



SCOTT DOYLE, CLERK
LARIMER COUNTY CO

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**Amended and Restated
DEED OF CONSERVATION EASEMENT**

Hidden Valley

Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall pay a transfer fee of \$100 to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT AND RESTATEMENT OF DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 20th day of September 2004, by BACKBONE INVESTMENTS, LLC, a Colorado limited liability company, whose address is c/o Scott T. Charpentier, 144 North Mason #5, Fort Collins, CO 80524 ("Grantor"), to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is Suite 320, 274 Union Boulevard, Lakewood, CO 80228.

RECITALS:

A. Description of Donation. Grantor donated a Deed of Conservation Easement recorded on November 13, 2003, at Reception number 2003-0143273 of the records of the Clerk and Recorder of Larimer County, Colorado to Grantee over the fee interest in the real property legally described on **Exhibit A** and shown on **Exhibit C** and **Exhibit C I**, attached hereto and made a part of this Deed (the "First Donation Parcel"), in October, 2003. Grantor is also the owner of the fee simple interest in the real property legally described on **Exhibit B** and shown on **Exhibit C** and **Exhibit C II**. By this instrument, Grantor is donating a second Deed of Conservation Easement to Grantee over the fee interest in the real property legally described on **Exhibit B** attached hereto and made a part of this Deed, together with water and mineral rights associated with or appurtenant to the property (the "Second Donation Parcel"). The First Donation Parcel consists of 99.54 +/- acres of land and the Second Donation Parcel consists of 103 +/- acres of land. The First Donation Parcel and the Second Donation Parcel are both located in the East half of the Southwest quarter of Section 5, in the East half of the West half of Section 8, and the Northeast quarter of the Northwest quarter of Section 17, Township 5 North, Range 69 West of the 6th P.M., Larimer County, Colorado and are together referred to in this Deed as the "Property". The Property is shown graphically on **Exhibit C**, **Exhibit C I** and **Exhibit C II** (the "Map Exhibits") attached hereto and made a part of this Deed. Grantor and Grantee desire to combine the conservation easements over the First Donation Parcel and the Second Donation Parcel for management and stewardship purposes. To that end, Grantor and Grantee desire that the provisions of this Deed shall constitute the original instrument for the donation of the conservation easement over the Second Donation Parcel, and a restatement of the terms of the conservation easement over the First Donation Parcel. All terms and conditions of this Deed shall apply to the First Donation Parcel and the Second Donation Parcel.

Hidden Valley Amended and Restated Deed of Conservation Easement

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after recording, return to: Colorado Open Lands
274 Union Blvd. #320
Lakewood, CO 80228

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B. Qualified Organization. Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under §§38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

C. Conservation Values. The conservation purposes set forth in this paragraph may hereinafter be collectively referred to as the "Conservation Values." According to § 170(h)(4)(A) of the Internal Revenue Code and § 1.170A-14(d) of the Treasury regulations, the Conservation Values of a qualified conservation contribution may be for one or more of the following: to preserve land for outdoor recreation by or education of the general public; to protect relatively natural habitat of fish, wildlife or plants; to preserve open space; and to preserve historically important land or structures. The Conservation Values of the Property include open space and relatively nature habitat as further described below.

Relatively natural habitat § 1.170A-14(d)(3). In general, the Property slopes downward from east to west and north to south and is comprised almost entirely of open grassland habitat. At the time of granting of this Easement, vegetation present on the Property includes needle and thread, sagebrush, sagewort, mountain mahogany, skunkbush sumac, fringed sagebrush, broom snakeweed, three awn and a small number of cottonwoods. The open grassland habitat found on the Property is best suited for browse, cover and forage for small mammals and avian species. The Second Donation Parcel is a northern continuation of the First Donation Parcel and is topographically higher and steeper than the First Donation Parcel. The Second Donation Parcel has less impact from historic agricultural use and has significantly fewer weeds. Most of the Second Donation Parcel is in native vegetation, having been only impacted by grazing. Much of the steeper eastern portion of the Second Donation Parcel is dominated by mountain mahogany, skunkbush sumac, and a diverse community of grasses and forbs which has high value for browse, cover, and forage for mammals and avian species. Several small ponderosa pines have become established on the higher portion of the Second Donation Parcel. Preservation of the Property as a whole will provide wildlife habitat in addition to that of the adjacent public open space.

