



Parks & Open Space

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BOCC BUSINESS MEETING

TO: Board of County Commissioners
FROM: Liz Northrup, Conservation Easement Program Supervisor
FOR: BOCC Business Meeting, 10:30 a.m., Tuesday, December 5, 2023
RE: Oreo Farms-Wood Meadows NCNUPUD-2023 CE Amendments
MEMO DATE: November 29, 2023

For much longer than Parks & Open Space's history of stewarding open space, the land in this community has been important to diverse Indigenous communities that continue to live here. We are partnering with Indigenous people to make meaningful changes to how we do our work that include Indigenous people, incorporate their perspectives, and honor their land stewardship legacy. Parks & Open Space operates within modern legal constructs of land ownership to steward Boulder County open space and accomplish these efforts on behalf of our community.

Summary of Request

Oreo Farms LLC owns two properties encumbered by county-held conservation easements: Oreo Farms and Wood Meadows NCNUPUD-Outlot B. Both are located in northeast Boulder County. The Wood Meadows property is on the southwest corner of Highway 287 and Vermillion Road. The Oreo Farms property is at 8820 Yellowstone Road. The Wood Meadows conservation easement ties 4.5 shares of Highland Ditch water to the property, and the Oreo Farms conservation easement ties 1.5 shares of Highland Ditch water to the property for agricultural use. The landowner is requesting to amend both conservation easements to move 1.5 shares of Highland Ditch water from Wood Meadows to Oreo Farms to better support agricultural operations on Oreo Farms. This transfer would result in three shares of Highland Ditch water tied to each property. In return, the landowner has agreed to grant the county a fifty percent (50%) undivided interest in the 4.5 shares of Highland Ditch water that will be divided between the properties. Staff supports this proposal.

Background Information

Boulder County is the sole holder of the Oreo Farms conservation easement, which currently ties 1.5 shares of Highland Ditch water, of which Boulder County has a 50% undivided interest, and one Longs Peak water tap to the property. Boulder County and the City of Longmont co-hold the Wood Meadows conservation easement, which currently ties 4.5 shares of Highland Ditch water to the property with no county or city ownership interest. The city has reviewed this request and supports this water transfer.

The landowner has improved the irrigation infrastructure on both properties over time by adding two center pivot sprinklers to each property, greatly increasing irrigation efficiency and agricultural production. The proposed water transfer, depicted in the table below, will further protect agricultural conservation values and production on the Oreo Farms property without jeopardizing the conservation values of the Wood Meadows property.

Property	Current Tied Water	Proposed Transfer	Resulting Water
Wood Meadows	4.5 shares Highland Ditch (no county ownership interest)	-1.5 shares Highland Ditch	3 shares Highland Ditch (50% undivided county ownership interest)
Oreo Farms	1.5 shares Highland Ditch (50% undivided county interest), one Longs Peak water tap	+ 1.5 shares Highland Ditch	3 shares Highland Ditch (50% undivided county ownership interest), one Longs Peak water tap

As noted above, this amendment request gives Boulder County the opportunity to secure a 50% undivided interest in 4.5 shares of Highland Ditch water. This undivided interest enables the county to review and approve future water transfer requests, creating complete certainty that the water will remain tied as intended by the terms of the conservation easements.

Staff Recommendation

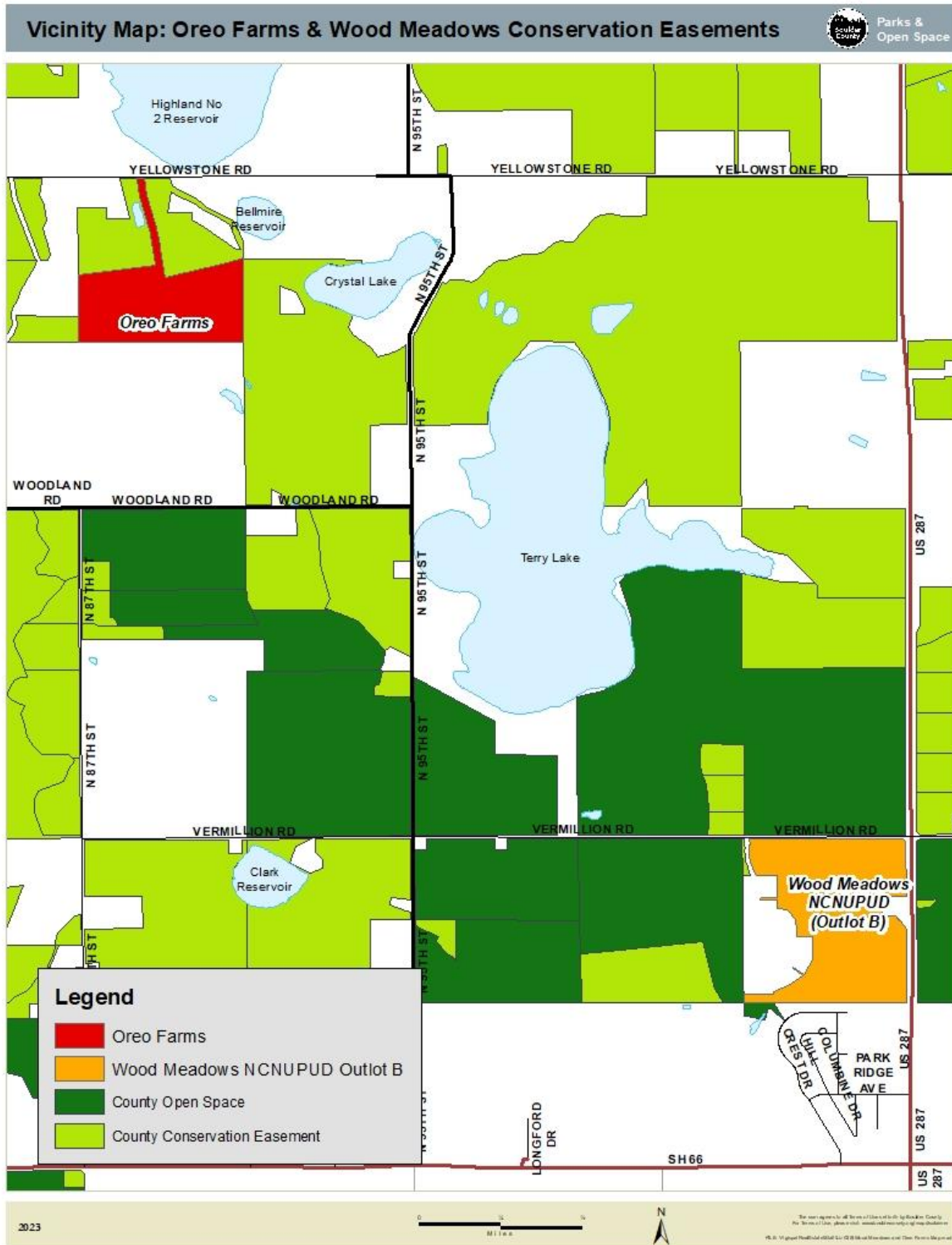
Staff recommends approval to amend both the Wood Meadows and Oreo Farms conservation easements to allow for the water transfer request as described above. Conservation easement amendment requests always need to be evaluated against the question of what Boulder County would receive in return for agreeing to the request. It is necessary to ensure that Boulder County does not provide private benefit to the landowner without getting something of equivalent value in return. In this case, staff supports the request for several reasons.

First, Boulder County would receive a 50% undivided interest in 4.5 shares of Highland Ditch water, with 1.5 shares to be tied to Oreo Farms and three shares to remain tied to Wood Meadows. The undivided interest grants the county additional protections to approve and deny future transfer requests, ensuring certainty that the water rights will remain tied as intended by the conservation easements. Next, adding 1.5 shares to Oreo Farms makes important irrigation water available throughout the property, strengthening its conservation values and agricultural production. Finally, staff evaluated the request with input from Parks & Open Space Agricultural Resources staff and the landowner and determined that the conservation values of Wood Meadows will not be harmed by the removal of 1.5 shares of Highland Ditch water.

BOCC Action Requested

Approve the request as described above and by staff at the business meeting.

Vicinity Map:



Close-Up Map:



End of Staff memo to BOCC

Following pages are documents for signature

AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT IN GROSS

THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT IN GROSS (“Easement”) is entered into this ____ day of _____, 2023, by and between **Oreo Farms, LLC**, a Colorado limited liability company (“Grantor”), and the **County of Boulder**, a body corporate and politic (“Grantee”) (collectively, the “Parties”).

RECITALS

A. Grantor is the sole owner of approximately 76.127 acres of land in Boulder County, Colorado legally described on Exhibit 1 and generally depicted on the map attached hereto as Exhibit 2 (the “Land”). Grantor also holds an undivided fifty percent (50%) interest in: 3.0 shares of the capital stock of the Highland Ditch Company and one Longs Peak water tap, and an undivided fifty percent (50%) in any and all other water and water rights, ditches and ditch rights, reservoirs and reservoir rights, ponds and pond rights, springs and spring rights, wells and well rights, underground water rights, both tributary and non-tributary (including any and all inchoate non-tributary groundwater rights), whether decreed or not, on, underlying, appurtenant to, or at any time used on or in connection with the Land (the “Water Rights”), which are necessary for protecting the conservation values of the Land. The Land and Water Rights are collectively referred to herein as the “Property”.

B. The Property is encumbered by that certain Amended and Restated Deed of Conservation Easement in Gross recorded on April 7, 2022, at Reception Number 3955147 (the “Original Conservation Easement”) in the office of the Clerk and Recorder of Boulder County, Colorado.

