

[NOTE: This form is different from GOCO's previous easement forms. GOCO will work with grantees to tailor easement language to fit a particular property, but every easement must be consistent with GOCO policies and guidelines and with all representations made by the applicant in the grant application. GOCO recognizes that individual grantees have differing missions and approaches to conservation. GOCO staff will endeavor to accommodate these differences as much as possible, but GOCO is bound by its fiduciary duty as trustee of the public funds invested in the transaction. As such, certain portions of this model easement are not negotiable.]

DEED OF CONSERVATION EASEMENT

[XYZ RANCH]

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT # _____ ("GRANT") FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND ("BOARD"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY, WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT (the "**Deed**") is granted on this ____ day of _____ 20__ ("**Effective Date**"), by _____, having its address at _____ ("**Grantor**"), to _____, having its address at _____ ("**Grantee**").¹ (Grantor and Grantee may be individually referred to as a "**Party**" and collectively referred to as "**Parties.**") The following exhibits are attached and incorporated²:

- Exhibit A - Legal Description of Property
- Exhibit B - Map of Property [including Building Envelopes and other areas designated in this Deed]
- Exhibit C - Baseline Acknowledgement
- Exhibit D - Water Rights
- [Exhibit X - XYZ]

RECITALS

A. Grantor is the sole owner in fee simple of approximately ____ acres of real property located in _____ County, Colorado, more particularly described in **Exhibit A**³ and generally depicted on **Exhibit B** (the "**Property**").

¹ The names of the Parties should appear in identical form to the names listed in the title commitment (including proper corporate form, as determined by the Colorado Secretary of State's website, a.k.a., d.b.a., etc. as applicable).

² The exhibits are a part of the easement and are vital to understanding its terms. GOCO may not be able to provide comments on a draft that is submitted without exhibits.

³ Please check the attached legal description against the title commitment and the vesting deed for the Property.

B. The Property possesses [e.g., **relatively natural habitat, scenic, open space, educational, and/or recreational**] values (collectively, “**Conservation Values**”) of great importance to Grantor, the people of [county, locale, or region] and the people of the State of Colorado. In particular, the Property contains the following characteristics, which are also included within the definition of Conservation Values [**describe specific Conservation Values supported by or attributable to the Property.**]

i. ...

ii. ...

iii. ...⁴

C. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor’s land use patterns existing on the Property as of the Effective Date (as defined in **Section 28**, below), including without limitation those relating to [e.g., **farming, ranching**], do not materially adversely affect the Conservation Values and are consistent with the Purpose.

D. By granting this Deed, Grantor further intends to create a conservation easement interest that binds Grantor and future owners of the Property and to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

E. Grantee is a publicly supported, tax-exempt nonprofit organization under I.R.C. § 501(c)(3) and a “qualified organization” under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c), whose primary purpose is [**insert your organization’s mission statement here**].

F. Grantee is also a charitable organization as required under C.R.S. § 38-30.5-101, *et seq.*, which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.⁵

⁴ Use as many paragraphs as necessary to fully explain the specific Conservation Values of the Property including any and all federal, state and local governmental policies supporting the preservation of the Conservation Values. The recital of Conservation Values must be consistent with the grant application and include specific characteristics of the Property from the Baseline Report. If Grantor intends to obtain federal or state tax benefits for a bargain sale donation of the conservation easement, the description of the Conservation Values should specifically refer to one or more of the conservation purposes set forth in I.R.C. § 170(h)(4) and Treas. Reg. § 1.170A-14(d).

⁵ If Grantee is a government, Recital E should be revised to indicate that Grantee has an open space program dedicated to land conservation and Recital F to indicate that Grantee is qualified to hold conservation easements as a governmental entity under C.R.S. 38-30.5-104.

G. Grantee is certified as license number [CEXXXX] by the State of Colorado's Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

H. Funding for this project has been provided in part by the Board. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grant programs and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

I. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, *et seq.*, and in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained in this Deed, and for the further consideration of Grantor's charitable donation of a portion of the fair market value of the conservation easement interest for which Grantee did not provide goods or services to Grantor⁶ and for Grantee's payment of _____ Dollars (\$ _____), Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a conservation easement in gross in perpetuity over the Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed.

1. Purpose. The purpose of this Deed is to ensure that Grantor preserve and protect in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101, *et seq.* ("**Purpose**"). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will materially adversely affect the Conservation Values. Notwithstanding the foregoing, nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. Baseline Documentation Report. The Parties acknowledge that a written report dated _____ has been prepared by _____ and has _____

⁶ The reference to a charitable donation of the easement is only applicable if Grantor and Grantee both agree it is appropriate.

been reviewed and approved by the Parties, which documents the Property's condition as of the Effective Date (the "Baseline Report"). The Baseline Report contains a natural resources inventory of the Property and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represents the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as **Exhibit C**. The Parties will use the Baseline Report to ensure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. Rights of Grantee. To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101, *et seq.*, and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

- a. To preserve and protect the Conservation Values in perpetuity;
- b. To enter upon the Property at reasonable times to monitor Grantor's compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor prior to such entry. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property when exercising any such rights;
- c. To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of areas or features of the Property that may be damaged by any inconsistent use; and
- d. To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right of way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural and recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. Reserved Rights.⁷ Subject to the terms of the Deed, Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the specific rights set forth below.

a. Right to Convey. Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this **Section 4.a** shall be subject to the provisions of **Section 19** of this Deed.

b. Resource Management. To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of **Section 6** of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) Habitat Management. Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values. Prior to any such activities, Grantor must first notify Grantee and obtain Grantee's approval in accordance with **Section 7** of this Deed.