Open Space § 1.170A-14(d)(4). The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit. More specifically, the Property is a parcel of land lying directly north of U.S. Highway 34. At the time of granting of this easement, U.S. Highway 34 is a paved, well-traveled road, and portions of the Property are visible to the public. The Property lies in a broad, gently rolling valley floor between the prominent Devil's Backbone to the west and the prominent Dakota hogback to the east. A low limestone hogback ridge trends northwest – southeast across the southwest corner of the Property, and the Dakota hogback runs north-south through the northern half of the Property. Significant portions of the Property are directly adjacent to Devil's Backbone Open Space, public land owned by Larimer County. This public land includes a trail along the eastern edge of a geologically significant landmark called Devil's Backbone. As a result, much of the Property is highly visible from this public trail. The Property itself also provides excellent views of Devil's Backbone and the Front Range of the Rocky Mountains. Because of the immediate proximity to public open space, the Property provides a visual buffer and continuation of the open space already present to the west in Devil's Backbone Open Space.

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There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will add to the scenic character of the local landscape in which it lies, and will continue to provide an opportunity for the general public to appreciate the Property's scenic values. In particular, preservation of the open, undeveloped nature of the ridgetop will preserve important scenic qualities of the Property. It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land. These Conservation Values are of great importance to Grantor, the people of Larimer County, and the people of the State of Colorado.

D. State Policy Concerning Conservation Easements. C.R.S. §§33-1-101, *et seq.*, provides in relevant part that "it is the declared 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." Additionally, C.R.S. §§35-3.5-101, *et seq.*, provides in relevant part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of agricultural land for the production of feed and other agricultural products." C.R.S. §§38-30.5-101, *et seq.*, provides for the creation 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 having wholesome environmental quality or life-sustaining ecological diversity."

E. Larimer County Supporting Government Policy. *Growth Management Guiding Principle 7* in the Larimer County Master Plan (the "Plan") states that "To protect rural character, the County shall maintain current zoning and provide new standards and performance requirements for Adequate Public Facilities, Rural Conservation (cluster) Development, neighborhood compatibility, protection of environmental resources and restrictions in hazardous areas." *Land Use Guiding Principle 5* of the Plan states that "All new rural residential development shall be designed to maintain the open character of rural areas and to protect and maintain agricultural uses and sensitive environmental areas," and *Land Use Guiding Principle 10* states that "All new development shall be located and designed for compatibility with sensitive natural areas." Lastly, *Environmental Resource Guiding Principle 4* of the Plan states that "Larimer County shall endeavor to protect all areas identified as highest priority on the Important Wildlife Habitat Map, which is adopted by reference as part of the Master Plan."

F. Documentation of Present Conditions. The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property of the date of this Deed are further documented in a "Present Conditions Report," dated November 2003, updated September 2004, and prepared by John Barnett & Associates, which report is acknowledged as accurate by Grantor and Grantee. The Present Conditions Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

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ACKNOWLEDGEMENT OF INTENT:

As a guide to the interpretation of this Deed and administration of the Conservation Easement ("Easement") created by this Deed by future generations, Grantor and Grantee, for themselves, and for their successors and assigns, herein expressly declare their agreement and dedication to the following purpose and intent:

1. **Purpose.** The purpose (the "Purpose") of this Easement is to preserve and protect in perpetuity the Conservation Values of the Property. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever.

2. **Intent.** Subject only to the Purpose set forth above, the intent of the parties is to permit all other uses of the Property which are not inconsistent with the preservation and protection of the Conservation Values as determined by Grantee in its sole discretion and which are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than of the preservation and protection of the Conservation Values.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Grantor and Grantee mutually agree as follows:

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily 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 of the nature and character described in this Deed, for the purpose of preserving and protecting the Conservation Values of the Property in perpetuity.