C. Grantor and Grantee desire to amend and restate the Original Conservation Easement to tie Grantor’s fifty percent (50%) undivided interest in 1.5 shares of the capital stock of the Highland Ditch Company to the Property so that it cannot be sold separately from the Land.

D. This Easement shall supersede and replace in its entirety the Original Conservation Easement, except that the effective date of the Original Conservation Easement shall remain in full force and effect.

E. The Property is primarily open cropland and rangeland that is used to grow hay, alfalfa, and row crops, and to graze cattle. The Property is an important part of the productive agricultural land in Boulder County and along the Front Range. The Property contains approximately 76 acres of irrigated crop land containing high quality, productive soils. The United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”) has designated approximately 76 acres of the Property’s soils as being Prime if irrigated, and approximately 76 acres as being Farmland of National Importance. These features and the significant natural, environmental, agricultural, scenic, open space, and wildlife habitat attributes of the Property constitute the Property’s primary conservation values (the “Conservation Values”).

F. This Easement has multiple purposes, including preserving and protecting the Property's significant open space values due to its wildlife habitat and agricultural farmland attributes, continuing the Property's agricultural use, protecting its water resources, agricultural resources, and preserving and protecting the Property's open space values for scenic enjoyment by the public and the grant of this Easement is being made pursuant to clearly delineated government conservation policies that yield a significant public benefit. This Easement has the following primary conservation purposes ("Conservation Purposes"):

1. Open Space. This Easement preserves open space pursuant to a clearly delineated federal, state, or local governmental policy, or for the scenic enjoyment of the general public and yields a significant public benefit, and so is consistent with Treasury Regulations §1.170A-14(d)(1)(iii) and §1.170A-14(d)(4), because:

a. Scenic Public Enjoyment. The Property is prominently visible from, and provides scenic enjoyment to the general public from, Boulder County Roads 2, 4, 19 and 23. The Property is adjacent to or in close proximity to Woodland Village, Yellowstone Farms, Bitterroot Ranch, Highland Ranch and Yoakum conservation easement properties. With the recording of this Easement, the Property and all adjacent open space together constitute 959 acres of contiguous agricultural land and open space. The Property and these other agricultural and open lands together give the immediate area its high-quality scenic, pastoral, and open character.

b. Clearly Delineated Government Policies.

i. As set forth in the Boulder County Comprehensive Plan adopted by Grantee ("Comprehensive Plan"), the Property is categorized as Farmland of National Importance. The Comprehensive Plan declares that it is the policy of Boulder County to encourage preservation of land for agricultural uses to protect its open space character, wildlife habitat, and scenic qualities. Boulder County recognizes the public benefit to be served by such preservation, as described in the Comprehensive Plan, which defines functions of open space to include: urban shaping between or around municipalities or community service areas, and buffer zones between residential and non-residential development; preservation of critical ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitats, natural resources and landmarks, outdoor recreation areas, cultural, historical and archaeological areas, linkages and trails, access to public lakes, streams and other useable open space lands, and scenic and stream or highway corridors; conservation of natural resources, including, but not limited to forest lands, range lands, agricultural lands, aquifer recharge areas, and surface water; and protection of designated areas of environmental concern. In addition, the Comprehensive Plan contains specific sections on environmental resources, open space, agricultural lands, and historic and cultural resources that define specific policies to protect open space in Boulder County.

ii. As set forth in the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (“Super IGA”), to which Grantee is a party, it is the policy of Boulder County to protect the environment, preserve the rural character of Boulder County, and minimize the negative impacts of development on areas surrounding the municipalities in Boulder County. The Super IGA designates Rural Preservation Areas that contain significant agricultural land and other land suitable for protection as open space or as community buffers. The Property is designated as being within a Rural Preservation Area under the terms of the Super IGA.

iii. The Property is assessed for local property tax purposes as agricultural land due to its history of being used for hay, pasture, and cattle production], and the State of Colorado recognizes the importance of preserving lands in agricultural uses by mandating a lower assessed valuation for agricultural lands in Colorado, pursuant to Colorado Revised Statutes §§ 39-1-101, et seq.

iv. Colorado Revised Statutes §§ 38-30.5-101, et seq., provide for the establishment of conservation easements to maintain land “in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural. . . or other use or condition consistent with the protection of open land, environmental quality, or life-sustaining ecological diversity.”

v. The statutes governing the Colorado Department of Agriculture (C.R.S. §§ 35-1-101 et seq.) support the purposes of this Easement by providing, in part, that “it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.”

vi. The statutes governing the Colorado Division of Wildlife and Colorado Parks and Outdoor Recreation (Colorado Revised Statutes §§ 33-1-101 et seq.) provide that “it is the policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors,” and that “it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state.”

vii. The Conservation Purposes of this Easement are recognized by the NRCS’ Agricultural Conservation Easement Program outlined in Title II, Subtitle D, Section 2301 of the Agricultural Act of 2014, Public Law 113-79, 16 USC § 3835, and 7 CFR Part 1468, et seq., authorizes the Agricultural Conservation Easement Program under which the Secretary of Agriculture, acting through the NRCS on behalf of the Commodity Credit Corporation, facilitates and provides funding for the purchase of conservation easements the purpose of which is “protect

the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land.”

G. The Property’s significant Conservation Values, agricultural attributes, present and continued agricultural use, open space, wildlife habitat, and scenic values, and this Easement’s Conservation Purposes described above are of great importance to Grantor and Grantee, provide significant public benefit to the people of Boulder County and of the State of Colorado, and are worthy of preservation.

H. The current use of the Property is for agriculture and open space purposes. Grantor desires to continue responsible agricultural practices and use the Property in such a manner that protects the Property’s Conservation Values.

I. Grantor and Grantee intend to preserve the Property in its present form and prevent development of the Property, except as provided for in this Easement. Grantor and Grantee further intend to confine uses of the Property to activities that are consistent with the purposes of this Easement and to prohibit and prevent any uses of the Property that would substantially diminish, materially impair, or adversely impact any of the Property’s Conservation Values, or that otherwise would be inconsistent with the purposes of this Easement.

J. This Easement’s Conservation Purposes are intended to be consistent with C.R.S. §§ 38-30.5-101, et seq., which provide 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, and Grantee is a governmental entity statutorily authorized to be a grantee of conservation easements, as set forth in C.R.S. §§ 38-30.5-104(2).

K. Grantor desires to grant and convey to Grantee an amended and restated conservation easement interest in the Property to Grantee, along with the right to preserve and protect the Property and its Conservation Values in perpetuity.

L. Grantee desires to accept an amended conservation easement interest in the Property to ensure preservation and protection of the Property and its Conservation Values in perpetuity for the agricultural uses, environmental conservation, open space, wildlife habitat, and scenic values they serve.

M. Grantor and Grantee acknowledge that this Easement is a restrictive document by nature, that does not grant any rights to Grantor that Grantor did not have prior to the granting of this Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the foregoing Recitals, and of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, Grantor does hereby voluntarily grant and convey to Grantee, its successors and assigns, and Grantee hereby accepts, a perpetual Conservation Easement in Gross, an immediately vested interest in real

property defined by C.R.S. §§ 38-30.5-101, et seq. and consisting of the rights and restrictions hereinafter enumerated, over and across the Property.

1. Purpose. The purpose of this Easement is to preserve and protect the Property and its Conservation Values in perpetuity for public benefit and for the Conservation Purposes described in the Recitals listed above and incorporated herein.

2. Affirmative Rights Conveyed. The affirmative rights and interests conveyed to Grantee by this Easement are the following:

2.1. To preserve and protect the Conservation Values of the Property in perpetuity.

2.2. To require that the Property be managed consistent with sound conservation principles, including but not limited to Section IV of the NRCS Field Office Technical Guide applicable for Boulder County, Colorado (“NRCS Technical Guide”) and the Management Plan (as defined in the “Management Plan” Paragraph below).

2.3. To enter upon the Property upon prior reasonable notice to Grantor, to inspect and enforce this Easement and the Management Plan (as defined herein below), in a manner that shall not unreasonably interfere with the proper uses being made of the Property at the time of such entry and that is in accordance with the “Grantee’s Right of Entry” Paragraph herein.

2.4. To prevent, remove, or eliminate any activity on or use of the Property that violates the terms of this Easement or is otherwise inconsistent with the purposes of this Easement.

2.5. To require the restoration of such areas or features of the Property that may be damaged by any use inconsistent with the terms of this Easement.

2.6. To enter the Property and undertake any and all actions reasonably necessary to continue the historic use of the Water Rights, if Grantor notifies Grantee that Grantor cannot use the Water Rights on the Property in any given year or if Grantee reasonably believes abandonment of the Water Rights is occurring. Such actions by Grantee may include, but are not limited to, entering the Property to irrigate and maintain ditches, headgates, diversions, or other structures, paying ditch company assessments and fees, filing a lien against the Property to ensure that Grantor reimburses Grantee for any amounts paid by Grantee to maintain the Water Rights, plus ten percent (10%) interest through the date of reimbursement, using the Water Rights on another property, and any other actions necessary or appropriate to put the Water Rights to beneficial use, in Grantee’s sole discretion. Grantee shall have the right to vote the shares in any given year where Grantor fails to pay the assessment and Grantee has paid the assessment to prevent the respective rights from being sold. Grantee may also undertake any and all actions reasonably necessary to administratively prevent abandonment or forfeiture of the Water Rights and shall have the right to seek reimbursement from Grantor for any assessments Grantee has paid after Grantor has failed to pay an assessment.

