Gunnison Valley Land Preservation Fund

GRANT AGREEMENT

Project Name: Gunnison Partnership Ranches in Sage-grouse Habitat

PARTIES TO AGREEMENT

Gunnison County

221 N. Wisconsin St, Gunnison, CO 81230

Contact name: Mike Pelletier

Telephone: 970 641-7645

_____

Grantee: Gunnison Ranchland Conservation Legacy

Address: 307 N. Main St., Ste. 2H

Contact name: Stacy McPhail

Date: 12/11/2017

Exhibits:

Exhibit A - Required Language for the Deed of Conservation Easement

Exhibit B – Project Application

Exhibit C - Project Summary

Exhibit D – Budget

THIS GRANT AGREEMENT ("Grant Agreement") is entered into this _____, 20____, by and between the Board of County Commissioners of Gunnison County, Colorado ("Gunnison County"), 200 E Virginia, Gunnison, Colorado 81230, and _Gunnison Ranchland Conservation Legacy_____, ("__GRCL_____"), (jointly the "Parties"), and witnesses:

RECITALS

A. A portion of the revenue from the current County-wide sales tax in Gunnison County is deposited in the Gunnison Valley Land Preservation Fund ("Fund") of the Board of County Commissioners of Gunnison County ("Board") which is an account of the Capital Improvement Fund of the Board. The Fund is designated for open space, agricultural preservation, wildlife habitat, wetland preservation, access to public lands, trails, and watershed protection in the County, including matching public and private grants or to acquire interests or easements in land and water rights. The Fund was originally established, by public vote, in 1997 and was reauthorized by public vote in 2012. The amount of monies for the Fund varies annually.

B. Gunnison County has created a process for review of requests for funding of projects from the Fund. The process begins with submission of a written proposal by a proponent to the Gunnison Valley Land Preservation Board ("GVLPB"), which consists of two members appointed by each Gunnison County, City of Gunnison, Town of Crested Butte, and Town of Mount Crested Butte for a total of eight voting members. The GVLPB approves, disapproves or approves with conditions, the proposal. Provision of monies from the Fund requires a formal grant agreement to be executed by the Gunnison County Board of County Commissioners and the project proponent.

C. The _____GRCL_____ ("Grantee") has applied to the GVLPB for funding of a project known as _Gunnison Partnership Ranches in Sage-grouse Habitat_____ ("Project") and described in Exhibit A ("Project Application"), Exhibit B ("Project Summary") and Exhibit C ("Budget") all attached hereto and incorporated herein. The GVLPB has reviewed and approved the Project.

D. This Grant Agreement is intended to identify and memorialize the relationship between the Parties, the various obligations of the Parties regarding the Project, and required components of any relevant deed or conservation easement.

SECTION 1-PROJECT SCOPE

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into the terms and conditions of this Agreement.

2. Grant and Project. The Board hereby awards to Grantee a grant in the amount not to exceed $186,310.00 (the "Grant"), subject to the terms and conditions set forth in this Agreement and subject to the following specific condition(s) for this project:

The final amount of funding for this project that will be available to Grantee at closing or reimbursement will be dependent upon the overall project being completed with no material changes. The Grant will not be increased, but the Board may reduce the Grant if the project changes in any way that the Board deems material. For example a reduction in acreage, purchase price, or fair market value may cause a reduction in the Grant, unless the Board approves adding or substituting project elements to the overall project. Similarly, the Board will release grant funds in portions if the project is completed in phases (i.e., more than one transaction), according to the Board's determination of how the proportionate acreage, project cost and value relates to the overall project and Grant. The Grantee must meet the Board's reporting requirements before any funds are released. The project must also comply with all of the Board's policies and practices and must meet any special conditions as listed in the attached Project Summary – Exhibit C.

3. Exclusive Use of Grant. The Grant shall be used by Grantee solely to complete the Project only as approved by the GVLPB and this Grant Agreement.

4. Project Scope. The Project will not be materially modified by Grantee without the prior written approval of the GVLPB and the Board. Any material change to the Project, whether or not such change is approved in writing by GVLPB and the Board, may result in a reduction of the Board's funding award or requirement of a refund to the Board from Grantee, pursuant to Paragraph 10 of this Agreement. In addition, any material change to the Project that is not approved in advance and in writing by the Board and GVLPB may result in termination of the Grant.