2. **Rights of Grantee.** To accomplish the Purpose of this Easement the following rights are hereby conveyed to Grantee, its employees and its representatives:

A. To preserve and protect the Conservation Values of the Property;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

C. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that may be damaged by an inconsistent activity or use; and

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D. To require the Grantor to monitor and enforce the terms of this Deed. Grantee will receive reimbursement for all costs and burdens Grantee incurs if Grantor or Grantor's successor's fail to fulfill its obligations herein.

Nothing in this section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values of the Property or any other provisions of this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or restricted by this Easement. These ownership rights include, but are not limited to, the retention of the economic viability of the Property provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values. Grantor shall be responsible for management of the Property.

4. **Property Improvements.** The parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. Without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:

A. **Existing Improvements.** At the time of granting of this Deed, there are no residential or agricultural improvements on the Property:

B. **Construction of Improvements.** The construction or reconstruction of any improvement is prohibited except as described below.

(1) **New Improvements Construction.**

a. **Residential Improvements.** At the time of the granting of this Easement, no residential structures exist on the Property and no residential structures may be constructed on the Property after the date hereof.

b. **Agricultural and Recreational Improvements.** New minor, unenclosed agricultural improvements such as corrals, loafing sheds, hayracks, or stock tanks may be constructed on the Property without permission of Grantee. One or more new buildings not to exceed a cumulative total of 5,000 square feet of enclosed floor area, including buildings associated with equestrian, swimming, tennis and other athletic activities, may be located within either Recreational Building Envelope #1 or Recreational Building Envelope #2 (collectively, the "Recreational Building Envelopes") as depicted on the **Map Exhibits** without permission of Grantee. Upon selection of either Recreational Building Envelope #1 or #2, Grantor shall notify Grantee in writing so that Grantee may update its records. Further, after selection of one of the two Recreational Building Envelope(s) has been made, Grantor and Grantee

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agree that the remaining Recreational Building Envelope is extinguished. After construction, Grantor may maintain, repair, or replace the improvements within the Recreational Building Envelope without further permission of the Grantee.

(2) **Notification of Replacement or Enlargement.** In the event of replacement or enlargement of Agricultural Improvements in Section 4B(1), Grantor shall notify Grantee so that its records may be updated.

(3) **Other Improvements.**

a. **Road Construction and Paving.** No roads or driveways shall be constructed or established except for those existing or new roads or driveways depicted on the **Map Exhibits**. The paving or otherwise surfacing of roads or driveways with concrete, asphalt, or any other impervious paving material is prohibited unless so indicated on the **Map Exhibits**.

b. **Fences.** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife. Fences may be constructed around building envelopes without any further permission of Grantee, provided said fences are not greater than 46" in height and are not inconsistent with the preservation and protection of the Conservation Values.

c. **Utilities.** Existing utilities may be repaired and replaced in the same location with a similar structure without any further permission of Grantee. Grantor may install new utility lines or relocate existing utility lines provided such new or relocated utility lines shall be installed underground in the new or existing roads or driveways as depicted on the **Map Exhibits**.

d. **Billboards and Signs.** Signs existing on the Property at the time of execution of this Deed are permitted and may be replaced with signs similar in character. Grantor shall not construct, maintain, or erect any signs or billboards on the Property that are inconsistent with the preservation and protection of the Conservation Values.

e. **Trails.** Grantor may construct soft surface trails on the Property to be used for permitted recreational uses as described in Section 5D, provided that all trails are located outside of wetland areas. Grantee acknowledges that a trail alongside the existing roads, except through any wetland areas, shall not be inconsistent with the Conservation Values of

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the Property. If Grantor desires to locate other trails on the Property, Grantor shall submit proposed locations for trails to Grantee for approval prior to constructing such trails. Grantee's approval shall not be unreasonably withheld, conditioned, or delayed. Should more than 30 calendar days elapse after Grantee's receipt of such written notice from Grantor without any response from Grantee, the construction of soft surface trails shall be deemed approved.

5. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below. Grantor shall assume responsibility for managing and maintaining the Conservation Values on all or any portion of the Property that may be of common ownership or use by subsequent landowners.