2.7. To participate in negotiating any surface use agreement between the Grantor and any owner or lessee of mineral rights. For any oil or gas leases in effect as of the date of this Easement, Grantor shall notify Grantee when beginning negotiations of surface use agreements or any other agreements with the lessee regarding any new oil and gas operations on the Property, primarily so that Grantee may help ensure that none of the Property's Conservation Values are substantially diminished, materially impaired, or adversely impacted by the operations, but also so that Grantee may share in payments to be made by lessee for its operations on the Property, since any operations by lessee will impair the Property's Conservation Values that are protected by this Easement, regardless of whether any such payments are due and payable by lessee pursuant to an agreement or pursuant to an award of damages resulting from lessee's use of the Property.

2.8. To be consulted with prior to, and provide a recommendation to approve or deny, any application for zoning change, annexation to a municipality, variance to or exemption from the land use regulations of the controlling jurisdiction, right-of-way vacation, building permit, grading permit, or other permit pertaining to a use of the Property that is regulated by a governmental authority and not otherwise provided for in this Easement. Grantor shall provide a copy of any such application in advance of its filing to the Boulder County Parks & Open Space Department ("POS"), as Grantee's designated manager of this Easement. If POS declines to recommend approval of an application due to its noncompliance with the terms of this Easement, Grantor may not proceed with its application until Grantor modifies it to become compliant. Grantor shall provide POS with notice of any scheduled meetings or hearings related to any application at least ten (10) days in advance of the scheduled date. POS shall have the opportunity to participate in any discussions with or hearings before any local government department, board or commission, including the Boulder County Board of County Commissioners. The County's status as owner of an interest in the Property shall not require any financial or legal responsibility for the Property except as specifically set forth in this Easement.

2.9. To review and approve or deny applications from Grantor for uses neither expressly granted nor specifically prohibited by this Easement but that may be conducted in a manner consistent with the purposes of this Easement and protection of the Property's Conservation Values. Approval, if granted, shall be by action of the Board of County Commissioners of Boulder County, and shall be recorded in the office of the Boulder County Clerk and Recorder.

2.10. The ownership of any and all development rights now or hereafter associated with the Property, except as permitted in the "Permitted Uses and Practices" Paragraph of this Easement including, without limitation, all rights, however designated, that may be exercised pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, or any similar development variable on or pertaining to the Property.

3. Permitted Uses and Practices. Grantor and Grantee intend that this Easement shall confine the future use of the Property to agricultural uses and other related or compatible uses

described herein. The following uses and practices are permitted under this Easement and are not inconsistent with the purposes of this Easement, provided that they are conducted in a manner that does not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values:

3.1. Continuation of agricultural uses, including but not limited to evolving agricultural practices, that are consistent with the NRCS Technical Guide and the Management Plan (as defined herein below) and with the Boulder County land use regulations in effect at the time of use, as those regulations apply to the Property, are allowed. The agricultural activities shall not result in the degradation of any surface or subsurface waters or the Property's Conservation Values. Except as otherwise prohibited in this Easement, Grantor may conduct non-commercial feeding by seasonally confining Grantor's livestock and other animals into an area for feeding, lease pasture for grazing livestock or other animals owned by others, or feed on a seasonal basis livestock or other animals owned by others than Grantor.

3.2. On the date of this Easement, these agricultural accessory structures exist on the Property totaling 7,128 square feet: one hay barn (4,896 square feet) and one loafing shed (1,632 square feet), and three (3) loafing sheds (600 square feet). Grantor shall have the right to construct, maintain, repair, and replace agricultural accessory structures on the Property for non-residential uses, provided that the total square footage of all agricultural accessory structures, including but not limited to, barns, cattle shelters and loafing sheds, shall not exceed 7,200 square feet.

3.3. All structures permitted under this Easement shall be located within the approximately 5.0-acre building envelope generally depicted on Exhibit 3. These restrictions are created for the express purpose of maintaining the rural character of the Property.

3.4. Maintenance, repair and use of all roads existing on the Property as of the date of this Easement, provided that they are maintained only as reasonably necessary for the uses permitted on the Property, and provided that the roads are maintained substantially in their present condition without being improved.

3.5. Installation, maintenance, repair, removal, relocation and replacement of utility mains, lines, and underground facilities for the exclusive purpose of providing utility services to the Property for the uses permitted by this Easement, provided that any such activities shall not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values.

3.6. Development and maintenance of such water resources on the Property as are reasonably necessary for irrigation and the agricultural uses conducted thereon pursuant to the terms hereof; provided, however, that the development and use of such water resources shall be done in a manner that does not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values. Permitted activities shall include installation, maintenance, repair, removal, relocation, and replacement of

agricultural irrigation facilities serving the Property, including ditches, pipes, water diversion structures, stock ponds, and pivot sprinklers and associated ponds, subject to the Management Plan (as defined herein below). Any such activities shall be conducted in accordance with all water rights laws and regulations.

3.7. Use of agrichemicals, including but not limited to, fertilizers and pesticides, but only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes. Such use shall not contaminate surface and ground water or diminish the Property's Conservation Values. Grantor shall control all noxious weeds to the extent reasonably possible and according to the provisions of Title 35 of the Colorado Revised Statutes and/or the administrative rules and regulations promulgated by the Commissioner of Agriculture of the State of Colorado or by the Board of County Commissioners of Boulder County.

3.8. Cutting and removal of live trees and shrubs, consistent with ecological principles and conservation forestry management, to control any imminent threat of disease or insect infestation, to simulate natural ecological processes to prevent wildfires and to remove invasive non-native species, and cutting and removal of dead, diseased, or downed trees and shrubs that present a safety hazard.

3.9. Control of predatory and problem animals by the use of selected control techniques whose effect shall be only upon specific animals or species that have caused or are likely to cause damage to crops, livestock or other property. Such control techniques shall not have detrimental impacts upon water quality and the continued permitted uses of the Property. The use of leg-hold traps is prohibited.

3.10. With the exception of commercial hunting, which is prohibited, use of the Property for hunting by Grantor and Grantor's non-paying invited guests to the extent that harvesting of game from the Property is not inconsistent with game management objectives and the Management Plan (as defined herein below). For the purpose of this provision, Grantor and Grantee agree that Grantor may request and rely upon an opinion from the Colorado Division of Parks and Wildlife defining the quantity of game which can be harvested from the Property in any year consistent with generally accepted principles of game management.

3.11. Use of the Property for low-impact and Passive Recreation (as defined herein below), scientific and/or outdoor environmental educational activities which are: (1) occasional in nature; (2) limited to Grantor and Grantor's invited guests; and (3) that do not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values.

3.12. Except for the interest in the Water Rights that Grantor has conveyed to Grantee by deed, certificates of ownership, or this Easement, Grantor specifically retains: (1) all right, title, and interest in and to all tributary and non-tributary water, water rights, well and well rights, and related interests in, on, under, or appurtenant to the land; and (2) all right, title, and interest to subsurface oil, gas, and other minerals; provided, however,

that the mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited upon or within the Property.

3.13. Grantor retains the right to apply to Grantee for permission to conduct other uses and activities on the Property that are neither expressly granted nor specifically prohibited by this Easement but which may be conducted in a manner consistent with this Easement and that do not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values. Approval, if granted, shall be in Grantee's sole discretion and shall be accomplished by action of the Board of County Commissioners of Boulder County, and shall be recorded in the office of the County Clerk and Recorder.

3.14. Grantor retains the right to maintain, repair, rebuild, or if destroyed, reconstruct or replace existing fences. Fencing may be constructed by Grantor in new locations as reasonably necessary or reasonably advantageous to the permitted uses of the Property. Any new fencing shall be compatible with the movement of wildlife through and across the Property and consistent with guidelines of the Colorado Division of Wildlife or with the recommendation of Boulder County Parks & Open Space wildlife resource staff. All new or replacement fencing shall comply with all requirements of the Boulder County land use regulations in effect at the time of construction.

4. Prohibited Uses and Practices. The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Property:

4.1. The change, disturbance, alteration, or impairment of the Conservation Values of the Property, except to engage in generally accepted open, non-intensive agricultural activities, and except as otherwise allowed herein.

4.2. The construction, reconstruction, or replacement of any residences or other structures, except as provided in the "Permitted Uses and Practices" Paragraph hereof. Accessory residential dwellings are not allowed on the Property. If any current or future structures are determined to be of historic significance by the Boulder County Historic Preservation Advisory Board, no alteration, including demolition, shall be made to the exterior of the structures without Grantor first obtaining written approval from Grantee. If the site is determined to be of historic significance by the Boulder County Historic Preservation Advisory Board, no alteration to the site, including the Property's topography, shall be made without Grantor first obtaining written approval from Grantee. For the purposes of this Easement, structures shall mean a combination of materials forming any edifice, building, or man-made formation of any kind, excluding the following:

4.2.1. Fences not over six (6) feet in height and associated gates;

4.2.2. Renewable energy and other utility systems that only serve the Property's permitted uses, if allowed under this Easement, and only to the extent permitted by Boulder County land use regulations;

4.2.3. Any retaining walls, platforms, or decks that lie not more than thirty (30) inches above the Property's natural grade, excluding railings;

4.2.4. Any minor improvements that accommodate low-impact recreational enjoyment of the Property, including any yard and play equipment, picnic tables,

benches, and child-scale tree houses.

4.3. More than one principal use on the Property at any given time, as the concept of “principal use” is used in Boulder County land use regulations.

4.4. Any use not expressly permitted as a use-by-right by the Boulder County land use regulations as they apply to the Property, including but not limited to community or institutional uses, golf courses, helicopter pads, and airstrips.