5. Approved Budget. Grantee has completed a detailed budget that reflects all anticipated sources and uses of funds for the Project, including a detailed accounting of Grantee's anticipated direct costs associated with the Project, a copy of which is attached hereto as Exhibit D and incorporated herein by reference ("Budget"). Eligible costs are described in Paragraph 8 of this Agreement. The Project Application contains a budget that may not match the approved version attached as Exhibit C and which, therefore, shall not be relied upon by the Board, GVLPB or the Grantee. Where discrepancies exist, the approved Budget in Exhibit C shall control until such time as the Board approves the final version.

6. Waiver. Prior to the disbursement of funds, the Board may waive certain conditions set forth in this Agreement. Anything else to the contrary notwithstanding, no exercise by the Board or GVLPB of any right or discretion reserved by the Board hereunder shall be deemed an election, and no waiver by the Board of any action or requirement of Grantee, including any waiver of the foregoing conditions, shall constitute a waiver of any other requirements, actions or conditions, nor shall any waiver granted be deemed a continuing waiver. No waiver by the Board shall be effective unless in advance and in writing executed by the Board. Additionally, any failure by the Board to take any actions as set forth above shall have no legal effect on the contractual duties of the Grantee under this Agreement. Further, no waiver with respect to this Project, Grant, or Agreement shall constitute a waiver in any other Board-funded project.

7. Future Funding. This Grant Agreement and the Grant contemplated hereunder only apply to the Project as approved herein. The Board makes no representations regarding future funding for future phases of the Project or any other properties.

SECTION 2- GRANT PAYMENT

8. Eligible Costs. The following costs are eligible for reimbursement under the terms and conditions of this Agreement:

A. *Interest in Land.* The purchase price of any interest in real property described in the Project Summary, which may not exceed the fair market value as established by appraisal.

B. *Direct Costs*. Costs directly associated with producing due diligence documents needed for closing the transaction on the Project, including but not limited to expenses for a title policy (including endorsements and other title company charges); an appraisal; Grantee's contract or "outside" attorneys' fees; an environmental hazards assessment; development of a management plan and baseline documentation; a survey, if needed; a geologist's mineral assessment, if needed; maps.

C. *Stewardship Costs*. Costs directly associated with stewardship of the Project, and only as expressly identified in the Budget.

9. Payment of Grant. Payment of the Grant is subject to the Board's determination in its sole discretion that it has received and has available sufficient Fund proceeds to fund the Grant and that Grantee has complied with the terms and conditions of this Grant Agreement, including Grantee's fulfillment of all conditions precedent to funding as set forth in herein. In determining the sufficiency of Fund proceeds, the Board may consider all facts and circumstances as it deems necessary or desirable, including, but not limited to, adequate reserves, funding requirements and/or commitments for other past, current and future grants, and past, current and future Board operating expenses and budgetary needs.

10. Withdrawal of Board Funding; Termination of Agreement. Anything in this Agreement to the contrary notwithstanding, with prior notice to Grantee, the Board reserves the right to withhold or withdraw all or a portion of the Grant, to require a refund of the Grant, and/or terminate this Agreement if the Board determines in its sole discretion that any of the following conditions exist, but before making such determination, the Board shall notify the GVLPB:

A. *Altered Expectations*. Facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Project or the Grant as approved by the Board infeasible or impractical;

B. *Material Project Changes*. Material changes in the scope or nature of the Project have occurred from how the Project was presented in the Project Application, approved by the GVLPB and reflected in the Project Summary, and all such material changes have not otherwise received prior written approval of the Board;

C. *Inaccuracies.* Any statement or representation made or information provided by the Grantee in the Project Application, this Grant Agreement or the due diligence materials is untrue, inaccurate or incomplete in any material respect;

D. *Conditions Precedent Not Fulfilled or Unsatisfactory*. Any of the conditions precedent to funding is not fulfilled by Grantee or is unsatisfactory to the GVLPB or Board, in their respective discretion; or

E. *Termination of Use Restriction, Disposal of Property*. Any use restriction (e.g. conservation easement) is terminated or materially altered or if other interests purchased with the Grant are disposed of; in which event Grantee shall make a full refund to the Board of all funds received to date.

SECTION 3- CONDITIONS PRECEDENT

11. Completion Date. Grantee shall complete acquisition of the real property interest no later than _____, which is eighteen months after the date of the Board's approval of the Project (the "Completion Date"). Grantee may request an extension of the Completion Date, which the Board may grant or deny in its sole discretion. In addition to other rights set forth in this Agreement, the Board may elect to terminate this Agreement and deauthorize the Project in the event this Completion Date is not met and/or Grantee fails to comply with any extension.