⁷ If Grantor wishes to reserve specific rights (either uses or development rights) and those rights were presented in the grant application and approved by the Board, please include each right in a sub-paragraph to Section 4 as indicated, describing reserved rights, building envelopes, etc. The language included in Section 4 is an illustration of the typical reserved rights found in conservation easements but may represent more or less than the reserved rights approved in the grant application. If contemplating a subdivision provision that was approved in the grant application, contact GOCO for suggested language.

(2) Agriculture. Grantor reserves the right to **[list all permitted agricultural uses such as irrigating and fertilizing forage crops, raising and cultivating forage crops and grazing cattle, sheep and other livestock]**. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover.

(3) Timber Management. Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Dead trees may also be cut for firewood and other uses on the Property. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee and provided to the Board prior to any large-scale fire mitigation activities or commercial timber harvesting.

c. Recreational Activities. Grantor reserves the right to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, snowshoeing, and other similar low-impact recreational uses, to be enjoyed solely by Grantor and Grantor's family and guests. Fishing and hunting are also permitted, so long as they are undertaken in compliance with applicable state and federal laws and regulations and pursued in a manner that is consistent with the Purpose. **[If applicable, state here that Trails are permitted only in accordance with Section 4.e(3) of this Deed.]**

d. Residential and Non-Residential Improvements. Improvements existing as of the Effective Date are permitted, and Grantor may maintain, repair, replace and reasonably enlarge such improvements in their current locations without Grantee's approval. Grantor reserves the right to construct or place Residential Improvements and Non-Residential Improvements defined below, and Grantor shall provide prior notice of such construction to Grantee in accordance with **Section 7** of this Deed. Once constructed, Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially constructed locations without Grantee's approval. **"Residential Improvements"** shall mean covered improvements containing habitable space intended for full- or part-time human habitation, including but not limited to homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch. **"Non-Residential Improvements"** shall mean all other covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, including but not limited to barns, hay storage areas, machine shops, sheds, free-standing

garages, well houses, outhouses, gazebos, picnic areas, sport courts, pools, outdoor kitchens, parking areas, and indoor and outdoor riding arenas. Grantor reserves the right to construct Minor Non-Residential Improvements, defined below, without Grantee’s approval. “**Minor Non-Residential Improvements**” shall mean minor agricultural or non-residential improvements including but not limited to fences (subject to the terms of **Section 4.f** of this Deed), corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, information kiosks, trail markers and trash receptacles.

(1) **Building Envelope.** Grantor has designated a building envelope consisting of ___ acres in the location depicted on **Exhibit B** (the “**Building Envelope**”). Grantor may construct, place, replace or enlarge Residential and Non-Residential Improvements within the Building Envelope subject to the following limitations:

- (i) **[State maximum number of improvements.]**
- (ii) **[State maximum square footage for each improvement and cumulative.]**
- (iii) **[State maximum height.]**
- (iv) **[Other building restrictions.]**

OR, alternative Building Envelope language:

(1) **Building Envelope.** Grantor may designate a building envelope (“**Building Envelope**”) of no more than ___ acres, only within the ___-acre building area Grantor has designated in the location depicted on **Exhibit B** (the “**Building Area**”). Prior to construction of either the first new Residential Improvement or the first new Non-Residential Improvement within the Building Envelope, Grantor shall present Grantee with a plan describing and depicting the proposed boundaries of the Building Envelope within the Building Area. Grantee shall review the proposed location of the Building Envelope to ensure that it is located wholly within the Building Area. Upon acknowledgement that the boundaries of the proposed Building Envelope are located wholly within the Building Area, Grantor and Grantee shall record in the property records of the county or counties in which the Property is located Notice of Building Envelope Designation in a form similar to the form attached as **Exhibit X**, which shall also include a revised **Exhibit B**, which revision shall describe, depict and establish the boundaries of the Building Envelope. Any such revision shall be binding on any lender whose mortgage or deed of trust is subject to the terms of this Deed. After a properly executed Notice of Building Envelope Designation is recorded, new Residential Improvements or new Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

- (i) **[State maximum number of improvements.]**
- (ii) **[State maximum square footage for each improvement and cumulative.]**
- (iii) **[State maximum height.]**
- (iv) **[Other building restrictions.]**

OR, second alternative Building Envelope language:

(1) Building Envelope. Grantor may designate a building envelope (“**Building Envelope**”) of no more than ___ acres, within one of four locations depicted on Exhibit B as “A,” “B,” “C” and “D.” Grantor shall inform Grantee in writing of Grantor’s choice of location for the Building Envelope. Grantor and Grantee shall then execute and record in the property records of the county or counties in which the Property is located a Notice of Building Envelope Designation in a form similar to the form attached as Exhibit X, which shall also include a revised Exhibit B, which revision shall describe, depict and establish the boundaries of the Building Envelope. Any such revision shall be binding on any lender whose mortgage or deed of trust is subject to the terms of this Deed. After a properly executed Notice of Building Envelope Designation is recorded, new Residential Improvements or new Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

- (i) **[State maximum number of improvements.]**
- (ii) **[State maximum square footage for each improvement and cumulative.]**
- (iii) **[State maximum height.]**
- (iv) **[Other building restrictions.]**

(2) Outside of the Building Envelope. Grantor may construct or place the Non-Residential Improvements in the portion of the Property outside of the Building Envelope subject to the following limitations:

- (i) **[State type of improvements permitted.]**
- (ii) **[State maximum number of improvements.]**
- (iii) **[State maximum square footage for each improvement and cumulative.]**
- (iv) **[State maximum height.]**
- (v) **[Other building restrictions.]**

e. Roads and Trails. Maintenance of existing Roads and Trails is permitted. “**Roads**” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “**Trails**” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include game trails established and used by wildlife only. Prior to the construction or establishment of any Road or Trail, Grantor shall provide notice to Grantee in accordance with **Section 7** of this Deed.

(1) Within the Building Envelope. Grantor may construct Roads and parking areas within the Building Envelope (which Roads and parking areas may be paved) to access Residential and Non-Residential Improvements expressly permitted within the Building Envelope by **Section 4.d** of this Deed. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed.

(2) Outside the Building Envelope. Grantor shall not construct or establish Roads outside the Building Envelope except those existing Roads depicted on **Exhibit B** and a new Road to be constructed in the location depicted on **Exhibit B** to access the Building Envelope, or such other Roads that Grantee determines are consistent with the Purpose. Grantor shall not construct or establish any Road wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed. Grantor shall not pave or otherwise surface a Road with any impervious surface, except for the Road providing access to the Building Envelope or any other Road if Grantee determines the paving of the Road is consistent with the Purpose.

(3) Trails. Grantor shall not construct or establish any new Trail on the Property except for the new Trail to be constructed in the location depicted on **Exhibit B**, or unless Grantee determines a new Trail is consistent with the Purpose.

f. Fences. Existing fences may be maintained, repaired and replaced, and new fences may be built anywhere on the Property. The location and design of any fencing located outside the Building Envelope shall facilitate and be compatible with the movement of wildlife across the Property⁸ and otherwise consistent with the Purpose.

g. Utility Improvements. If permitted in an instrument recorded as of the Effective Date, or approved by Grantee in accordance with **Section 7** of this Deed, energy generation or transmission infrastructure and other Utility Improvements, if any, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including but not limited to wind, solar, geothermal, or hydroelectric for use on the Property (“**Utility Improvements**”). Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose.

(1) Within the Building Envelope. Grantor may enlarge or construct Utility Improvements within the Building Envelope for the uses permitted on the Property without further permission of Grantee, provided that no Utility Improvement exceeds 35 feet in height.

(2) Outside of the Building Envelope. Grantor shall not enlarge or construct any Utility Improvements outside of the Building Envelope without Grantee’s approval. However, Grantor reserves the right to construct Utility Improvements outside the Building Envelope solely to provide utility services to the improvements permitted by this Deed, provided that no Utility Improvement exceeds 35 feet in height. Utility Improvements outside of the Building Envelope shall be located underground to the extent practicable.

⁸ Required if the application describes wildlife habitat.

(3) Additional Requirements. Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to Grantee in accordance with **Section 7** of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose.

(4) Alternative Energy.

(i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this **Section 4.g(4)**. Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this **Section 4.g(4)** are located within a Building Envelope [**revise if no Building Envelopes**] or if the facilities are installed in conjunction with the operation of an agricultural improvement as described in **Section 4.d()** above. Any other Alternative Energy Generation Facilities may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors that Grantee may consider in determining whether to grant such approval shall include but not be limited to (a) whether the installation and siting would substantially diminish or impair the Conservation Values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this **Section 4.g(4)** shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this **Section 4.g(4)** that is incidentally in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

(iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. Prior to approving any expanded Alternative Energy Generation Facilities, Grantee shall submit an Alternative Energy Development Plan to the Board for its review. If the Board deems that the facilities proposed in the Alternative Energy Development Plan are inconsistent with the Board’s Grant or the Purpose, or that the Alternative Energy Development Plan does not contain sufficient information, Grantee shall not permit any expanded Alternative Energy Generation Facilities on the Property. For the purposes of this **Section 4.g(4)(iii)**, the term

“expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by **Sections 4.g(4)(i) and 4.g(4)(ii)**.

h. [Other provisions as necessary]

5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited⁹ or restricted as set forth below:

a. Development Rights. To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including but not limited to all present and future rights to divide the Property for the purpose of development into residential, commercial or industrial lots or units or to receive density or development credits for the same for use off of the Property (“**Grantee’s Development Rights**”). The Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible lot yield of the Property or any other property.

b. Residential, Non-Residential and Minor Non-Residential Improvements. Grantor shall not construct or place any Residential Improvements, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with **Section 4.d** of this Deed.

c. Recreational and Commercial Improvements. Grantor shall not construct or place any new recreational improvement on the Property, including but not limited to athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges [**except as specifically reserved in Section 4() if applicable**]. Grantor shall not construct or place any new commercial improvement on the Property [**except as specifically reserved in Section 4() if applicable**].

d. Subdivision. The Parties agree that the division, subdivision, de facto subdivision or partition in kind of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including but not limited to condominium interests or the partition of undivided interests) is prohibited. At all times Grantor shall own and convey the Property as a single parcel, which shall be subject to the provisions of this Deed, regardless of whether the Property consists of separate parcels as of the Effective Date, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes. Grantor may own the single parcel by joint tenancy or tenancy in common. However, Grantor shall not undertake any legal

⁹ GOCO will tailor this paragraph to fit the project as it was approved; all restrictions must be consistent with the application. The model subparagraphs included are not an exhaustive list. Certain other restrictions may be necessary to protect the unique Conservation Values of an individual property.

proceeding to partition, subdivide, or partition in kind in any manner such undivided interests in the single parcel.¹⁰

e. Removal of Vegetation and Timber Harvesting. Except as otherwise set forth in this Deed, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with **Section 4.b(3)**.

f. Mineral Extraction. As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “**Minerals**”) located on, under, or in the Property or otherwise associated with the Property. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any proposed mineral extraction by Grantor or any third party, as applicable: **[OR if minerals are severed: As of the Effective Date, Grantor does not own all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “Minerals”) located on, under, or in the Property or otherwise associated with the Property. For this reason, a minerals assessment report has been completed by _____, dated _____, in compliance with I.R.C. § 170(h)(5)(B)(ii) and Treas. Reg. § 1.170A-14(g)(4). The report concludes that, as of the Effective Date, the probability of extraction or removal of Minerals from the Property by any surface mining method is so remote as to be negligible. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Grantor may permit subsurface access to Minerals from locations off the Property, provided that Grantor shall not permit such subsurface access to disturb the subjacent and lateral support of the Property or to materially adversely affect the Conservation Values. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any proposed mineral extraction by Grantor or any third party, as applicable:]**¹

(1) Soil, Sand, Gravel and Rock. Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the Conservation Values; (iv) does not involve disturbing by such extraction more than one

¹⁰ GOCO will consider modifications to this language to allow limited reserved subdivision rights if specifically addressed in the grant application and addressed in a qualified appraisal.

¹ If Grantor owns some but not all of the mineral rights associated with the Property, a combination of these two paragraphs is appropriate.

half-acre [**a smaller area may be appropriate for smaller properties**]of the Property at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irretrievably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.¹¹

(2) Oil and Gas. Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

(i) The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the “**Oil and Gas Plan**”), prepared at Grantor’s expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) the proposed operation restrictions to minimize impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (g) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring soils to the original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (h) remedies for damages to the Conservation Values.

(ii) No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

(iii) Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

(iv) Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

¹¹ This paragraph is only appropriate where Grantor has reserved limited development and/or road construction rights. It should be deleted if there is no reserved development on the Property.

(v) Well facilities and pipelines shall either be placed underground, or screened or concealed from view by the use of existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located along or under existing roadways to the maximum extent possible.

(vi) Drilling equipment may be located above ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is completed.

(vii) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Grantor.

(viii) Any water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

(ix) Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

(x) Grantor shall not allow use of the Water Rights for any oil and gas activities.

(xi) Grantee shall be released, indemnified and held harmless from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(3) Third-Party Mineral Extraction. If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals associated with the Property (each, a “**Mineral Document**”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval.¹² Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii) must (a) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values; and (c) contain

¹² If there is an active oil and gas lease on the Property, you will need to consult with GOCO about drafting certain additional protections.

a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property, and shall not allow any use that would materially adversely affect the Conservation Values.