4.5. Any uses that may be consistent with Boulder County land use regulations as they apply to the Property, but which are inconsistent with the preservation and protection of the Conservation Values of the Property, including but not limited to Active Recreation (as defined herein below), intensive agriculture, agribusiness, commercial, industrial, institutional, community, lodging, open mining, retail, office, business, personal services, transportation, utilities, public service, warehouse, and home events of any kind, whether or not a fee is charged or a financial donation is requested or allowed.

4.6. The construction, placement, or erection of any sign or billboard without the prior written consent of Grantee, except for signs of less than twenty (20) square feet that are consistent with Boulder County land use regulations, and that only advertise the Property or agricultural products produced on the Property for sale or that limit access to the Property, such as signs announcing ‘private property’ or ‘no trespassing’.

4.7. The construction of any permanent fences that prevent the passage of and/or injure wildlife without the express written consent of Grantee, which consent shall be in Grantee’s sole discretion.

4.8. The dumping or accumulation of trash, ashes, garbage, waste or other unsightly or offensive material on the Property, including but not limited to hazardous chemicals; provided, however, that equipment and machinery used on the Property for the permitted uses and that products and by-products produced on the Property may be placed or stored on the Property, so long as such placement or storage is consistent with public health standards, all applicable government laws and regulations, and sound management practices.

4.9. Any division of the Property (whether or not a subdivision as defined by state law) without the prior written consent of Grantee. Without the prior written consent of Grantee or by operation of law, Grantor may not convey any portion of the Property constituting less than the entire Property, as said conveyance would constitute an impermissible division of the Property under this Easement. If Grantee does approve a division of the Property, or if the Property is divided by operation of law, all terms of this Easement shall attach to each subdivided portion of the Property and shall survive any division.

4.10. The conveyance of any new access easement or other right-of-way, the paving of any road, or otherwise covering any portion of the Property with concrete, asphalt

or any other paving material, the resurfacing, widening, grading, or any other improvement of any road, or the construction of any new trails or roadways without the prior written consent of Grantee, which consent shall be in Grantee's sole discretion. The Property may also not be used to provide vehicular access to any other property, whether owned by Grantor or a third party, without the written consent of Grantee, which consent shall be in Grantee's sole discretion. If Grantee consents to any right-of-way, paving, or new roadway, any such permitted right-of-way, paving, or roadway shall be constructed so as to minimize the impact on the Conservation Values of the Property. As of the date of this Easement, the Property contains one gravel access road and the unimproved two-track roadways used for agricultural purposes ("Existing Roads"), in the locations generally depicted on Exhibit 2. Nothing herein shall prevent Grantor from maintaining Existing Roads substantially in their present condition, as further described in the Permitted Uses and Practices section of this Easement.

4.11. Construction of new utility transmission mains, lines, or other utility facilities or renewable energy systems on the Property, whether underground or above ground, without the prior written consent of Grantee, which consent shall be in Grantee's sole discretion, except as allowed under any existing utility easements, or under any additional utility easements that may be established pursuant to an exercise of eminent domain, or as is necessary to conduct any of the permitted uses of this Easement. Any such permitted utility transmission lines or facilities shall be constructed so as to minimize any adverse impacts on the Conservation Values of the Property.

4.12. The erection, construction, installation, relocation, or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in The Federal Telecommunication Act of 1996.

4.13. The degradation, pollution or draining of any surface or sub-surface water on the Property.

4.14. The transfer, encumbrance, lease, sale, or other separation from the Property of the Water Rights.

4.15. Grantor shall retain, reserve the right to use, and use the Water Rights in current or future agricultural production on the Property, and shall not transfer, lease, sell, or otherwise separate the Water Rights from the Property; provided, however, that in the event Grantor cannot use the Water Rights on the Property in any given year, Grantor shall notify Grantee, and Grantee may exercise its rights to put the Water Rights to beneficial use, as described in Paragraph 2.6 of this Easement. When requested by Grantee, Grantor shall provide Grantee with evidence that the Water Rights are being beneficially used on the Property including, but not limited to, copies of reports filed with or produced by district and state water officials proving water diversions and water usage, and copies of any reports confirming crop production. If Grantor receives notice of abandonment of any component of the Water Rights, Grantor shall notify Grantee in writing within thirty (30)

days of receiving such notice, and Grantor shall act affirmatively and shall cooperate with Grantee in taking any and all actions reasonably necessary to defend use of the Water Rights on the Property to prevent abandonment or forfeiture.

4.16. Except for any oil and gas leases which are in effect as of the date of this Easement which may allow for the drilling of future wells on the Property and except with respect to mineral rights not owned by Grantor, The mining or extraction of geothermal resources, soil, sand, gravel, rock, oil, natural gas, fuel, other hydrocarbons or any other mineral substance shall be prohibited upon or within the Property. Grantor shall not transfer, lease, or otherwise separate the geothermal resources, soil, sand, gravel, rock, oil, natural gas, fuel, other hydrocarbons or any other mineral substance from the Property.

4.17. The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Easement, “commercial feed lot” is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually that is used and maintained for the purpose of feeding and fattening livestock for future commercial sales.

4.18. Grading, contouring, berming, reshaping, or otherwise altering the topography of the Property for non-agricultural purposes, or any such topography alterations if the Boulder County Historic Preservation Advisory Board has deemed the Property to contain a site of historic significance, including without limitation, the movement, excavation, or removal of plants, plant material, soil, sand, gravel, rock, peat, or sod, without the prior written consent of Grantee, and then any such activity conducted for agricultural purposes may only occur to such an extent that does not substantially diminish, materially impair, or adversely impact any of the Property’s Conservation Values.

4.19. Removal, alteration, impairment, modification, or adverse change to any ditch, creek, stream, river, stream channel, riparian corridor, wetland, pond or lake edge, except as otherwise permitted in this Easement and except to the minimal extent necessary for a ditch company to maintain its ditches or for Grantor to beneficially use the Water Rights on the Property.

4.20. Except as used in the normal course of conducting any permitted activities, use of motorized vehicles, including but not limited to motorcycles, motorized bicycles, tricycles, and all-terrain vehicles, except on roads or trails existing as of the date of this Easement. Individuals with mobility disabilities are permitted to use manually powered or power-driven mobility devices, such as wheelchairs, anywhere on the Property so long as such use does not substantially diminish, materially impair, or adversely impact any of the Conservation Values of the Property.

5. Grantee’s Approval. Whenever this Easement requires that Grantor obtain Grantee’s approval of any activity on or use of the Property, Grantee’s determination regarding Grantor’s application for approval shall not be unreasonably withheld or delayed. If Grantee’s approval is required, Grantee shall grant or withhold its approval in writing within forty-five (45)

days of receipt of Grantor's written request therefore unless a different time period is specified herein for the matter in question or unless the requested activity requires approval under Boulder County's land use regulations, in which case the timing specified in those regulations shall apply. Failure to respond within the 45 days does not constitute approval. If Grantee denies Grantor's application for approval of an activity or use, Grantee shall provide Grantor with the reason(s) for such determination in its written notice to Grantor. If a reasonable modification of Grantor's proposed use or activity would render the proposal consistent with the purpose of this Easement, Grantee shall specify, in its written notice to Grantor, any required modifications.

6. Baseline Report. A complete inventory of the conditions of the Property and its Conservation Values as of the date of the Original Conservation Easement was established to enable Grantee to properly monitor future uses of the Property and ensure compliance with the terms hereof ("Baseline Report"). The Grantor of the Original Conservation Easement and Grantee signed the Baseline Report on October 26, 2010. Upon signing this Easement, Grantor and Grantee shall sign an update to the Baseline Report describing the Property's current conditions (the "Current Conditions Report") that has been prepared by Grantee with Grantor's input. Grantor shall give a copy of the Baseline Report and Current Conditions Report to any subsequent owner of the Property. The Parties acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's use or the physical condition of the Property subject to this Easement, the Parties may use the Baseline Report and Current Conditions Report and all other relevant or material documents, surveys, reports, and other evidence to assist in resolving the controversy.

7. Management Plan. Grantor recognizes the importance of good resource management and stewardship of the Property to preserve and protect the Property's Conservation Values. For that reason, Grantor shall operate and manage the Property in accordance with widely recognized management practices that preserve and protect the Property's Conservation Values. If Grantee determines that Grantor's management and stewardship practices have caused deterioration of the Conservation Values protected by the Conservation Easement, Grantee will give notice of this deterioration to the Grantor as a violation or potential violation of the Conservation Easement, consistent with the provisions in Enforcement Rights of Grantee Paragraph. Upon Grantor's receipt of such notice, Grantor must, within the time set forth by Enforcement Rights of Grantee Paragraph, develop a management plan, for review and approval by Grantee, designed to promote recovery of the degraded resources as well as protect and strengthen the Property's Conservation Values ("Management Plan"). If Grantee approves the Management Plan proposed by Grantor, Grantor must implement the plan. Grantee will periodically review the Management Plan and Grantor's implementation of the plan for compliance. The Management Plan shall also incorporate the provisions of any current Soil and Water Conservation Plan and Grazing Management Plan prepared by the local Soil Conservation District and any other provisions designed to protect the Conservation Values of the Property.

Any Management Plan, and the practices implemented by Grantor under the plan, must at a minimum restore the degraded resources and must thereafter maintain these resources in a condition that is consistent with protection of the Conservation Values. If the Grantor does not propose a Management Plan that is acceptable to Grantee, or if the conditions fail to recover to a state similar to the condition prior to the degradation, Grantee may require the Grantor to cease

those activities which resulted in degradation until conditions recover to those that existed prior to the undertaking of such activities and to pursue any and all other remedies for violation of breach of the Conservation Easement, as provided to Grantee under Enforcement Rights of Grantee Paragraph hereof.