12. Conditions Precedent to Funding. Grantee acknowledges that any acquisition of the Property prior to fulfillment of the terms and conditions of this Grant Agreement and the disbursement of funds by the Board is undertaken at Grantee's sole risk and may cause a forfeiture of the Grant. Anything else in this Grant Agreement or otherwise to the contrary notwithstanding, the Grant is expressly conditioned upon Grantee's fulfillment of all terms and conditions of this Grant Agreement to the Board's satisfaction in its sole discretion, including, but not limited to, the following:

A. *Matching Funds*. Matching funds in the minimum amount set forth in the Project Application and Project Summary must have been received by Grantee, or the status of efforts to secure matching funding were disclosed to the Board and have been deemed satisfactory by the Board.

B. *Due Diligence*. The Board shall conduct a due diligence review of the Project, the results of which must be satisfactory to the Board in its sole discretion. Grantee shall assist and cooperate with the Board in conducting such due diligence review, and in connection therewith shall provide the Board with the information or documentation specified in the Project Application, as well as such other documentation and/or information as the Board shall reasonably request. Grantee shall have the duty to update all such documentation and information as necessary to reflect material changes from the date such information is originally provided to the Board. The Board may in its sole discretion terminate this Agreement and deauthorize the Grant if Grantee fails to provide any information or documentation promptly when requested by the Board.

C. *Other Property Interests.* Grantee may not use the Grant or other Project funds to acquire any rights other than the Use Restriction defined below as described in the Project Application, including but not limited to, fee title, water rights, or any other partial real estate interest (collectively, "Other Interests").

D. *Gunnison County Use Restriction*. Property acquired with the Board funds, whether through the acquisition of fee title, conservation easement, or any other technique, shall be held and managed in a manner designed to protect the Property's natural resources, open space and other conservation values, to prevent any development that would adversely affect such resources and values, and where necessary and appropriate, to ensure appropriate public access. Such restrictions ("Use Restrictions") shall be implemented by inclusion of specific language in a conservation easement or other document approved in writing by the Gunnison County Attorney. Each Use Restriction shall be acceptable to the Board in form and content, and shall identify Grantee or a third party acceptable to the Board as the Holder. In accordance with this requirement, Grantee hereby covenants and agrees as follows:

(1) *Conservation Easement Form*. Grantee shall incorporate the terms and conditions that are contained in the Board's approval, in substantially the same language as in Exhibit A ("Required Language for the Deed of Conservation Easement") attached hereto and incorporated herein and approved by the County Attorney, into Grantee's conservation easement form. Grantee acknowledges that the Grantee must obtain County Attorney approval of the proposed Use Restriction document well in advance of closing.

(2) *Subordination to Use Restriction*. All liens, encumbrances or other use restrictions and interests of record that, in the Board's opinion, are inconsistent with the Use Restriction, must be discharged, released or subordinated to the Use Restriction.

SECTION 4-OTHER PROVISIONS

13. Publicity and Project Information. The Board has the right and must be provided the opportunity to use information gained from the Project; therefore, Grantee shall acknowledge the Board funding in all news releases and other publicity issued by Grantee concerning the Project. If any events are planned in relationship to the Project, the Board shall be acknowledged as a contributor in the invitation for the event.

14. Liability.

A. *Indemnity*. To the extent allowed by law, Grantee shall indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable attorneys' fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Grant Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the Gunnison County, the

Board, its members, officers, agents or employees for any liability resulting from, growing out of; or in any way connected with or incident to this Agreement.

B. *No CGIA Waiver*. Anything else in this Grant Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Board under the Colorado Governmental Immunity Act as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted) ("CGIA"). This provision may apply to the Grantee if the Grantee qualities for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq. The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

C. *Compliance with Regulatory Requirements and Federal and State Mandates*. Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, and local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the maximum extent permitted by law, Grantee hereby agrees to indemnify, defend and hold harmless the Board, County Staff, and GVLPF members from any cost, expense or liability tor any failure to comply with any such applicable requirements.

D. *Nondiscrimination*. During the performance of this Grant Agreement, Grantee and its contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex and shall comply with any other applicable laws prohibiting discrimination. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

15. Audits and Accounting Records. Grantee shall maintain standard financial accounts, documents, and records relating to the acquisition, use, management, operation and maintenance of the real property interest. The accounts, documents, and records related to acquisition of the real property interest shall be retained by

Grantee for five (5) years following the date of disbursement by the Board of the Grant funds under this Agreement, and shall be subject to examination and audit by the Board or its designated agent during this period. All accounts, documents, and records described in this paragraph shall be kept in accordance with generally accepted accounting principles.

