

EASEMENT IN GROSS
(including Conservation Easement and Access Easement)
(Park County / DOW / Tarryall Creek Ranch)

THIS DEED OF EASEMENT IN GROSS, including a conservation and access easement and associated agreements between the parties (hereinafter collectively referred to as the “**Easement**”), is made and entered into this ____ day of _____, 201____ (hereinafter the “**Effective Date**”), by and between the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK** whose mailing address is P.O. Box 1373, Fairplay, Colorado 880440 (hereinafter referred to as the “**Grantor**” or the “**County**”), and the **STATE OF COLORADO** acting by and through the **DEPARTMENT OF NATURAL RESOURCES** for the use and benefit of the **DIVISION OF WILDLIFE and WILDLIFE COMMISSION**, whose address is 6060 Broadway, Denver, Colorado 80216 (hereinafter referred to as the “**Grantee**” or the “**State**”). The County and the State are sometimes collectively referred to hereinafter as the “**Parties**,” and sometimes singularly as a “**Party**.”

WITNESSETH THAT:
RECITALS

- A. WHEREAS**, the County is the owner in fee title of approximately 1,200 acres of land located in Park County, Colorado, more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter the “**Property**”); and
- B. WHEREAS**, the Property has significant public values, including, but not necessarily limited to, values for hunting, fishing, recreation, and open space that are of great importance to the residents of Park County and the People of the State of Colorado (hereinafter the “**Recreational and Open Space Values**”), which is why the State Board of the Great Outdoors Colorado Trust Fund assisted with funding the acquisition of a conservation easement burdening the Property (and approximately 250 acres of additional land) that was conveyed to Colorado Open Lands on December 28, 2009, and recorded that same day at Reception No. 667878 of the records of the Park County Clerk and Recorder (hereinafter the “**Primary Conservation Easement**” or “**PCE**”); and
- C. WHEREAS**, pursuant to Paragraph 4.A.(1) of the Primary Conservation Easement, three (3) building envelopes are permitted on the lands burdened there under (hereinafter the “**Three Permitted Envelopes**”), which include one referred to as the “*Headquarters Building Envelope*” (as that term is defined and used in the PCE) that is located on the Property, with the remaining two (2) of the Three Permitted Envelopes to be selected from a set of six (6) “*Approved Building Envelopes*” (as that term is defined and used in the PCE) identified as “A” through “F” generally depicted on Exhibit B-1, Exhibit B-2, and Exhibit B-3 attached to the PCE; and
- D. WHEREAS**, of the six (6) Approved Building Envelopes identified in the Primary Conservation Easement (which are in addition to the Headquarters Building Envelope), only Approved Building Envelopes “C”, “D”, “E”, and “F” are located on the Property; and

E. WHEREAS, immediately prior to the conveyance of this Easement, the County acquired fee title ownership of the Property, the deed for which provides that, in addition to the Headquarters Building Envelope, one of the two remaining Three Permitted Envelopes allowed under the PCE can also be used on the Property. That building envelope is referred to herein as “*Building Envelope I*” (as that term is used in the PCE) and is selected from the Approved Building Envelopes pursuant to the provisions of the PCE. The other of the Three Permitted Envelopes, to be referred to as “*Building Envelope II*” (as that term is used in the PCE), can be used on the remaining land approximately 250 acres in size that is similarly burdened by the PCE; and

F. WHEREAS, the County, as owner in fee simple of the Property, intends, pursuant to this Easement, to convey to the State certain aspects of the remaining development and property rights that exist on the Property following its encumbrance by the PCE (hereinafter the “**State’s Affirmative Rights**”), while also creating certain restrictions on the County’s use of the Property in addition to those restrictions imposed by the PCE (hereinafter the “**Additional Conservation Restrictions**”); and

G. WHEREAS, the Executive Director of the Colorado Department of Personnel has approved in writing the State of Colorado’s contractual commitment contained herein to defend and hold harmless the Grantor under certain circumstances, as provided in C.R.S. § 24-30-1510(3)(e).

NOW, THEREFORE, in consideration of the payment of _____ and ____ cents (_____.00), the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants, terms, conditions, restrictions, and requirements contained herein, which are based upon both the common law and Sections 38-30.5-101, et seq., C.R.S., as amended, Grantor does hereby grant, bargain, sell, and QUITCLAIM to Grantee a perpetual easement in gross and a perpetual conservation easement in gross, consisting of the rights hereinafter enumerated, over and across that certain real property, situated in Park County, Colorado, more particularly described on Exhibit A hereto (the Property), subject to the terms, conditions, and agreements between the Parties set forth herein.