A. **Agriculture.** The Property shall be managed to prevent overgrazing by livestock and soil erosion.

B. **Timber.** Timber harvesting is prohibited except as set forth below. On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted buildings and fences. Tree thinning activities may take place to maintain the character and nature of the habitat.

C. **Mining.** The exploration, mining or other extraction of minerals, fossil fuels, rock or soil is prohibited

D. **Recreation.** Golf courses are prohibited on the Property. Those low impact recreational uses such as bird watching, hiking, cross country skiing, hunting and fishing not inconsistent with the preservation and protection of the Conservation Values are permitted. The creation or construction of tennis courts, swimming facilities, or athletic fields are permitted, provided all are located within the Recreational Building Envelope as shown on the **Map Exhibits** and meet the standards outlined in Paragraph 4.B.(1)b.

E. **Water Rights.** No water rights are associated with or included in the Property subject to this Easement.

6. **Restricted Practices.**

A. **Subdivision.** Grantor and Grantee agree that the legal division or subdivision of the Property, including by partition, into more than two parcels of land is prohibited and further, that the Second Donation Parcel may not be subdivided apart from

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the adjacent unencumbered thirty-seven (37) acres. Notwithstanding the foregoing, Grantor and Grantee further agree that the Property or description of the Property may identify or include one or more legal parcels.

B. **Surface Disturbance.** Except as permitted within this Deed, any alteration of the surface of the land, including without limitation, the excavation or removal of soil, sand, gravel, rock, peat or sod, that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

C. **Water Features.** Any alteration, impairment, modification or adverse change in or to any existing ponds, wetlands or stream channels currently located on the Property, without prior written consent of and determination by the Grantee that such actions are not inconsistent with the preservation and protection of the Conservation Values, is prohibited. Notwithstanding the foregoing, the maintenance of agricultural ditches, stock ponds or other agricultural improvements is permitted without further permission from Grantee.

D. **Industrial Activity.** Industrial uses of the Property are prohibited.

E. **Feed Lot.** The establishment or maintenance of a feed lot is prohibited. For purposes of this Deed, "feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of feeding livestock. Nothing in this section shall prevent Grantor from seasonally confining livestock into an area for feeding, or from leasing pasture for the grazing of livestock owned by others.

F. **Public Access.** Nothing contained herein shall be construed as affording the public access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is not inconsistent with the preservation and protection of the Conservation Values of the Property.

G. **Trash.** The dumping, collecting or storing of any kind of trash, sludge, or refuse on the Property is prohibited. The dumping, collecting or storing of farm-related trash and refuse produced on the Property is permitted, provided it is not inconsistent with the preservation and protection of the Conservation Values. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Notwithstanding the foregoing, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any

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federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition does not impose any liability on Grantee for hazardous materials nor does it make Grantee an owner of the Property, nor does it permit or require Grantee to control any use of the Property that may result in the treatment, storage, disposal or release of hazardous materials.

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible.

J. **Other Restricted Uses.** Sod farms, helicopter pads, and airstrips are prohibited.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified herein, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible and Grantee shall have no obligation for the upkeep and maintenance of the Property and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Such responsibilities include, but are not limited to the following:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

B. **Liability.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due solely by the willful and wanton act or omission (as defined by C.R.S. 13-21-102(1)(b)) of the Indemnified Parties; (ii) the obligations under this Section 7 or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. Grantee shall indemnify and hold Grantor and its assigns and successors

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harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

8. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation or (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee. If Grantor is unable or unwilling to cease the immediate alleged violation, restore or remediate the Property to its condition prior to the violation or provide a written plan for restoration and remediation of the Property acceptable to Grantee, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor unless the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement. The parties will share equally in the mediation fees. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. The failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

9. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. **Transfer of Property.** The Second Donation Parcel may not be separated or conveyed separately from the adjacent unencumbered thirty-seven (37) acres, and ownership of these adjacent unencumbered acres shall include common ownership of the Second Donation parcel. Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall pay a \$100 transfer fee to Grantee and notify Grantee within (5) business days after closing in writing using the form in **Exhibit D** attached hereto. Any document of conveyance shall expressly refer to this Deed of Conservation Easement. This transfer fee shall

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be in addition to any amount that Grantor may owe to reimburse Grantee for its costs and expenses under separate provisions in this Easement.