16. Post-Completion Requirements.

A. *Stewardship*. Grantee shall comply with the Board's stewardship requirements as identified in the Board's approval of the Grant.

B. *Change of Use.* If Grantee, in its reasonable discretion, determines a need for a request of a change in use of the Property or Other Interests wholly or partially acquired with the Grant, Grantee shall notify the GVLPB, in writing, of its determination for a request of a change of use review. The GVLPB will review the change of use request. Within sixty (60) days after submitting the change of use request, Grantee shall submit to the GVLPB any additional documentation requested by the GVLPB as a result of its receipt of the change of use request. The GVLPB will review the change of use request to determine whether or not the need for a change in use is compelling and consistent with the conservation purpose of the easement. The GVLPB in its sole discretion will determine whether to grant, deny, or condition the GVLPB's approval. Further, no change of use shall be made without the GVLPB's prior written approval.

C. *No Termination of Conservation Easement Without Prior Board Written Approval*. Notwithstanding any provision of law to the contrary, it is the explicit agreement of the Parties that there shall be no termination of the conservation easement funded partially or wholly by this Agreement without the prior written approval of the Board which the Board may grant only if the Board finds in its reasonable discretion that conditions on or surrounding the subject property have changed so much that it has become impossible to fulfill the easement's conservation purpose.

D. *Standing To Enforce*. Notwithstanding any provision in C.R.S. 38-30.5-101. et. seq., as it may be amended, to the contrary, the Board shall have standing to initiate and/or participate in court proceedings to enforce the Grant Agreement and/or any conservation easement funded wholly or in part by Funds granted by the Grant Agreement.

E. *Conservation Easement Document Shall Incorporate Post-Completion Requirements*. Each conservation easement and document of title funded wholly or partially by the Grant Agreement shall incorporate in writing the requirements of this Section 16.

17. Breach. In addition to such other remedies as shall be available at law or in equity, in the event that Grantee breaches any of the terms or conditions of this Agreement, the Board shall have the following non-exclusive remedies:

A. *Prior to Payment of Grant*. The Board reserves the right to withdraw funding and/or terminate this Agreement.

B. *After Payment of Grant.* The Board reserves the right to seek equitable relief and/or all other remedies as available to it under applicable law, including but not limited to, return of all or a portion of the Grant as provided herein. Further, the Board reserves the right to deem Grantee ineligible for participation in future the Board grants, loans or projects.

C. In addition to the remedies set forth above, the Board shall be entitled to pursue any other remedy available at law or in equity.

18. Miscellaneous Provisions.

A. *Good Faith.* Both parties have an obligation of good faith, including the obligation to make timely communication of information that may reasonably be believed to be of interest to the other party.

B. *Assignment*. Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Board. Consent to assign this Agreement may be withheld in the sole discretion of the Board.

C. *Applicable Law.* Colorado law applies to the interpretation and enforcement of this Agreement.

D. *Status of Grantee*. The parties acknowledge that the Board lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee or agent of the Board.

E. *Time is of the Essence*. Time is of the essence in this Agreement.

F. *Survival*. The terms and provisions of this Agreement and Grantee's obligations hereunder shall survive the funding of the Grant and the acquisition of, and any future conveyance of, the real property interest by Grantee.

G. *Fax and Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one agreement. In

addition, the parties agree to recognize signatures to this Agreement transmitted by facsimile as if they were original signatures.

H. *Third Party Beneficiary*. The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third party beneficiaries are intended. Notwithstanding the preceding statement, the Board and Grantee hereby acknowledge that the Board is intended to be and is a third party beneficiary of the covenants and terms of the Use Restriction and Grantee's real property interest therein.

I. *Notice*. Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses shown on Page 1 of this Agreement.

J. *Construction; Severability*. Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect. At any time when this Agreement refers to a party's ability to act or make determinations or decisions with discretion, this Agreement shall be construed to permit such party to act and to make such determinations and/or decisions in its sole discretion.

K. *Entire Agreement*. Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of _____.

GRANTEE

_____

Gunnison Ranchland Conservation Legacy
Stacy McPhail, Executive Director

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

_____
Phil Chamberland, Chairperson

_____
Jonathan Houck, Commissioner

_____
John Messner, Commissioner

_____
Deputy County Clerk

Exhibit A - Required Language for the Deed of Conservation Easement

The following language is required for a conservation easement deed resulting from a GVLPB grant, even if the grant only provides transaction expenses and no direct funding for the easement. This language must appear in the deed verbatim, or be substantially identical. In order to meet the standard format of different Grantees or Holders of the conservation easement deed, some language may be expressed with slightly different terms. However, any substantive changes in the required language that may alter its meaning must be approved in advance by the Gunnison County Attorney.