1. Purpose. The most significant purposes of this Easement are generally as follows:

A. To convey to the State certain aspects of the remaining development and property rights that exist on the Property following its encumbrance by the Primary Conservation Easement (collectively the “**State’s Affirmative Rights**”), including, but not limited to, the right to engage in agricultural practices on the Property, the right to hunt and fish on the Property, and the right to provide for public recreation on the Property (Recreational Values of the Property), all of which are as further set forth below; and

B. To convey to the State additional protections for the preservation and protection in perpetuity of the Open Space Values of the Property more stringent than those provided for in the Primary Conservation Easement, including, but not limited to, additional limitations on the County’s use of the Building Envelope I allowed on the Property

pursuant to the PCE (collectively the “**Additional Conservation Restrictions**”).

2. Description of the Present Condition of the Property. The Property is in general presently unoccupied by any building, structure, barn, or other development, except for (i) certain limited fences and roads, and (ii) improvements on the Headquarters Building Envelope as described in Paragraph 4.A.(1).a. of the Primary Conservation Easement. As described in Recital F of the PCE, the condition of the Property as of December 28, 2009, is described in the PCE’s “*Present Condition Report.*” Said Present Condition Report is hereby incorporated into this Easement by reference and is made a part hereof. The Parties hereto acknowledge that said Present Condition Report is also intended to establish the condition of the Property as of the Effective Date of this Easement. The Parties further agree that, in the event a controversy arises with respect to the condition of the Property as of the Effective Date of this Easement, or compliance with or violation of any term or provision of this Easement, then the Parties may use said Present Condition Report and any other relevant or material documents, surveys, reports, and other information to assist in resolving such controversy.

3. Designation of the Property’s Building Envelope I. As discussed above in the Recitals, the County’s deed for fee title ownership of the Property provides that, in addition to the Headquarters Building Envelope, one of the two remaining Three Permitted Envelopes allowed under the PCE is dedicated to the Property and shall be referred to as Building Envelope I. Of the six (6) Approved Building Envelopes identified in the PCE (which are in addition to the Headquarters Building Envelope), only Approved Building Envelopes “C”, “D”, “E”, and “F” are located on the Property that is the subject of this Easement. In regard to Building Envelope I, the Parties hereby agree as follows:

A. The County shall as soon as practical following the Effective Date of this Easement choose under the terms of PCE Paragraph 4.A.(1).c., Approved Building Envelope “D” as Building Envelope I pursuant to the terms of the PCE. Consequently, Approved Building Envelopes “C”, “E”, and “F” shall NOT be chosen.

B. Prior to the commencement of construction of any improvements within Building Envelope I (formerly known as Approved Building Envelope “D”), the County shall comply with all of the requirements of PCE Paragraph 4.A.(1).c., including, but not limited to, causing the exact location of Building Envelope I to be surveyed. Prior to providing a copy of the survey to the PCE Grantee, the County shall first provide a copy to the State for review and approval, and shall also provide a copy of the recorded notice to the State once the designation process is complete.

4. Joint Plan for Management of the Property. The County and the State intend to enter into a joint plan for the development, use, and management of public recreation on the Property (hereinafter the “**Development Agreement**”). The Development Agreement shall provide for the cooperative development by the Parties of the Property for public recreation. A copy of the Development Agreement shall be maintained on file with the Parties and by this reference is made a part hereof. Both the County and the State shall comply with the provisions of the Development Agreement, **but it is expressly understood between the Parties that any conflict between the Development Agreement and the terms of this Easement shall be resolved in**

favor of this Easement. The Development Agreement should be reviewed periodically and may be modified or amended in writing with the consent of the County and the State to address changing management concerns for the Property, but the failure of the Parties to review the Development Agreement shall not impair its validity or limit its enforceability in any way. Establishment of any subsequent modifications to the Development Agreement shall not require a formal amendment to this Easement, but any changes to the Development Agreement must conform to the requirements established by this Easement.

5. The State's Affirmative Rights. To accomplish the purposes of this Easement, the County does hereby grant, bargain, sell, and QUITCLAIM to the State the following affirmative rights on the Property:

A. The right to identify, preserve, and protect in perpetuity, and to restore to its natural condition following damage, the Recreational and Open Space Values of the Property, and in particular the value of the Property for public recreation.