8. Grantee's Right of Entry. Grantee shall have the right to enter upon the Property at reasonable times, upon forty-eight (48) hours prior notice to Grantor, to monitor and enforce compliance with the terms and covenants of this Easement and to remove or eliminate any conditions or operations which violate the same, except that no such notice shall be required in the event Grantee reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement. If Grantee determines that immediate entry is necessary, Grantee shall make a reasonable attempt to notify Grantor. No further right of access, entry or possession is conveyed hereby.

9. Restoration. Should any prohibited activity be undertaken on the Property, Grantee shall have the right to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to, or change in, the Conservation Values of the Property resulting from natural 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.

10. Enforcement Rights of Grantee. If Grantee determines there has likely been a violation, or there is an ongoing a violation, of any term, condition, covenant, or restriction contained in this Easement, Grantee shall provide notice to Grantor of the alleged violation, and Grantor shall immediately discontinue any activity that could increase or expand the alleged violation while the activity is being disputed. If Grantee reasonably believes that an ongoing or threatened imminent activity violates this Easement and must be addressed immediately to protect the Property from irreparable damage, Grantee may take immediate action including, but not limited to, filing a civil action to seek a temporary restraining order and/or injunctive relief, or entering the Property to take action to prevent or mitigate imminent damage to the Property. In the event that Grantee reasonably believes that there has been a violation of any term, condition, covenant or restriction contained in this Easement, but that the violation will not cause imminent irreparable damage, Grantor shall have 30 days in which to cure, or commence a cure of, the violation, or to rebut the existence of a violation. If, after 30 days, Grantee remains convinced that there is a violation and the violation has not been cured or a cure has not been diligently commenced, Grantee may file a civil action to seek a temporary restraining order and/or injunctive relief to require that the violation be cured, or for damages for breach of covenant, or both, or Grantee may take such other action as it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement. Any failure by Grantee to enforce any particular violation of the Easement shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future.

11. Costs of Enforcement. If a violation by Grantor is determined to have occurred, any reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor,

including without limitation any reasonable attorney fees and costs and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In addition, if Grantor is required to restore any portion of the Property affected by a prohibited activity to the condition that existed prior to the undertaking of such prohibited activity, those costs shall also be borne by Grantor.

12. Waiver. Enforcement of the terms of this Easement shall be at the sole discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. §§ 38-41-119, et seq.

13. Maintenance, Costs and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the operation, upkeep, and maintenance of the Property, including weed control and maintenance of adequate comprehensive general liability insurance coverage, and Grantor hereby indemnifies Grantee therefrom. In addition, Grantor shall remain responsible for, and agrees to pay before delinquency, any and all real property taxes and assessments levied by competent authority on the Property and Grantor agrees to pay any and all water carriage fees/ditch assessments levied by the ditch companies or other competent authority relating to the Water Rights. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor; provided, however, that if a mechanic's lien is asserted against the Property, Grantee shall not claim that Grantor has violated the terms of this paragraph, so long as Grantor is making reasonable efforts to resolve the dispute and discharge the lien. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon fifteen (15) days' prior written notice to Grantor, in accordance with any tax bill procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the tax bill, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) 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.

14. Permits and Applicability of Other Laws. Grantor is solely responsible for obtaining any applicable governmental permits for construction or any other activities permitted hereunder, including any permits required under Boulder County land use regulations. Nothing herein shall be construed to supersede or exempt the Property from the application of laws and regulations affecting land uses on the Property or to permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state or local government or governmental agency having jurisdiction over the Property, or to prohibit the imposition of further land use restrictions by Grantor or by operation of law and all such uses shall be conducted in accordance with such laws and regulations. **This Easement does not grant any rights to Grantor that Grantor did not have prior to this Easement, and this Easement does not grant Boulder County's approval for any use regulated by Boulder County land use regulations; therefore, all uses permitted under this Easement remain subject to all Boulder County land use**

regulations in effect at the time that the use occurs, and all required permits and approvals must be obtained in advance.

15. Indemnity. Grantor shall indemnify and hold harmless Grantee and its employees, agents and contractors from any and all claims, demands, causes of action, suits, actions, penalties and damages, including reasonable attorney's fees, arising from or connected with the use of the Property or any environmental condition arising on the Property for personal injury, loss of life, or damage to property sustained, in or upon the Property or arising out of the use of the Property or any environmental condition arising on the Property, and from and against all costs, attorneys' fees, expenses and liabilities incurred in and about any such claims, the investigation thereof or the defense of any action or proceedings brought thereon, and from any judgments, orders, decrees, or liens, resultant therefrom by virtue of the use of the Property or any environmental condition arising on the Property. By requiring this right to indemnification, Grantee in no way waives or intends to waive the limitations on liability which are provided to Grantee under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee 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. Grantor's indemnification obligations under this paragraph shall not be affected by any authorizations Grantee may provide to Grantor with respect to the Property.

16. Grantor's Environmental Warranty. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances, materials, or wastes on, at, beneath, or from the Property. "Hazardous Materials" means any petroleum, petroleum products or byproducts, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, substances, or wastes, toxic substances, or chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment. Grantor warrants that it is in compliance with and shall remain in compliance with all applicable environmental laws, including but not limited to, any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, requirements or common law imposing standards of conduct or liability concerning air, water, solid waste, hazardous materials, worker and community rights-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands, and watercourses, health protection and similar environmental health, safety, building, and land use as may now or any time hereafter be in effect and pertaining to the Property. Grantor further warrants that there are no notices by any governmental authority of any violation or alleged violation of, alleged or actual non-compliance with, or any liability under any environmental law relating to the operations on or conditions of the Property.

17. No Public Access. Nothing contained herein shall be construed as affording access to the general public over any portion of the Property.

18. Real Property Interest and Grant in Perpetuity. Grantor acknowledges that this Easement constitutes a real property interest immediately vested in Grantee, and the covenants as set forth herein shall run with the land in perpetuity.

19. Condemnation. If Grantor receives notice of condemnation or the threat of condemnation of all or a portion of the Property, Grantor shall immediately notify Grantee in writing. If, as a result of condemnation or a threat of condemnation, this Easement is terminated or extinguished, in whole or in part, and any portion of the underlying Property is sold, exchanged or involuntarily converted or taken for public use, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award. Grantee's share of the proceeds shall be based on the ratio between this Easement's fair market value of the portion of the Property being taken and the unrestricted fair market value of the portion of the Property being taken as of the date of the taking. Grantee shall use any such proceeds in a manner consistent with the Conservation Purposes of the Easement.

20. Amendment. If circumstances arise under which an amendment would be appropriate, Grantor and Grantee may jointly amend this Easement, except that any such amendment shall be consistent with the purposes of this Easement. Any such amendment shall not affect this Easement's perpetual duration, shall not affect the qualification of this Easement under any applicable laws, shall not permit additional development currently prohibited by this Easement, shall comply with all applicable federal, state, and local laws, shall comply with Grantee's amendment practices then in effect, and shall not substantially diminish, materially impair, or adversely impact any of the Conservation Values of the Property. Nothing requires the Grantor or Grantee to amend the Easement, and the Grantee retains sole discretion in all determinations whether to amend the Easement. Any such amendment shall be by action of the Board of County Commissioners of Boulder County and shall be in writing, signed by all parties, and recorded in the office of the Boulder County Clerk and Recorder.

In giving this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed circumstances justifying the termination or extinguishment of this Easement. 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 this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

21. Assignment. Grantee may assign the Easement with or without Grantor's consent, provided that Grantee requires, as a condition of such transfer, that the Conservation Purposes of the Easement continue to be carried out, that the assignee agrees to assume the responsibilities imposed on Grantee by this Easement, and that an assignment may be made only to an organization qualified at the time of transfer as an eligible donee under the Internal Revenue Code of 1986, as amended, and the U.S. Treasury regulations adopted pursuant thereto (the "IRS Code") and C.R.S. §§ 38-30.5-101 et seq., as amended.

22. Extinguishment and Termination. In giving this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes in circumstance shall not be deemed to justify the termination or extinguishment of this Easement. 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 this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

22.1. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction determining that such circumstances exist. Each party shall promptly notify the other when it first learns of such circumstances.

22.2. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, and the purposes to which these proceeds may be put, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with the provisions set forth in the "Condemnation" Paragraph herein.

23. Severability. If any of the provisions of this Easement are held to be invalid or unenforceable, then the remaining balance of this Easement shall be deemed severable and held to be in full force and effect.

24. Grantor's Warranty of Title. Grantor warrants that Grantor has good and sufficient title to the Property, that Grantor has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement, and Grantor hereby promises to warrant and forever defend the title to this Easement against all and every person or persons lawfully claiming by, through, or under Grantor, the whole or any part thereof, except for the rights-of-way, easements, restrictions, covenants, agreements, and mineral reservations of record at the time of the execution of this Easement.

25. Annexation. Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the prior written consent of Grantee. Any such consent shall be by action of the Board of County Commissioners of Boulder County and shall be recorded in the office of the Boulder County Clerk and Recorder.

26. Notices. Within sixty (60) days after a change of a party's address, that party shall provide a written notice of any change of address to all other parties. Whenever notice is required to be given hereunder, it shall be in writing and may be mailed, or hand delivered to the party entitled thereto, and if mailed, it shall be done by registered or certified mail, return receipt requested. If mailed, said notice shall be effective and complete as of the date of mailing. If hand

delivered, said notice shall be effective and complete upon completion of the hand delivery. Notice may also be accomplished by email, if emailed to a current email address specified in writing by the receiving party. Until changed by notice in writing, each party's mailing addresses are as follows:

Grantee:
The Director
Boulder County Parks & Open Space Department
5201 St. Vrain Road
Longmont, Colorado 80503

With a copy to:
The Boulder County Attorney's Office
P.O. Box 471
Boulder, Colorado 80306

Grantor:
Oreo Farms, LLC
9744 Meadow Ridge Lane
Longmont, CO 80504

27. Subsequent Liens on the Property. No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinated to this Easement and shall encumber the entire Property.

28. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of Grantor's title in any respect.

29. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

30. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the Parties expressly state that they intend a merger of estates or interests to occur.

31. No Enforcement Rights by Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth herein, and does not create any enforcement rights or responsibilities in any third parties.

32. Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors, representatives, and assigns, and all persons who may hereafter acquire an interest in the Property.

33. Termination of Rights and Obligations. A party's rights and obligations under this Easement shall 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.

34. Terms. The following terms are hereby defined for the purposes of this Easement:

34.1. The terms "Grantor" and "Grantee", and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor's heirs, personal representatives, executors, successors and assigns, and the above-named Grantee and its successors and assigns, respectively.

34.2. Unless otherwise agreed to in writing by the Grantor and Grantee, the term "Passive Recreation" shall be as defined in Boulder County's comprehensive plan ("Comprehensive Plan"), as the definition may be updated from time to time. If the Comprehensive Plan ever does not contain a definition of Passive Recreation, the term shall mean non-motorized outdoor recreation that emphasizes enjoyment of the Property's open space features, involves little or no installation of equipment or development on the Property except as may be permitted by this Easement, has little or no impact on the Property's Conservation Values, and does not create new trails or new features on the Property unless otherwise permitted by this Easement. Examples of Passive Recreation include, but are not limited to, hiking, snowshoeing, cross-country skiing, photography, bird-watching, or other nature observation or study, and if specifically designated in this Easement, bicycling (including electric-assisted bicycles), horseback riding, or fishing.

34.3. The term "Active Recreation" shall mean any recreation that is not Passive Recreation. Unless otherwise agreed to in writing by the Grantor and Grantee, Active Recreation shall also consist of any form of recreation that requires development of facilities, including athletic fields, buildings, or other structures used for recreational activities, skate parks, and other areas built of concrete or other paving material, dog parks, and similar uses. Examples of Active Recreation include, but are not limited to, football, soccer, baseball, softball, lacrosse, basketball, tennis, cycling venues such as velodromes, indoor or outdoor racquetball courts, and climbing gyms.

35. Liberal Construction. This Easement shall be liberally construed in favor of protecting the Property's Conservation Values and to effect the purpose of this Easement and the policies and purpose of C.R.S. §§ 38-30.5-101, et seq. 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.

36. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this 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 the "Amendment" Paragraph herein.

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

38. Exhibits. All exhibits referred to herein are incorporated by reference.

39. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Electronic signatures shall be acceptable to and binding upon the Parties.

40. Recording. This Easement shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

41. Property Sale. **Grantor shall provide a copy of the Easement to the proposed buyer or transferee of the Property at least thirty (30) days prior to closing.** Grantor agrees that reference to this Easement shall be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the Property (including a leasehold interest). Failure to provide the copy or make the reference as described in this paragraph shall not invalidate any transfer or conveyance of the Property but shall not limit Grantee's right to reasonable remedies afforded at law.

42. Notice to County of Transfer of Property. **Grantor shall give written notice to Grantee of the transfer of the Property and the name, address, and telephone number of the buyer or proposed transferee within ten (10) days after closing.** Failure to provide notice pursuant to this paragraph shall not invalidate or limit this Easement or any transfer or conveyance of the Property.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Easement on the dates set forth in their respective acknowledgements intending that this Easement be effective as of the date set forth above.

GRANTOR:
Oreo Farms, LLC
a Colorado limited liability company

By: _____
Marva DeFalco, Member

State of Colorado
County of Boulder

The foregoing Deed of Conservation Easement in Gross was acknowledged before me this ____ day of _____, 2023, by Marva DeFalco, as Member of Oreo Farms, LLC, a Colorado limited liability company.

(Notary Official Signature)

NOTARY
SEAL

(Commission Expiration)

GRANTEE:

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Claire Levy, Chair

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2023
by Claire Levy, Chair, of the Board of County Commissioners of Boulder County, Colorado.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

EXHIBIT 1

Legal Description

PARCEL I:

A portion of the Northwest 1/4 of Section 8, Township 3 North, Range 69 West of the 6th P.M., County of Boulder, State of Colorado, being more particularly described as follows:

Commencing at the Northwest corner of said Section 8; thence North $89^{\circ}57'40''$ East along the North line of said Northwest 1/4 of said Section 8, 965.00 feet to the true point of beginning of Parcel I; thence continuing along said North line, North $89^{\circ}57'40''$ East, 60.00 feet; thence South $00^{\circ}01'59''$ East, 30.00 feet; thence along the arc of a curve to the left (said curve having a radius of 1204.85 feet, a central angle of $15^{\circ}59'51''$, chord of said arc bears South $08^{\circ}02'16''$ East, 335.31 feet), a distance of 336.41; thence South $16^{\circ}02'11''$ East, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 3315.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears South $12^{\circ}35'04''$ East, 399.27 feet), a distance of 399.52 feet; thence South $09^{\circ}07'42''$ East, 1520.74 feet to the South line of the Northwest 1/4 of said Section 8; thence North $89^{\circ}39'01''$ West along the South line Northwest 1/4 of said Section 8, 1514.33 feet to the Southwest corner thereof; thence North $00^{\circ}07'55''$ West along the West line of the Northwest 1/4 of said Section 8, 1085.00 feet; thence North $83^{\circ}14'52''$ East, 1265.08 feet; thence North $09^{\circ}07'42''$ West, 252.17 feet; thence along the arc of a curve to the left (said curve having a radius of 3255.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears North $12^{\circ}35'04''$ West, 392.05 feet), a distance of 392.29 feet; thence North $16^{\circ}02'11''$ West, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 1264.85 feet, a central angle of $15^{\circ}59'51''$, chord of said arc bears North $08^{\circ}02'16''$ West, 352.01 feet), a distance of 353.16 feet; thence North $00^{\circ}01'59''$ West, 30.00 feet to the true point of beginning of Parcel I.

PARCEL II:

A portion of the Northwest 1/4 of Section 8, Township 3 North, Range 69 West of the 6th P.M., County of Boulder, State of Colorado, being more particularly described as follows:

Commencing at the Northwest corner of said Section 8; thence North $89^{\circ}57'40''$ East along the North line of said Northwest 1/4, 1085.00 feet to the Northwest corner of that certain parcel of land described in the Deed recorded June 22, 1981 as Reception No. 451609, said point being the true point of beginning of Parcel II; thence along the Westerly and Southerly boundary of said parcel described in the Deed recorded as Reception No. 451609 the following six courses:

- 1) South $00^{\circ}01'59''$ East, 30.00 feet;
- 2) Thence along the arc of a curve to the left (said curve having a radius of 1144.85 feet, a central angle of $15^{\circ}59'51''$, chord of said arc bears South $08^{\circ}02'16''$ East, 318.62 feet), a distance of 319.65 feet;
- 3) South $16^{\circ}02'11''$ East, 434.94 feet;

- 4) Thence along the arc of a curve to the right (said curve having a radius of 3375.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears South $12^{\circ}35'04''$ East, 406.50 feet), a distance of 406.75 feet;
- 5) South $09^{\circ}07'42''$ East, 470.65 feet;
- 6) North $76^{\circ}19'41''$ East, 1276.49 feet to the East line of the Northwest 1/4;

Thence South $00^{\circ}17'47''$ East, along the East line of the Northwest 1/4, 1355.00 feet to the center 1/4 corner of Section 8; thence North $89^{\circ}39'01''$ West, along the South line of the Northwest 1/4, 1140.00 feet; thence North $09^{\circ}07'42''$ West, 1520.74 feet; thence along the arc of a curve to the left (said curve having a radius of 3315.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears North $12^{\circ}35'04''$ West, 399.27 feet), a distance of 399.52 feet; thence North $16^{\circ}02'11''$ West, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 1204.85 feet, a central angle of $15^{\circ}59'51''$, chord of said arc bears North $08^{\circ}02'16''$ West, 335.31 feet), a distance of 336.41 feet; thence North $00^{\circ}01'59''$ West, 30.00 feet to the North line of the Northwest 1/4; thence North $89^{\circ}57'40''$ East, along the North line of the Northwest 1/4, 60.00 feet to the true point of beginning of Parcel II,

Less and except the Northerly 30 feet thereof.

EXHIBIT 2

Property Map

Exhibit 2: Oreo Farms Map



2021
2020 Pictometry



The aerial imagery is by All Terrain Aerial Ltd. by Rockwell County. The boundary lines shown are not necessarily the boundary of any individual parcel. All rights reserved. © 2021. All rights reserved. For more information, please contact the County.

AMENDED AND RESTATED RESTRICTIVE COVENANT RUNNING WITH WATER RIGHTS AND LAND

THIS AMENDED AND RESTATED RESTRICTIVE COVENANT RUNNING WITH WATER RIGHTS AND LAND (the “Amended Restrictive Covenant”) is entered into by and between **Oreo Farms LLC**, a Colorado limited liability company (“Seller”), and the **County of Boulder**, a body corporate and politic (the “County”) (collectively, the “Parties”).