11. **Termination of Easement.** If, at the joint request of Grantor and Grantee, a court with jurisdiction determines that conditions on or surrounding the Property change so much that none of the Conservation Values can be fulfilled, the court may terminate this Easement. The total loss of all the Conservation Values are the only grounds under which this Deed can be terminated. Upon such termination, Grantee may use the endowment funds associated with this Deed for purposes consistent with Grantee's organizational mission. Grantor and Grantee agree that the granting of this Deed immediately vests Grantee with a property right, and the fair market value of the First Donation Parcel property right is 59.5% percent of the full fair market value of the Property, and the fair market value of the Second Donation Parcel property right is 32% percent of the full fair market value of the Property. Grantor and Grantee further agree that these percentages shall remain constant, so that should any portion of this Easement (comprised of either the First Donation Parcel or the Second Donation Parcel or combination of both) be extinguished, be sold for public use, taken for public use, or terminated, Grantee shall be entitled to a portion of the proceeds (in proportion to that Donation Parcel's percentage property value or the average of the two percentage property values if the extinguishment, sale for public use, or termination of the Easement includes property in both Donation Parcels) from any subsequent sale, exchange, involuntary conversion, or condemnation award. Grantee's share of the proceeds shall be the aforementioned percentage of the value of the Property at the time of such sale, exchange, involuntary conversion, or condemnation. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

12. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that either party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of such party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

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

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14. **Notices.** As specified here in, any notices required by this Deed shall be sent as appropriate to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

Grantor: Scott T. Charpentier
Backbone Investments, LLC
144 North Mason #5
Fort Collins, CO 80524
Phone: (970) 484-5626

Grantee: Colorado Open Lands
274 Union Blvd., Suite 320
Lakewood, CO.80228
Phone: (303) 988-2373

15. ***Liens on the Property.***

A. ***Current Liens.*** At the time of granting of this Deed, there exists on the Property a Deed of Trust held by Olhausen Family Limited Partnership LLLP to the benefit of Grantor, recorded January 12, 2004 at reception number 2004-0003100 of the records of the Clerk and Recorder of Larimer County, Colorado.

B. ***Subsequent Liens.*** No provisions of this Deed 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 a borrowing would be subordinated to this Easement.

16. ***No Merger.*** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement.

17. ***Grantor's Representations and Warranties.***

A. Grantor warrants that Grantor has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

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(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are not now any underground storage tanks located on the Property;

(2) Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;

(3) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(4) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

18. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed.

19. **General Provisions:**

A. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

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

C. **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the one-year statute of limitation provided under C.R.S. § 38-41-119 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

D. **Controlling Law and Interpretation.** This Easement shall be performed and broadly interpreted under the laws of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to favor maintaining the Conservation Values of the Property.

E. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall

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be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** If the circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will confer a private benefit to the Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. If there is any question as to whether the private benefit conferred is greater than the public benefit conferred by such an amendment, such determination shall be made by an independent appraisal paid for by Grantor. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values of the Property and may not affect the perpetual duration of the Easement. At Grantee's request, Grantor shall reimburse Grantee for their reasonable time and costs associated with any amendment. Any amendment must be in writing, signed by both parties, and recorded in the official records of Larimer County, Colorado.

G. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which are merged herein.

20. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.

21. **Recording.** The Grantor shall record this Deed in timely fashion in the official records of Larimer County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

TO HAVE AND TO HOLD, this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

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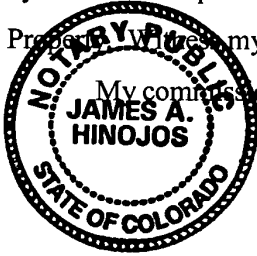
GRANTOR:

BACKBONE INVESTMENTS, LLC
a Colorado limited liability corporation

By: [Signature]
Scott T. Charpentier, Managing Manager

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

The foregoing instrument was acknowledged before me this 20th day of September 2004, by Scott T. Charpentier, as Managing Manager of Backbone Investments, LLC, owner of the Property, in my hand and official seal.