B. The right to enter upon, access, and inspect the Property without notice at any and all times by foot and motorized vehicle in order to monitor compliance with and otherwise enforce the terms of this Easement and to exercise the rights granted herein.

C. The right to prevent any activity on or use of the Property that is inconsistent with the purposes and terms of this Easement, or which may be reasonably expected to have a material adverse impact on the Recreational and Open Space Values of the Property or its value for public recreation, and to require Grantor or a third party to restore such areas or features of the Property that are materially damaged by any inconsistent activity or use undertaken by Grantor or the third party.

D. The right to enforce and litigate the rights herein granted, by injunction and other means if necessary, in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such enforcement.

E. The exclusive right outside of Building Envelope I and the Headquarters Building Envelope to construct and use "*Non-Residential Improvements*" (as that term is defined in the PCE), which is allowed pursuant to PCE Paragraph 4.A.(2).

F. The exclusive right outside of Building Envelope I and the Headquarters Building Envelope to construct, maintain, improve, repair, and use new roads and parking areas, which is allowed pursuant to PCE Paragraph 4.B.(1).b., except that the County shall also have the non-exclusive right to maintain, improve, and repair the roads that connect Building Envelope I and the Headquarters Building Envelope to Highway 285.

G. The exclusive right within the interior of the Property but outside of Building Envelope I and the Headquarters Building Envelope to construct, build, maintain, replace, repair, and remove new fences, which is allowed pursuant to PCE Paragraph 4.B.(2). The County shall have this exclusive right in regard to fences within Building Envelope I and the Headquarters Building Envelope.

H. The non-exclusive right on the perimeter of the Property to (i) maintain, replace, and repair the existing perimeter fence around the Property; and (ii) construct, build, maintain, replace, and repair a new fence where appropriate on the perimeter of the Property, including, but not limited to, the western boundary of the Property, which are both allowed pursuant to PCE Paragraph 4.B.(2).

I. The non-exclusive right to erect, maintain, replace, and repair signs advising the public regarding recreational use of the Property, including, but not necessarily limited to, signs advising that Property is a “State Wildlife Area,” which is allowed pursuant to PCE Paragraph 4.B.(4).

J. The exclusive right to use the Property for agricultural purposes, which is allowed pursuant to PCE Paragraph 5.A. This right shall include, but not be limited to, grazing livestock.

K. The exclusive right outside of Building Envelope I and the Headquarters Building Envelope to cut trees, which is allowed pursuant to PCE Paragraph 5.B. The County shall have the exclusive right to cut trees within Building Envelope I and the Headquarters Building Envelope.

L. The exclusive right to engage in habitat management and restoration activities such as, but not limited to, the construction of ponds, the construction of wetlands, stream restoration, upland restoration, the removal of existing mine tailings, conducting controlled burns, and the planting, cutting, or eliminating by any means individual plants or entire plant species, which are allowed pursuant to PCE Paragraph 5.C. This right shall NOT include the responsibility to control noxious weeds, which, as discussed below in Paragraph 8.E., shall remain with the County.

M. The exclusive right outside of Building Envelope I and the Headquarters Building Envelope to use the Property for low-impact recreational uses, including, but not limited to, wildlife watching, hiking, cross-country skiing, hunting, and fishing, which are allowed pursuant to PCE Paragraph 5.E. This right shall include (i) the exclusive right outside of Building Envelope I and the Headquarters Building Envelope to construct hiking and skiing trails, foot bridges, kiosks, benches, interpretive signs, blinds, and similar improvements; (ii) the exclusive right outside of Building Envelope I and the Headquarters Building Envelope to allow, regulate, administer, control, and even prohibit the public’s access to and use of the Property for any and all such uses, not just those of wildlife viewing, hunting, and fishing; and (iii) the exclusive right outside of Building Envelope I and the Headquarters Building Envelope to establish and collect fees from the public for use of the Property. If collected, said fees shall belong completely to the State. Furthermore, the County shall have in regard to Building Envelope I and the Headquarters Building Envelope the exclusive right regarding the above listed low impact recreational activities.

N. The non-exclusive right to remove material that the State believes to be trash, litter, garbage, or junk that has been dumped, abandoned, or otherwise deposited on the Property.