RECITALS

- A. Seller is the owner of approximately 76.127 acres of land in Boulder County, Colorado legally described on Exhibit 1 attached hereto and incorporated herein by reference (the “Property”);
- B. Seller conveyed to County a Deed of Conservation Easement in Gross over and across the Property recorded on October 27, 2010, at Reception Number 3108347, in the office of the Clerk and Recorder of Boulder County, Colorado (the “Original Conservation Easement”), which tied a fifty percent (50%) undivided interest in Seller’s one and three-quarter (1.75) shares of the capital stock of Highland Ditch Company to the Property;
- C. Seller conveyed to County the other fifty percent (50%) undivided interest in one and three-quarter (1.75) shares of the capital stock of Highland Ditch Company, which were then tied to the Property by a Restrictive Covenant Running with Water Rights and Land recorded on October 27, 2010, at Reception Number 03108348 (the “Original Restrictive Covenant”) in the office of the Clerk and Recorder of Boulder County, Colorado;
- D. Parties then agreed to reduce the amount of Highland Ditch Company shares tied to the Property, and accordingly, amended the Original Conservation Easement with the instrument recorded on February 10, 2021, at Reception Number 3857952, in the office of the Clerk and Recorder of Boulder County, Colorado, which changed the fifty percent (50%) undivided interest in Seller’s water rights tied to the Property from one and three-quarter (1.75) to one and one-half (1.5) shares of the capital stock of Highland Ditch Company; however, the Original Restrictive Covenant was never amended to reduce the County’s shares tied to the Property;
- E. The Parties now agree to increase the shares of the Highland Ditch Company that are tied to the Property from one and one-half (1.5) shares to three (3.0) shares. To effectuate this change, Seller conveyed to County, for the benefit of the Property, a 50% undivided interest in three (3.0) shares of the capital stock of Highland Ditch Company (the “County’s Water Rights”) and retained the other fifty (50%) undivided interest in three (3.0) shares of the capital stock of Highland Ditch Company (“Seller’s Water Rights”);
- F. To update the amount of Seller’s water rights tied to the Property, Parties entered into an Amended and Restated Deed of Conservation Easement in Gross to tie the Seller’s Water Rights to the Property (Reception Number _____);

G. To update the amount of County's Water Rights tied to the Property, the Parties desire to amend and restate the Original Restrictive Covenant with this Amended Restrictive Covenant to tie the updated County's Water Rights to the Property;

H. This Amended Restrictive Covenant shall supersede and replace in its entirety the Original Restrictive Covenant, except that the effective date of the Original Restrictive Covenant shall remain in full force and effect.

I. With this Amended Restrictive Covenant, the County and Seller desire to ensure that County's Water Rights remain attached to, appurtenant to, and available for continued use on the Property, and are used to preserve and protect the agricultural and environmental resources of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants, and undertakings described above and hereinafter set forth, County and Seller agree as follows:

1. County's Water Rights shall remain attached to, appurtenant to, and available for continued use on the Property by Seller and shall not be severed from the Property.

2. Seller shall be responsible for all annual ditch assessments and/or carriage costs associated with County's Water Rights and shall reserve any and all voting rights associated with County's Water Rights. Seller hereby appoints County to be its proxy at any ditch company meetings at which Seller is not present. If Seller fails to pay the water assessments in any given year, County shall have the right to pay the assessments, vote the shares in Seller's stead, and seek a judgment against the property.

3. The restrictions contained herein shall be restrictions running with the Property and County's Water Rights and shall be binding upon County, its successors and assigns.

DATED this ____ day of _____, 2023.

Seller:
Oreo Farms, LLC
a Colorado limited liability company

By: _____
Marva DeFalco, Member

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by Marva DeFalco, Member of Oreo Farms, LLC, a Colorado Limited Liability Company.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Claire Levy, Chair, of the Board of County
Commissioners of Boulder County,
Colorado.

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2023
by Claire Levy, Chair, of the Board of County Commissioners of Boulder County, Colorado.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

EXHIBIT 1

Legal Description of the Property

PARCEL I:

A portion of the Northwest 1/4 of Section 8, Township 3 North, Range 69 West of the 6th P.M., County of Boulder, State of Colorado, being more particularly described as follows:

Commencing at the Northwest corner of said Section 8; thence North 89°57'40" East along the North line of said Northwest 1/4 of said Section 8, 965.00 feet to the true point of beginning of Parcel I; thence continuing along said North line, North 89°57'40" East, 60.00 feet; thence South 00°01'59" East, 30.00 feet; thence along the arc of a curve to the left (said curve having a radius of 1204.85 feet, a central angle of 15°59'51", chord of said arc bears South 08°02'16" East, 335.31 feet), a distance of 336.41; thence South 16°02'11" East, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 3315.47 feet, a central angle of 06°54'15", chord of said arc bears South 12°35'04" East, 399.27 feet), a distance of 399.52 feet; thence South 09°07'42" East, 1520.74 feet to the South line of the Northwest 1/4 of said Section 8; thence North 89°39'01" West along the South line Northwest 1/4 of said Section 8, 1514.33 feet to the Southwest corner thereof; thence North 00°07'55" West along the West line of the Northwest 1/4 of said Section 8, 1085.00 feet; thence North 83°14'52" East, 1265.08 feet; thence North 09°07'42" West, 252.17 feet; thence along the arc of a curve to the left (said curve having a radius of 3255.47 feet, a central angle of 06°54'15", chord of said arc bears North 12°35'04" West, 392.05 feet), a distance of 392.29 feet; thence North 16°02'11" West, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 1264.85 feet, a central angle of 15°59'51", chord of said arc bears North 08°02'16" West, 352.01 feet), a distance of 353.16 feet; thence North 00°01'59" West, 30.00 feet to the true point of beginning of Parcel I.

PARCEL II:

A portion of the Northwest 1/4 of Section 8, Township 3 North, Range 69 West of the 6th P.M., County of Boulder, State of Colorado, being more particularly described as follows:

Commencing at the Northwest corner of said Section 8; thence North 89°57'40" East along the North line of said Northwest 1/4, 1085.00 feet to the Northwest corner of that certain parcel of land described in the Deed recorded June 22, 1981 as Reception No. 451609, said point being the true point of beginning of Parcel II; thence along the Westerly and Southerly boundary of said parcel described in the Deed recorded as Reception No. 451609 the following six courses:

- 1) South 00°01'59" East, 30.00 feet;
- 2) Thence along the arc of a curve to the left (said curve having a radius of 1144.85 feet, a central angle of 15°59'51", chord of said arc bears South 08°02'16" East, 318.62 feet), a distance of 319.65 feet;

- 3) South $16^{\circ}02'11''$ East, 434.94 feet;
- 4) Thence along the arc of a curve to the right (said curve having a radius of 3375.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears South $12^{\circ}35'04''$ East, 406.50 feet), a distance of 406.75 feet;
- 5) South $09^{\circ}07'42''$ East, 470.65 feet;
- 6) North $76^{\circ}19'41''$ East, 1276.49 feet to the East line of the Northwest 1/4;

Thence South $00^{\circ}17'47''$ East, along the East line of the Northwest 1/4, 1355.00 feet to the center 1/4 corner of Section 8; thence North $89^{\circ}39'01''$ West, along the South line of the Northwest 1/4, 1140.00 feet; thence North $09^{\circ}07'42''$ West, 1520.74 feet; thence along the arc of a curve to the left (said curve having a radius of 3315.47 feet, a central angle of $06^{\circ}54'15''$, chord of said arc bears North $12^{\circ}35'04''$ West, 399.27 feet), a distance of 399.52 feet; thence North $16^{\circ}02'11''$ West, 434.94 feet; thence along the arc of a curve to the right (said curve having a radius of 1204.85 feet, a central angle of $15^{\circ}59'51''$, chord of said arc bears North $08^{\circ}02'16''$ West, 335.31 feet), a distance of 336.41 feet; thence North $00^{\circ}01'59''$ West, 30.00 feet to the North line of the Northwest 1/4; thence North $89^{\circ}57'40''$ East, along the North line of the Northwest 1/4, 60.00 feet to the true point of beginning of Parcel II,

Less and except the Northerly 30 feet thereof.

AMENDMENT TO DEED OF CONSERVATION EASEMENT IN GROSS

This Amendment to Deed of Conservation Easement in Gross (the “Amendment”) is entered into this ____ day of _____, 2023, by and between **Oreo Farms LLC**, a Colorado limited liability company, whose legal address is 9744 Meadow Ridge Lane, Longmont, Colorado 80504 (“Grantor”) and the **County of Boulder**, a body corporate and politic whose legal address is 5201 St. Vrain Road, Longmont, Colorado 80503 and **City of Longmont**, a Colorado municipal corporation, whose legal address is 350 Kimbark Street, Longmont, Colorado 80501 (collectively, “Grantee”) (collectively, the “Parties”).

RECITALS

- A. Grantor is the sole owner of approximately 117.797 acres of agricultural land in Boulder County, Colorado, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”).
- B. The Property is encumbered by that certain Conservation Easement recorded on March 4, 2005, at Reception Number 2669664 (the “Original Conservation Easement”) in the office of the Clerk and Recorder of Boulder County, Colorado.
- C. The Original Conservation Easement was amended by an Amendment to Conservation Easement recorded on March 27, 2006, at Reception Number 2765653 in the office of the Clerk and Recorder of Boulder County, Colorado (the “First Amendment”). The First Amendment modified Exhibit 2 of the Original Conservation Easement to update the Property’s management plan.
- D. The Original Conservation Easement ties a one hundred percent (100%) interest in Grantor’s four and one-half (4.5) shares of capital stock in the Highland Ditch Company to the Property.
- E. Parties desire to modify the quantity of water rights to better equate with the amount needed to manage the agricultural values of the Property, resulting in three (3.0) shares of capital stock in the Highland Ditch Company being tied to the Property. The Parties have concluded that the change in the amount of water rights tied to the Property will not harm the Property’s conservation values. The one and one-half (1.5) shares of the Highland Ditch Company being removed from the Conservation Easement will be transferred and tied to another property owned by the Grantor and encumbered by a different conservation easement.
- F. It was intended by the Parties that, in association with the granting of the Original Conservation Easement to County, Grantor would deed to Grantee an undivided interest in Grantor’s water rights used on the Property. To follow through on that intention, the Grantor will

now deed the Grantee by bargain and sale deed a fifty percent (50%) undivided interest in the remaining three (3.0) shares of capital stock in the Highland Ditch Company (“County’s Water Rights”). The County’s Water Rights will then be tied to the Property with a Restrictive Covenant Running with Land and Water Rights, for use on the Property by Grantor.