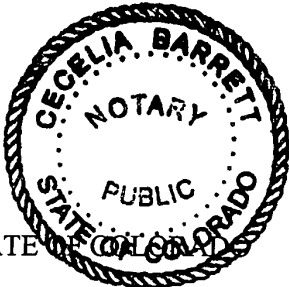
My commission expires: 2-4-08

[Signature]
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By: [Signature]
Daniel E. Pike, President



STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 15th day of September 2004, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 11-24-2004

[Signature]
Notary Public

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EXHIBIT A

Legal Description of the Property

First Donation Parcel

A TRACT OF LAND LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 5, IN THE EAST HALF OF THE WEST HALF OF SECTION 8, AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 69 WEST, OF THE 6TH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 8 AND CONSIDERING THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 8 TO HAVE AN ASSUMED BEARING OF S01°30'12"E WITH ALL OTHER BEARINGS RELATIVE THERETO;

THENCE S00°06'42"W, 201.89 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF US HIGHWAY 34;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE COURSES:

1. N78°08'12"W, 56.77 FEET;
2. ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 5,773.75 FEET, AN ARC LENGTH OF 120.92 FEET, A CENTRAL ANGLE OF 01°12'00", AND A CHORD WHICH BEARS N78°44'12"W, 120.92 FEET;
3. N79°20'12"W, 223.81 FEET;

THENCE N31°09'27"W, 144.09 FEET;

THENCE S89°46'08"W, 545.03 FEET;

THENCE N68°55'25"W, 171.30 FEET;

THENCE N85°25'11"W, 145.13 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8;

THENCE ALONG SAID WEST LINE, N00°26'48"W, 1,223.99 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 8;

THENCE ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8, N00°26'38"W, 1,298.08 FEET TO THE CENTER WEST SIXTEENTH CORNER OF SAID SECTION 8;

THENCE N00°49'02"W, 2543.65 FEET TO THE WEST SIXTEENTH CORNER OF SECTIONS 5 AND 8;

THENCE N01°38'14"E, 613.32 FEET;

THENCE S89°29'53"E, 510.20 FEET;

THENCE S09°18'59"W, 646.67 FEET;

THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 580.00 FEET, AN ARC LENGTH OF 246.13 FEET, A CENTRAL ANGLE OF 24°18'54", AND A CHORD WHICH BEARS S02°50'28"E, 244.29 FEET;

THENCE S14°59'55"E, 76.91 FEET;

THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 970.00 FEET, AN ARC LENGTH OF 120.86 FEET, A CENTRAL ANGLE OF 07°08'21", AND A CHORD WHICH BEARS S11°25'44"E, 120.79 FEET;

THENCE S07°51'34"E, 33.85 FEET;

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THENCE S87°39'52"E, 177.42 FEET;
THENCE N30°02'16"E, 123.34 FEET;
THENCE N45°58'57"E, 300.49 FEET;
THENCE N38°01'59"E, 502.58 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 5;
THENCE ALONG SAID EAST LINE S02°13'42"W, 215.49 FEET TO THE NORTH QUARTER CORNER OF SECTION 8;
THENCE ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 8, S01°30'14"E, 342.07 FEET;
THENCE N89°34'33"W, 329.25 FEET;
THENCE S42°24'04"W, 588.38 FEET;
THENCE S07°51'34"E, 56.84 FEET;
THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 620.00 FEET, AN ARC LENGTH OF 106.25 FEET, A CENTRAL ANGLE OF 09°49'08", AND A CHORD WHICH BEARS S02°57'00"E, 106.12 FEET;
THENCE S01°57'35"W, 775.66 FEET;
THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 620.00 FEET, AN ARC LENGTH OF 460.58 FEET, A CENTRAL ANGLE OF 42°33'47", AND A CHORD WHICH BEARS S23°14'29"W, 450.06 FEET;
THENCE S48°15'03"E, 144.89 FEET;
THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 620.00 FEET, AN ARC LENGTH OF 425.48 FEET, A CENTRAL ANGLE OF 39°19'12", AND A CHORD WHICH BEARS S28°35'27"E, 417.18 FEET;
THENCE S08°55'51"E, 678.80 FEET;
THENCE ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 14.47 FEET, A CENTRAL ANGLE OF 55°16'35", AND A CHORD WHICH BEARS S18°42'27"W, 13.92 FEET;
THENCE ALONG A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 64.00 FEET, AN ARC LENGTH OF 129.71 FEET, A CENTRAL ANGLE OF 116°07'19", AND A CHORD WHICH BEARS S11°42'56"E, 108.62 FEET;
THENCE S20°59'55"E, 460.69 FEET;
THENCE S80°43'47"E, 419.33 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 8;
THENCE ALONG SAID EAST LINE, S01°30'12"E, 1,248.49 FEET, TO THE POINT OF BEGINNING.