(4) This **Section 5.f** shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

g. **Trash.** The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other farm-related trash and refuse produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. This **Section 5.g** shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

h. **Water Rights Included.** The Parties agree that it is appropriate to encumber certain water rights beneficially used on the Property with this Deed pursuant to C.R.S. § 38-30.5-102, including all of Grantor's right, title, and interest in and to the water and water rights described in **Exhibit D**,¹³ together with all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and rights of way, and irrigation equipment affixed to the Property (collectively, the "**Water Rights**").¹⁴

(1) **Permitted Water Uses.** The Parties agree that the Water Rights will be used according to their decreed terms. The Parties further agree that the Water Rights are dedicated and restricted exclusively for conservation purposes, including but not limited to the Conservation Values of the Property, agricultural, wildlife habitat, horticultural, wetlands, recreational, forest, or other uses consistent with the protection and restoration of open land, environmental quality, or life-sustaining ecological diversity (the "**Permitted Water Uses**"). The Permitted Water Uses specifically include:

(i) **Historical Use.** The Parties agree that Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices, including continued irrigation or other historical use of the Water Rights. In the event that Grantor can no longer use the Water Rights in accordance with recent historical practices, the Water Rights shall be used for other Permitted Water Uses;

¹³ Alternative language for use in this exhibit is attached and should be attached as an exhibit to the Deed.

¹⁴ If the grant application contemplated subdivision, specific language will be necessary in this section.

(ii) Instream Flow Use. The Parties agree that Grantor may enter into temporary legally enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes, not to exceed three consecutive years or five out of every ten years, to increase instream flows and/or water levels in streams, rivers, lakes, and reservoirs to preserve or improve the natural environment of such water body(s), provided that: (1) Grantee has given its prior written consent to such arrangements; (2) that such use, in the opinion of Grantee, would not jeopardize the long-term Conservation Values of the Property; (3) that such arrangements do not permanently separate the Water Rights from the Property; (4) that such arrangements comply with current law; and (5) that Grantee has provided written notice to the Board; and

(iii) Restoration/Enhancement Use. Grantor may propose projects on the Property, including the riverbed of the Property, that prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property. These may include a change of Water Rights pursuant to C.R.S. § 37-92-302 or any successor statute (a “**Change**”) or water infrastructure construction. Such Change or construction shall be undertaken only after creation of a site-specific plan for restoration/enhancement, which has been submitted to and approved by Grantee.

Grantor shall have the right to install, construct, maintain, repair, and, if destroyed, reconstruct any facilities related to the Water Rights (such as gages, ditches, wells, reservoirs, recharge ponds, etc.), unless the Conservation Values of the Property would be unreasonably damaged thereby, as determined by Grantee in its reasonable discretion.

(2) Restrictions on Water Rights. Except as permitted by **Section 5.h(1)**, the Parties agree that Grantor may not: (i) Change the Water Rights to or use the Water Rights for municipal, industrial, commercial, or any other new uses; (ii) Change the Water Rights for use other than on the Property; (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property; or (iv) have the points of diversion, or the type or the place of use within or without the Property, changed except after Grantor’s receipt of written determination by Grantee that such changes are consistent with the Permitted Uses or will not materially impair the Conservation Values of the Property. Grantor shall not, without the prior written approval from Grantee, which approval shall not be unreasonably withheld, construct, or permit others to construct, any new diversion, storage, or other water structures upon the Property; develop any conditional water rights for use on the Property; or otherwise undertake any new development of water resources for use on the Property.

(3) Change of Conditions. Grantor expressly waives any claim to use, change or transfer all or any part of the Water Rights other than as provided in this Deed, regardless of any future change in circumstances, change in values, or other reasons, based on any theory of reasonable accommodation or other theory that would release any or all of the Water Rights from the provisions of this Deed without Grantee’s and the Board’s express written consent, which can be granted, withheld, or conditioned by each in its sole discretion.

(4) Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, Grantor shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, and shall provide to Grantee copies of any reports Grantor submitted to the State or Division Engineer or Water Commissioner. Grantor shall provide Grantee a copy of any written notice received by Grantor from any state water official concerning the use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list as provided by C.R.S. § 37-92-401 or any successor statute, or Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such abandonment or threat of abandonment and shall meet with Grantor to discuss the matter. If, and only if, Grantor fails to cure the threat of abandonment within 90 days of receiving such notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or law, have the right to (1) enter the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights, if desired by Grantee; and (2) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, Grantee may, after consultation with Grantor, seek to Change the Water Rights to another Permitted Water Use. Grantor agrees to cooperate in any manner necessary to accomplish such changes, and authorizes and appoints Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate such changes.

(5) Recording Encumbrance on Stock Certificates. If the Water Rights include any shares in ditch or reservoir companies, Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch or reservoir company for inclusion of the following notation thereon: “These shares are subject to the terms and restrictions set forth in the Deed of Conservation Easement from _____ to _____ recorded in the Real Property Records of _____ County, Colorado, on _____, 20__ at Reception No. _____.” Grantor shall promptly provide a copy of the reissued stock certificate(s) to Grantee and the Board.

i. Motorized Vehicles. Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

j. Commercial or Industrial Activity.

(1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C.

§ 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:¹⁵

(i) Producing, processing or selling plants, animals, or other farm or ranch products that are predominantly grown or raised outdoors on the Property, including forages, sod crops, grains, feed crops, field crops, berries, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, aquaculture, trees, and other similar uses and activities;

(ii) Breeding and grazing livestock, such as cattle, horses, sheep, swine, and similar animals;

(iii) Customary rural enterprises, such as farm machinery repair or livestock veterinary services, conducted within the Building Envelope;

(iv) Home occupations or similar enterprises conducted by and in the home of a person residing on the Property; and

(v) Hunting, fishing, and wildlife viewing.