O. The exclusive right to stock, control, and management in all respects the wildlife of the Property, which shall include, but not necessarily be limited to, the trapping or exterminating of all types of wildlife, and the stocking and releasing of wildlife, especially fish and other aquatic species.

P. The non-exclusive right within Building Envelope I and the Headquarters Building Envelope to use, and to allow the public to use, parking lots and public restroom facilities developed either by the County, or by the State in conjunction with the County.

When exercising its Affirmative Rights, the State shall comply with all of the terms and provisions of the PCE, including, but not limited to, complying with the “*General Construction Limitations and Procedures*” established in Paragraph 4.A.(3) of the PCE, and all other notice and approval requirements in the PCE that exist between the Grantor and Grantee thereof. The Parties further acknowledge that the State is authorized to act as Grantor under the terms of the PCE regarding the State’s Affirmative Rights, which shall include, but not be limited to, the right to give notice and communicate directly with the PCE Grantee regarding the State’s activities.

6. Responsibility for the PCE Management Plan. Paragraph 5 of the Primary Conservation Easement requires the preparation of a management plan by the PCE Grantor, to be provided to the PCE Grantee and initially agreed upon by December 28, 2010 (which is one year from the date of the PCE), and to be updated at least every five years (hereinafter the “**PCE Management Plan**”). The PCE Grantor and the PCE Grantee entered into a PCE Management Plan on _____ (date). Given that the Affirmative Rights granted to the State by this Easement include agricultural, timber, and other similar uses, the Parties to this Easement hereby agree that the State shall be responsible to work with the PCE Grantee for (i) updating the PCE Management Plan every five years, (ii) providing the PCE Management Plan (and its updates) to the PCE Grantee, and (iii) obtaining the PCE Grantee’s approvals thereof.

7. Additional Conservation Restrictions. The Primary Conservation Easement is a comprehensive real estate interest granted pursuant to the provisions of Section 38-30.5-101, et seq., C.R.S., and it significantly limits development of the Property. Nevertheless, the Parties to this Easement desire to limit further the development of the Property beyond that provided in the PCE as follows:

A. Construction on Building Envelope I shall be limited to (i) one (1) indoor shooting range with a maximum “*Floor Area*” (as that term is defined in PCE Paragraph 4.A.(4)) not to exceed 5,000 square feet; (ii) public restroom facilities; and (iii) parking lots, signs, and kiosks to facilitate public recreational use of the Property. No other “*Improvements*”, either “*Residential*” or “*Non-Residential*” in nature (as those terms are defined in the PCE) shall be allowed without the written approval of both Parties.

B. Construction of any facilities for wind and solar energy generation, which is allowed pursuant to PCE Paragraph 5.D.(3), shall be limited to Building Envelope I and the Headquarters Building Envelope.

C. The following shall be prohibited without the prior written approval of the State: (a) to construct, or permit others to construct, any new diversion, storage, or other water structures upon the Property; (b) to initiate the appropriation of any new conditional water rights for use on the Property; and (c) to otherwise undertake any new development of water resources for use on the Property.

8. The County's Reserved Rights. The County retains all rights on the Property allowed under the Primary Conservation Easement except those that have been expressly conveyed to the State, including, but not limited to, the following:

A. The right to enter upon, access, and inspect the Property without notice at any and all times by foot and motorized vehicle in order to monitor compliance with and otherwise enforce the terms of this Easement and to exercise the rights reserved herein.

B. The right to prevent any activity on or use of the Property that is inconsistent with the purposes and terms of this Easement, or which may be reasonably expected to have a material adverse impact on the Recreational and Open Space Values of the Property or its value for public recreation, and to require Grantee or a third party to restore such areas or features of the Property that are materially damaged by any inconsistent activity or use undertaken by Grantee or the third party.

C. The right to enforce and litigate the rights herein reserved, by injunction and other means if necessary, in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such enforcement.

D. The right and obligation to control noxious weeds on the Property by chemical, biological, and mechanical methods. For purposes of this Easement, "noxious weeds" shall be those undesirable plant species designated to be "noxious weeds" pursuant to the Colorado Noxious Weed Act, C.R.S §§ 35-5.5-101, et seq., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This right shall not include the right to conduct aerial herbicide or aerial insecticide spraying operations on the Property without the written permission of the State.

E. The non-exclusive right to maintain, improve, repair, and use the roads that connect Building Envelope I and the Headquarters Building Envelope to Highway 285, which is allowed pursuant to PCE Paragraph 4.B.(1).b.