SAID DESCRIBED TRACT CONTAINS 99.54 ACRES (4,336,119 SQUARE FEET), MORE OR LESS AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY NOW ON RECORD OR EXISTING.

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EXHIBIT B

Legal Description of the Property

Second Donation Parcel

A TRACT OF LAND SITUATE IN SECTION 5, TOWNSHIP 5 NORTH, RANGE 69 WEST, OF THE 6TH P.M.; COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST SIXTEENTH CORNER OF SAID SECTION 5 AND SECTION 32, TOWNSHIP 6 NORTH, RANGE 69 WEST AND CONSIDERING THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 5 TO HAVE AN ASSUMED BEARING OF N01°19'36"E WITH ALL OTHER BEARINGS RELATIVE THERETO;

THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 5, S89°36'47"E, 1,311.64 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 5;
THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5, S89°33'34"E, 701.47 FEET;
THENCE S02°15'24"W, 1,367.71 FEET;
THENCE S00°05'03"W, 2,200.09 FEET;
THENCE S04°36'58"E, 1,889.90 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;
THENCE ALONG SAID SOUTH LINE, S89°06'33"W, 1,010.97 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 5;
THENCE ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, N02°13'42"E, 195.77 FEET;
THENCE N89°00'58"E, 500.51 FEET;
THENCE N06°03'37"W, 208.57 FEET;
THENCE N08°15'17"E, 304.98 FEET;
THENCE N19°10'05"W, 743.44 FEET;
THENCE N80°44'05"E, 322.05 FEET;
THENCE N09°15'55"W, 534.90 FEET;
THENCE N04°06'59"W, 539.84 FEET;
THENCE N05°45'08"E, 344.19 FEET;
THENCE N84°14'52"W, 400.83 FEET TO A POINT ON THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5;
THENCE ALONG SAID WEST LINE, N02°14'27"E, 1,144.90 FEET;
THENCE N80°43'41"E, 252.15 FEET;
THENCE N09°16'19"W, 619.23 FEET;
THENCE N03°09'29"W, 316.58 FEET;
THENCE S86°50'31"W, 355.28 FEET;
THENCE S01°13'53"W, 401.79 FEET;
THENCE S85°17'25"W, 154.12 FEET;
THENCE S00°31'09"E, 504.38 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 5;
THENCE ALONG SAID SOUTH LINE, S89°29'48"W, 908.02 FEET TO THE NORTHWEST