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.

k. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing or other low-impact recreational uses, and signs informing the public of the status of ownership. Any such signs shall be located and designed in a manner consistent with the Purpose. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board's Grant and investment in this Property to the public.¹⁶

6. Land Management / Management Plan.

¹⁵ Following is a list of potential uses that typically may be consistent with the foregoing criteria; however, each Deed must be drafted so that the permitted uses do not, in fact, substantially diminish or impair the Property's Conservation Values or otherwise interfere with the conservation purposes of the Deed. Specific uses may only be permitted within a designated building envelope.

¹⁶ This sentence will be required in all situations where GOCO funds are helping acquire fee title or an easement interest, unless GOCO agrees otherwise in writing.

[GOCO requires that one of the following management plan paragraphs be incorporated into the conservation easement. The first paragraph is appropriate for a property that does not contain existing management issues or is not open to general public access (i.e. most ranches and farms). The second paragraph is required if there is an existing management issue or if public access is a project component.]

Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed require careful and thoughtful stewardship of the Property. In the event Grantee believes at any time that the resource management practices used on the Property are not consistent with the Purpose, Grantor and Grantee shall jointly prepare a written plan (“**Management Plan**”), detailing requirements for the preservation and protection of the Conservation Values regarding: agricultural, timber, mining, water, wildlife, weed control or other management practices that Grantee has identified as being at issue. Grantor shall comply with the requirements established in the Management Plan. Grantee shall provide the Management Plan to the Board. The Management Plan shall be updated if either Party determines an update is necessary.

OR

To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a “**Management Plan**” jointly prepared and agreed upon by Grantor and Grantee within one year of the Effective Date. Grantee shall provide the Management Plan to the Board. The Parties shall review the Management Plan at least every five years and update it if either Party determines an update is necessary. **[For a conservation easement with private ownership of the fee title, it is encouraged to have the Management Plan agreed to before the recording of the Deed in order to minimize the possibility of later disagreement between the landowner and the easement holder over a critical component of the transaction.]**

7. Grantor Notice and Grantee Approval. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose. Where Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee's approval in writing. Grantee shall grant or withhold its approval in writing within a reasonable period of time within receipt of Grantor's written request and sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee's reasonable determination that the activity

as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.¹⁷

8. Enforcement. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:

a. Restore the Property to its condition prior to the violation; or

b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If Grantor refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition. The Board shall in no event be required to participate in any mediation.

9. Costs of Enforcement. Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed. If the deciding body determines that Grantor has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee's legal action was frivolous or groundless, Grantee shall pay Grantor's costs and attorney fees in defending the legal action.

10. No Waiver or Estoppel. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Deed or of any of Grantee's rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the

¹⁷ GOCO will not accept "deemed approval" language in easements it funds. Such language places an arbitrary timeline on potentially complicated and unforeseeable questions that may require research, investigation, and consultation to thoroughly resolve. GOCO believes that deemed approval language may also create incentives to abuse the request and approval process in the hopes that these requests may be deemed approved by mistake or oversight.

terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*

11. Acts Beyond Grantor's Control. Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose.

12. Access. **[No right of access by the general public to any portion of the Property is conveyed by this Deed.] or [The general public shall have access to the Property, subject to any regulations by Grantor necessary and appropriate to protect public health and safety.]**¹⁹

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.²⁰

15. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and the Board and the members, directors, officers, employees, agents, and contractors and the heirs, representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act,

¹⁹ GOCO requires that public access be granted when GOCO funds helped acquire fee title or where a public access component is proposed in the project application.

²⁰ Grantee may add the following language if desired: "Grantee is authorized but in no event obligated to make or advance any payment of Taxes, upon [e.g., three] days' prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of / percentage points over the prime rate of interest from time to time charged by a bank selected by Grantee or the maximum rate allowed by law."

omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in **Section 8**; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this **Section 15**, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee or the Board, nor shall Grantee or the Board have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any similar law or regulation.

16. Real Property Interest. The conservation easement interest created by this Deed constitutes a real property interest immediately vested in Grantee. The Parties stipulate that, based on a qualified appraisal, this conservation easement interest (which includes the value of Grantee's Development Rights) has a fair market value equal to _____ percent (___%) of the full unencumbered fair market value of the Property (the "**Easement Value Percentage**"). The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to I.R.C. § 170(h), whether or not Grantor claims any deduction for federal income tax purposes. The Easement Value Percentage shall remain constant.