F. The exclusive right to construct, maintain, replace, and repair fences within Building Envelope I and the Headquarters Building Envelope, which is allowed pursuant to PCE Paragraph 4.B.(2).

G. The non-exclusive right on the perimeter of the Property to (i) maintain, replace, and repair the existing perimeter fence around the Property; and (ii) construct, build, maintain, replace, and repair a new fence where appropriate on the perimeter of the Property, including, but not necessarily limited to, the western boundary of the Property, which are both allowed pursuant to PCE Paragraph 4.B.(2).

H. The non-exclusive right to erect, maintain, replace, and repair signs advising the public regarding recreational use of the Property, which is allowed pursuant to PCE Paragraph 4.B.(4).

I. The non-exclusive right to remove material that the County believes to be trash, litter, garbage, or junk that has been dumped, abandoned, or otherwise deposited on the Property.

J. The exclusive right on Building Envelope I to construct, repair, maintain, replace, and use (i) one (1) indoor shooting range with a maximum Floor Area not to exceed 5,000 square feet; (ii) public restroom facilities; and (iii) parking lots, signs, and kiosks to facilitate public recreational use of the Building Envelopes and the Property.

K. The exclusive right on the Headquarters Building Envelope to exercise all rights provided for thereon by the terms and conditions of the Primary Conservation Easement.

L. The exclusive right to construct, repair, maintain, and replace wind and solar energy generation facilities on Building Envelope I and the Headquarters Building Envelope in compliance with the requirements of PCE Paragraph 5.D.(3).

9. Mineral Rights Retained. Except as expressly provided herein, the County retains all right, title, and interest in and to the mineral, mining, and other similar rights related to or appurtenant to the Property. In particular, the County specifically retains the right, title, and interest to subsurface oil, gas, and other minerals; provided, however, that exploration for, and extraction of any minerals or other material shall be undertaken in a manner that does not disturb the surface of the Property unless the State has given prior written approval. However, in the event that County derives any income from the mineral rights, including, but not necessarily limited to, a royalty payment by an owner of a severed mineral interest located beneath the Property, then _____ percent (xx%) of the County's net income from such payment shall be paid as soon as practical to the State.

10. Payments-in-Lieu of Taxes. The County hereby waives the right to seek any payment from the State in regard to the Property pursuant to § 30-25-302, C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

11. Rights to Wildlife. The County hereby waives on its behalf, and on behalf of its successors and assigns, the right provided by § 33-6-107(9), C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statutes, or under any similar

statutes which are subsequently enacted) to fish, hunt, trap and take animals on the Property. Instead, it is expressly required that animals shall only be fished, hunted, trapped, and taken on the Property pursuant to prior approval of the State, or in accordance with the rights granted to a member of the public by the State.

12. Game Damage Waiver. The County hereby waives on its behalf, and on behalf of its successors and assigns, any claims for payment or reimbursement for damage caused to or on the Property as enumerated in § 33-3-101, et seq., C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

13. Landowner Preference for Hunting. The County hereby waives on its behalf, and on behalf of its successors and assigns, any claim of ownership of the Property for use in any landowner preference for hunting licenses pursuant to § 33-4-103, C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute that is subsequently enacted.)

14. Assignment of the State's Interest. This Easement is transferable, but the State may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Colorado law, and only after having obtained the written approval of the County. The failure of the State to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15. Assignment of the County's Interest. Fee title to the Property is transferable, but only after having obtained the written permission of the State. If such transfer is approved, the County shall incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including, without limitation, a leasehold interest. The failure of the County to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

16. Grant in Perpetuity. The Easement herein granted shall be a burden upon and shall run with the Property in perpetuity and shall bind the County and the State, their successors and assigns, forever.

17. Change in Circumstances. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not compatible with the uses allowed under this Easement, has been considered by the County in granting this Easement. It is the County's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and Grantee that any changes should not be assumed to be circumstances justifying the extinguishment or termination of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

18. Enforcement. Grantee and Grantor may enter the Property at any time and without notice for the purpose of monitoring this Easement and inspecting for violations. If either Party finds what it reasonably believes is a violation, it shall immediately notify the other in writing of the nature of the alleged violation. Upon receipt of this written notice, said Party shall either (a) cease the objectionable activity and restore the Property to its condition prior to the violation; or (b) provide a written explanation why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both Parties agree to meet as soon as possible to resolve this difference. When, in either Party's reasonable opinion, an ongoing or imminent violation could irreversibly diminish or impair the Recreational and Open Space Values of the Property, said Party may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, either Party may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require either Party to restore the Property to its condition prior to the violation. In addition to the above, either Party may take unilateral legal action against a third party to protect the Property.