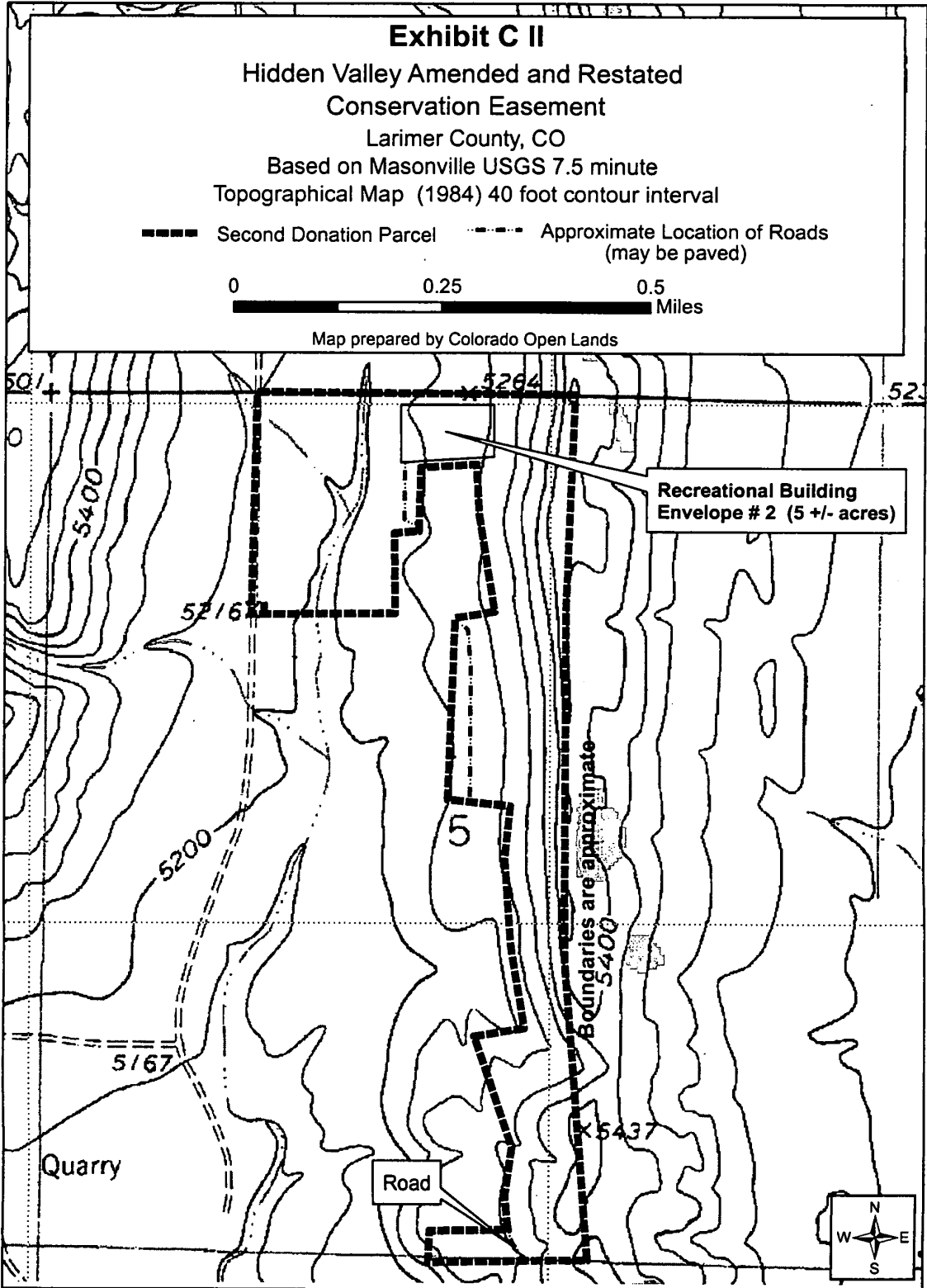
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SIXTEENTH CORNER OF SAID SECTION 5;
THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST
QUARTER OF SECTION 5, N01°19'36"E, 1,398.71 FEET TO THE POINT OF BEGINNING.

SAID DESCRIBED TRACT CONTAINS 103.09 ACRES (4,490,502 SQUARE FEET), MORE OR
LESS AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY NOW ON RECORD OR
EXISTING.

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EXHIBIT D

Sample Notice of Transfer of Property

To: Colorado Open Lands ("Grantee")
From: [Insert name of fee owner] ("Grantor")

Pursuant to Section 10 of the Deed of Conservation Easement, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit [insert Exhibit A and /or Exhibit B]** attached hereto effective [insert date of closing] to [insert name of new Grantor], who can be reached at [insert name, legal address, phone and fax number].

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200____, by _____ as _____ of _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

Date: _____

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