[If GOCO has helped fund the acquisition of the fee interest in the Property, the following language should be used instead of the above section: This Deed constitutes a real property interest immediately vested in Grantee, the value of which has not been determined as of the Effective Date. Should the Deed be taken for the public use or otherwise terminated according to Section 17 below, Grantee shall be entitled to compensation for its interest, which shall be determined by a qualified appraisal that establishes the ratio of the value of the Deed interest to the value of the fee simple interest in the Property, expressed as a percentage, as of the date of the taking or termination (the "Easement Value Percentage"). The Easement Value Percentage shall be used to determine Grantee's compensation according to the following Section 17].

17. Condemnation or Other Extinguishment. If this Deed is taken, in whole or in part, by exercise of the power of eminent domain ("**Condemnation**"), or if circumstances arise in the future that render the Purpose impossible to accomplish, this Deed can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party and the Board in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Deed that is terminated as a result of Condemnation or other proceedings. Grantee's proceeds shall be an amount at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest in the portion of the Property that will no longer be encumbered by this

Deed as a result of Condemnation or termination. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed without the approval of Grantee and the Board. The Board shall be entitled to receive ____ percent (____%)²¹ of Grantee's share of the proceeds. **[Additional funder shall be entitled to receive ____ percent (____%) of Grantee's share of the proceeds.]** Upon Grantee's receipt of its share of the proceeds, Grantee shall promptly remit to the Board **[and any additional funder]** its **[each body's]** respective share of these proceeds. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed. Grantee's remedies described in this **Section 17** shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

18. Assignment.

a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

(1) is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;

(2) is authorized to acquire and hold conservation easements under Colorado law;

(3) agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

(4) is approved in writing as a transferee by the Board **[and any additional funder]** in its **[the]**sole and absolute discretion **[of each entity]**²². Grantee shall provide the Board **[and each additional funder]** with a written request to assign the Deed at least 45 days prior to the date proposed for the assignment transaction.

b. The Board **[and the additional funder]** shall **[each]** have the right to require Grantee to assign its rights and obligations under this Deed to a different organization if Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Deed; or is unwilling or unable to effectively monitor the Property for compliance with this Deed at least once every calendar year. Prior to any assignment under this **Section 18.b**, the Board **[and the additional funder]** shall consult with Grantee and provide Grantee an opportunity to address the Board's **[or the**

²¹ This percentage is determined by dividing the portion of GOCO's grant attributed to the purchase price of the interest acquired (either fee or conservation easement) by the fair market value of the interest acquired.

²² GOCO's approval of an assignment will require compliance with any limitation on assignment in the Colorado Division of Real Estate regulations concerning assignment of a conservation easement in gross for which Colorado conservation easement tax credit was claimed.

additional funder's] concerns. If the Board's [**or the additional funder's]** concerns are not addressed to the satisfaction [**of the Board or of each]**, the Board [**or the additional funder]** may require that Grantee assign this Deed to an organization designated by the Board [**and the additional funder]** that complies with **Section 18.a(1), (2), and (3)** above.

c. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee, but Grantor, the Board [**or the additional funder]** has refused to approve the transfer, Grantee may seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor,**[and]** the Board [**and the additional funder]** shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

d. Upon compliance with the applicable portions of this **Section 18**, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located and provide a copy of the recorded assignment to the Board. Assignment of the Deed shall not be construed as affecting the Deed's perpetual duration and shall not affect the Deed's priority against any intervening liens, mortgages, easements, or other encumbrances.

19. Subsequent Transfers. Grantor shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. [**If GOCO has helped fund the acquisition of the fee interest in the Property, the following language must be included: Grantor further agrees to give written notice to Grantee and the Board of the transfer of any interest at least 45 days prior to the date of such transfer and may be required to pay the Board an Additional Board Refund under Section 20 below.**] The failure of Grantor to perform any act required by this **Section 19** shall not impair the validity of this Deed or limit its enforceability in any way.

20. Additional Board Refund²³. The Board's Grant has provided partial consideration for Grantor's acquisition of fee title to the Property, associated water rights, and/or partial real estate interest in the Property above and beyond this Deed; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated water rights ("**Sale**"), excluding any lease of the Property or the water rights to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "**Additional Board Refund**"), in addition to any payment that the Board may be entitled to receive under **Section 17** above. In the event of any condemnation of the fee title, the requirements of this section shall continue to apply with the exception of the need for prior written Board approval.

²³ GOCO will only use the following paragraph when GOCO has helped fund acquisition of the fee interest in the Property.

a. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale or condemnation of the fee title (which shall be defined as the fair market value of the property being sold in the Sale or condemnation of the fee title, minus direct transaction costs) ("**Net Proceeds**"). The Additional Board Refund shall be determined by: a) first dividing the portion of the Board's Grant amount attributed to the original purchase price by the original purchase price for fee title to the Property; b) then by multiplying the resulting ratio by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale or condemnation of the fee title. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale or condemnation of the fee title. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale or condemnation of the fee title.

b. Possible Exception to Refund Requirement. If a Sale or condemnation of the fee title occurs to a third party that is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board.