19. Real Property Interest. The rights of the State created by this Easement constitute a real property interest vested in the State. Pursuant to PCE Paragraph 14, as of December 28, 2010, the full fair market value of the Primary Conservation Easement was established as being fifty-five percent (55%) of the full fair market value of the property that is burdened by the PCE, which includes approximately 250 acres of land in addition to the land that is burdened by this Easement, that being the Property described on Exhibit A hereto. Despite the possibility of some slight value discrepancy given the allocation of the Building Envelopes between the two parcels, the Parties to this Easement nevertheless hereby agree that fifty-five percent (55%) shall be assumed to be the full fair market value of the Primary Conservation Easement of the full fair market value of the Property burdened by this Easement. That leaves forty-five percent (45%) as the assumed full fair market value of the remaining fee of the Property. Of that forty-five percent (45%), the County and the State agree that the value of this Easement is _____ percent (xx%), or _____ percent (yy%) of the full fair market value of the Property if assumed not to be burdened by either the PCE or this Easement (hereinafter the "**State's Easement Value Percentage**"). In the event of extinguishment, condemnation, or some other type of involuntary termination of this Easement, the State's compensation shall be an amount of money equal to the State's Easement Value Percentage, multiplied by the amount of the full proceeds from any such extinguishment, condemnation, or termination of all or a portion of the Property.

20. Acts Beyond A Party's Control. Nothing contained in this Easement shall be construed to entitle a Party to bring any action against the other Party for any injury to or change in the Property resulting from causes beyond the Parties' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

21. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws. Any amendment must be in writing,

signed and notarized by both Parties, and recorded in the records of the Clerk and Recorder of Park County, Colorado.

22. Miscellaneous.

- a. Application to Successors. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.
- b. Severability. If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- c. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.
- d. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- e. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 21 above.
- f. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property.
- g. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the first recorded counterpart shall be controlling.

j. No Third Party Rights. This instrument creates no enforcement or other rights in persons or entities not Parties to this Easement. Moreover, the inclusion or involvement of any third party in the Development Agreement (or any management team created there under) shall not create any rights in said third party to this Easement or the Property.

23. Notices. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows or to such other address as either Party from time to time shall designate by written notice to the other.

If to the County:

Board of County Commissioners of the County of Park
P.O. Box 1373
Fairplay, CO 80440

If to Grantee:

Real Estate Unit
Colorado Division of Wildlife
6060 Broadway
Denver, CO 80216

With a copy to:
Northeast Region - Colorado Division of Wildlife
Area 1 Manager
6060 Broadway
Denver, CO 80216

24. Liability Exposure. Notwithstanding any other provision of this Easement to the contrary, no term or condition of this Easement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits, or protection provided to the Parties under the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). The Parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as amended or as may be amended, and §§ 24-30-1501, et seq., C.R.S., as amended or as may be amended. Any

provision of this Easement, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the Parties to the above-cited laws.

25. Future Mineral Development. The State shall have the same legal rights as the County to influence and control impacts to the surface of the Property from mineral development by third parties who, as of the Effective Date of this Easement, already own some or all of the mineral rights located beneath the Property. Such rights shall include, but not be limited to, the unilateral right to take whatever legal action the State deems necessary in order to respond to proposals to develop oil, gas, and other minerals from beneath the Property, including bringing judicial or administrative actions. The County and the State both agree that neither shall unilaterally enter into a contract (including but not limited to Surface Use Agreements) with a third party regarding any oil, gas, and mineral development of the Property, but instead both the County and the State shall be required participants to any such contract.

26. Defend and Hold Harmless. To the extent authorized by § 24-30-1510(3)(e), C.R.S., the State shall defend and hold harmless Grantor against claims arising from the alleged negligent acts or omissions of the State and its public employees which occurred or are alleged to have occurred during the performance of their duties and within the scope of their employment, except where such acts or omissions are willful and wanton. Such claims shall be subject to the limitations of the “Colorado Governmental Immunity Act,” §§ 24-10-101 to 24-10-120, C.R.S., as now or hereafter amended.

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

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date first set forth above.