G. By this Amendment, Grantor and Grantee now desire to amend the Original Conservation Easement to modify the water right provisions and tie Grantor’s fifty percent (50%) undivided interest in three (3.0) shares of capital stock in the Highland Ditch Company defined in Exhibit B hereto as the “Outlot Water Rights” to the Property, and to modify the management plan requirements.

H. Except as expressly amended herein, the Original Conservation Easement, as modified by the First Amendment, shall continue in full force and effect with its original date of priority.

I. Grantor and Grantee have determined that this Amendment is consistent with the conservation purposes of the Original Conservation Easement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, but subject to the terms and conditions more fully set forth below, and pursuant to the laws of the State of Colorado, Grantor and Grantee hereby agree as follows:

1. Paragraph 1 of the Original Conservation Easement is hereby replaced in its entirety with the following paragraph:

The Property shall be limited to open agricultural uses only.

2. Paragraph 2 of the Original Conservation Easement is hereby replaced in its entirety with the following paragraph:

The Outlot Water Rights are hereby tied to and shall hereafter remain attached to the Property. Grantor shall retain, reserve the right to use, and use the Outlot Water Rights in current or future agricultural production on the Property, and shall not transfer, lease, sell, or otherwise separate the Outlot Water Rights from the Property; provided, however, that in the event Grantor cannot use the Outlot Water Rights on the Property in any given year, Grantor shall notify Grantee, and Grantee may exercise its rights to put the Outlot Water Rights to beneficial use as described below. When requested by Grantee, Grantor shall provide Grantee with evidence that the Outlot Water Rights are being beneficially used on the Property including, but not limited to, copies of reports filed with or produced by district and state water officials proving water diversions and

water usage, and copies of any reports confirming crop production. If Grantor receives notice of abandonment of any component of the Outlot Water Rights, Grantor shall notify Grantee in writing within thirty (30) days of receiving such notice, and Grantor shall act affirmatively and shall cooperate with Grantee in taking any and all actions reasonably necessary to defend use of the Outlot Water Rights on the Property to prevent abandonment or forfeiture.

Grantee shall have the right to enter the Property and undertake any and all actions reasonably necessary to continue the historic use of the Outlot Water Rights if Grantor fails to perform the activities described above to use the Outlot Water Rights on the Property, if Grantor notifies Grantee that Grantor cannot use the Outlot Water Rights on the Property in any given year, or if Grantee reasonably believes abandonment of the Outlot Water Rights is occurring. If Grantee reasonably believes abandonment is occurring, Grantee shall contact Grantor to initiate a discussion regarding use of the Outlot Water Rights on the Property. Grantor agrees to collaborate with Grantee to reach a solution for ensuring Grantor uses the Outlot Water Rights on the Property. If Grantee and Grantor cannot reach a resolution within a timeframe Grantee believes necessary to ensure the Outlot Water Rights are used on the Property, Grantee may provide Grantor with written notice of Grantee's intent to enter the Property and use the Outlot Water Rights on the Property. If Grantor does not act within ten (10) days after the date of Grantee's written notice to irrigate the Property with the Outlot Water Rights, Grantee may enter the Property to irrigate the Property until the Outlot Water Rights have been fully used for the year. Such actions by Grantee may include, but are not limited to, entering the Property to irrigate and maintain ditches, headgates, diversions or other structures, paying ditch company assessments and fees, filing a lien on the Property to ensure that Grantor reimburses Grantee for any amounts paid by Grantee to maintain the Outlot Water Rights, plus ten percent (10%) interest through the date of reimbursement, using the Outlot Water Rights on another property and any other actions necessary or appropriate to put the Outlot Water Rights to beneficial use, in Grantee's sole discretion. Grantee shall have the right to vote the shares in any given year where Grantor fails to pay the assessment and Grantee has paid the assessment to prevent the respective rights from being sold. Grantee may also undertake any and all actions reasonably necessary to administratively prevent abandonment or forfeiture of the Outlot Water Rights and shall have the right to seek reimbursement from Grantor for any assessments Grantee has paid after Grantor has failed to pay an assessment.

3. Exhibit 1 of the Original Conservation Easement is hereby replaced in its entirety with Exhibit B attached hereto.

4. Paragraph 5 of the Original Conservation Easement is hereby replaced in its entirety with the following paragraph:

Grantor shall not erect, construct or expand any structure and/or pavement on the Property, unless such structure and/or pavement is accessory to a principal open agricultural use and is required by government regulation, and unless such structure is permitted under the applicable regulations of the Land Use Regulations and is otherwise allowed under this Easement.

5. Exhibit 2 is hereby removed from the Original Conservation Easement.

6. The remainder of the Original Conservation Easement, as modified by the First Amendment, is hereby ratified and confirmed, and except as expressly amended herein, the Original Conservation Easement, as modified by the First Amendment, shall continue in full force and effect with its original date of priority.

7. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall together constitute one and the same document.

[Remainder of page intentionally left blank]

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

GRANTOR:
Oreo Farms, LLC
a Colorado limited liability company

By: _____
Marva DeFalco, Member

State of Colorado
County of Boulder

The foregoing Amendment was acknowledged before me this ____ day of _____, 2023 by Marva DeFalco, as Member of Oreo Farms, LLC, a Colorado limited liability company.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

GRANTEE:

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Claire Levy, Chair, of the Board of County
Commissioners of Boulder County,
Colorado.

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2023
by Claire Levy, Chair, of the Board of County Commissioners of Boulder County, Colorado.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

GRANTEE:
CITY OF LONGMONT, a Colorado municipal
corporation

By: _____
Joan Peck, Mayor

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

SR. ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ___ day of _____, 2023
by Joan Peck, Mayor, City of Longmont, a Colorado municipal corporation.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

EXHIBIT A

Legal Description

Outlot B, Block 1 Wood Meadows Wood Meadows Non-contiguous Non-urban Planned Unit Development Subdivision, Corrected, County of Boulder, State of Colorado.

EXHIBIT B

OUTLOT WATER RIGHTS

A fifty percent (50%) undivided interest in three (3.0) shares Highland Ditch Company Stock

RESTRICTIVE COVENANT RUNNING WITH WATER RIGHTS AND LAND

THIS RESTRICTIVE COVENANT RUNNING WITH WATER RIGHTS AND LAND is entered into by and between **Oreo Farms LLC**, a Colorado limited liability company (“Seller”), and the **County of Boulder**, a body corporate and politic (“County”).

RECITALS

- A. Seller conveyed to County by deed of conservation easement in gross and subsequent amendment (the “Conservation Easement”) an interest in the real property described on Exhibit 1 attached hereto and incorporated herein by reference (the “Property”); and
- B. The Conservation Easement requires Seller to retain, in perpetuity, a fifty percent (50%) undivided interest in three (3.0) shares of the capital stock of Highland Ditch Company (“Seller’s Water Rights”). The Conservation Easement prohibits Seller from transferring, leasing, selling or otherwise separating any of Seller’s Water Rights from the Property.
- C. In connection with the Conservation Easement, Seller conveyed to County, for the benefit of the Property, a fifty percent (50%) undivided interest in three (3.0) shares of the capital stock of Highland Ditch Company (“County’s Water Rights”);
- D. County and Seller are entering into this Restrictive Covenant because of their desire to ensure that County’s Water Rights remain attached to, appurtenant to, and available for continued use on the Property, and are used to preserve and protect the agricultural and environmental resources of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants, and undertakings described above and hereinafter set forth, County and Seller agree as follows:

1. County’s Water Rights shall remain attached to, appurtenant to, and available for continued use on the Property by Seller and shall not be severed from the Property.
2. Seller shall be responsible for all annual ditch assessments and/or carriage costs associated with County’s Water Rights and shall reserve any and all voting rights associated with County’s Water Rights. Seller hereby appoints County to be its proxy at any ditch company meetings at which Seller is not present. If Seller fails to pay the water assessments in any given year, County shall have the right to pay the assessments, vote the shares in Seller’s stead, and seek a judgment against the property.
3. The restrictions contained herein shall be restrictions running with the Property and County’s Water Rights and shall be binding upon County, its successors and assigns.

DATED this ____ day of _____, 2023.

Seller:
Oreo Farms, LLC
a Colorado limited liability company

Marva DeFalco, Member

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by Marva DeFalco, Member of Oreo Farms, LLC, a Colorado limited liability company.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Claire Levy, Chair, of the Board of County
Commissioners of Boulder County,
Colorado.

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2023
by Claire Levy, Chair, of the Board of County Commissioners of Boulder County, Colorado.

(Notary official signature)

NOTARY
S E A L

(Commission expiration)

EXHIBIT 1

Legal Description of the Property

Outlot B, Wood Meadows Non-contiguous Non-urban Planned Unit Development Subdivision
Final Plat, County of Boulder, State of Colorado