21. Notices. Any notice, demand, request, consent, approval, or communication that either Party or the Board is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

To Grantor:

To Grantee:

To the Board:
Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1900 Grant St., Ste 725
Denver, CO 80203

or to such other address as either Party or the Board from time to time shall designate by written notice to the other.

22. Grantor's Title Warranty. Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all claims whatsoever²⁴.

23. Subsequent Liens on the Property. No provisions of this Deed shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this Deed, including without limitation its perpetual nature, the payment of proceeds as described in **Section 17** above, and the limitation of **Section 5.d**.

24. Recording. Grantee shall record this Deed in a timely fashion in the official records of each county or counties in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Deed.

25. Environmental Attributes. Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. "**Environmental Attributes**" shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this **Section 25** shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.

26. Tax Benefits. Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Deed. Grantee makes no representation or warranty that Grantor will receive tax benefits for the bargain sale or donation of the Deed.

27. Deed Correction. The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement, which the Board must first approve in writing. Any corrections shall be recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located.

²⁴ It is acceptable to add an exhibit showing a list of title exceptions (but not to include the standard exceptions), but it is not acceptable to include a broad reference to making this warranty "subject to matters of record."

28. Effective Date. The Effective Date of this Deed shall be the date and year first written above.

29. General Provisions.

a. Controlling Law. The interpretation and performance of this Deed shall be governed by the laws of the State of Colorado.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the Purpose and the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this Deed is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Deed, and the balance of this Deed shall otherwise remain in full force and effect.

d. Entire Agreement. The Recitals above are a material part of this Deed and are incorporated into this Deed. This Deed sets forth the entire agreement of the Parties with respect to the grant of a conservation easement over the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the grant, all of which are merged in this Deed.

e. Joint Obligation. The obligations imposed upon Grantor and Grantee in this Deed shall be joint and several in the event that more than one entity or individual holds either interest at any given time.

f. Non-Merger. A merger of this Deed and the fee title to the Property cannot occur by operation of law because, in addition to Grantee's rights and interest under this Deed, the Board has rights under this Deed. Under Colorado law, the existence of these rights precludes unity of title. If the Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that Grantee first transfer the Deed to another qualified organization consistent with **Section 18** above. In the event Grantee acquires fee title interest or any other interest in the Property without Grantee's prior knowledge (e.g., receiving real property by will), Grantee must immediately provide notice of its acquisition to the Board, and the Board may require that Grantee transfer this Deed to another qualified organization consistent with **Section 18** above.

g. Successors. The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

h. Termination of Rights and Obligations. Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

j. No Third Party Beneficiaries. This Deed is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, and the Board **[and any additional funders]** and their respective successors and assigns for the purposes set forth in this Deed. This Deed does not create rights or responsibilities in any third parties beyond Grantor, Grantee, and the Board **[and any additional funders]**.

k. Amendment. If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed, (ii) does not affect the perpetual duration of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, (iv) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time), and (v) receives the Board's prior written approval. Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. A copy of the recorded amendment shall be provided to the Board. Amendment of the Deed shall not affect the Deed's priority against any intervening liens, mortgages, easements, or other encumbrances. In order to preserve the Deed's priority, the Board may require that Grantee obtain subordinations of any liens, mortgages, easements, or other encumbrances, and the Board may require a new title policy. For the purposes of the Board's approval under item (v) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this **Section 29.k** shall be construed as requiring Grantee or the Board to agree to any particular proposed amendment.

l. Change of Conditions or Circumstances. A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor, Grantee and the Board that any such changes shall not be deemed to be

circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.

m. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the Board, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board under this Deed shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

n. Authority to Execute. Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of each Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of each Party enforceable against each Party in accordance with its terms²⁵.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

[signatures]

[acknowledgments]

[please do not include a signature block for the Board]

[EXHIBITS]

²⁵ A current Statement of Authority should be recorded prior to recording of this Deed for any Party that is an artificial entity, e.g., corporation, LLC, LLLC, Trust, etc.

EXHIBIT A

Legal Description of the Property

EXHIBIT B

**Map of the Property
(including Building Envelopes and other areas designated in this Deed)**

EXHIBIT C

Baseline Acknowledgement

EXHIBIT D

Water Rights

[When the water rights to be included in the conservation easement can be described with specificity, include as much detail as possible, i.e., name of water right, source of water, amount, court and case number, date(s) of appropriation and date(s) of adjudication, well permit number(s), allotment contract(s), and/or certificate number(s) for shares in ditch and reservoir companies.]

[When the water rights to be included in the conservation easement cannot be described with specificity, but the intent of the Parties is to include *all* of the water rights, include the following language:] The “Water Rights” consist of all of Grantor’s right, title, and interests in any and all water and water rights of any kind or nature historically used on the Property, together with all canals, ditches, laterals, headgates, springs, ponds, reservoirs, water allotments, water shares and stock certificates, contracts, units, permits, wells, easements and rights of way, and irrigation equipment associated therewith. The Water Rights include surface water rights and groundwater rights (tributary, nontributary, not nontributary, and designated), whether decreed or undecreed.