1. The following will be included in the deed's introductory section:

> "NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED WITH SUPPORT FROM THE GUNNISON VALLEY LAND PRESERVATION FUND OF THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY (“GUNNISON COUNTY”) IN RECOGNITION OF CONSERVATION VALUES SPECIFIC TO OPEN SPACE, AGRICULTURE AND WILDLIFE HABITAT."

2. The following language will be included in a section describing "Responsibilities of the Parties Not Affected" or similarly titled section:

> "Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee or Gunnison County."

And further:

> "Grantor shall continue to be solely responsible for and Grantee or Gunnison County shall have no obligation for the upkeep and maintenance of the Property."

3. The following language will be included in a section describing "Environmental Liability" or similarly titled section:

> "Grantor shall indemnify, defend, and hold Grantee and Gunnison County and their 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) the existence, generation, treatment, storage, use, disposal, deposit or transportation of Hazardous Materials in, on or across the Property; (ii) the release or threatened release of Hazardous Materials on, at, beneath or from the Property; (iii) the existence of any underground storage tanks on the Property; or (iv) a violation or alleged violation of, or other failure to

comply with, any federal, state, or local environmental law or regulation by Grantor or any other prior owner of the Property."

And further:

"Notwithstanding anything in this Deed to the contrary, this Deed does not impose any liability on Grantee or Gunnison County for Hazardous Materials, nor does it make Grantee or Gunnison County an owner of the Property, nor does it require Grantee or Gunnison County to control any act on or use of the Property that may result in the treatment, storage, disposal or release of Hazardous Materials, all within the meaning of CERCLA or any similar federal, state or local law or regulation."

And further:

"Grantor shall indemnify, defend, and hold 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 caused 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; or (iii) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property."

And further:

"Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs 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."

4. The following language will be included in a section describing "Enforcement" or similarly titled section:

"If Grantee determines that a violation has occurred, Grantee shall notify Grantor and Gunnison County of the nature of the alleged violation. Said notice need not be in writing."

And further:

"Gunnison County shall in no event be required to participate in any arbitration, mediation, or other dispute resolution process."

5. The following language will be included in a section describing "Deed Correction" or similarly titled section:

"The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits hereto), including typographical, spelling, or clerical errors. Such correction shall be by recorded written agreement signed by the Parties, which Gunnison County must first approve in writing, with all associated costs being apportioned as the Parties may mutually agree."

6. The following language will be included in a section describing "Amendment" or similarly titled section:

"If circumstances arise under which an amendment to this Deed would be appropriate, as determined by Grantee in its sole discretion, the Parties may jointly amend this Easement so long as the amendment (a) is consistent with the Conservation Values and Purpose of this Easement, (b) complies with Grantee's procedures and standards for amendments (as such procedures and standards may be amended from time to time) and (c) receives Gunnison County's prior written approval."

And further:

" Any amendment must be in writing, signed by the Parties, and recorded in the official records of Gunnison County, Colorado."

And further:

"A copy of the recorded amendment shall be provided by Grantee to Gunnison County and any other funder who requests such notice in writing. In order to preserve the Easement's priority, Gunnison County may require that Grantor obtain subordinations of any liens, mortgages, easements, or other encumbrances. For the purposes of Gunnison County's approval under item (c) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement, which includes Deed Correction. Nothing in this paragraph shall be construed as requiring Grantee or Gunnison County to agree to any particular proposed amendment."

7. The following language will be included in a section describing "Transfer of Easement" or similarly titled section:

"This Easement is transferable by Grantee, provided that (i) the conservation purposes which the contribution was originally intended to advance continue to be carried out; (ii) the transfer is restricted

to an organization that, at the time of the transfer, is a qualified organization under I.R.C. § 170(h) and authorized to hold conservation easements under C.R.S. §38-30.5-101, *et seq*. and C.R.S. §12-61-724; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed; and (iv) the transferee is approved in writing by Gunnison County in its sole discretion. Grantee shall provide Gunnison County with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist, or Gunnison County fails to approve a transferee as described below, a court with jurisdiction is authorized to transfer this Easement pursuant to (i), (ii), (iii) and (iv) above."

And further:

"Gunnison County shall have the right to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist; is unable or unqualified to enforce the terms and provisions of this Easement; or is unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Section, Gunnison County shall consult with Grantee and provide Grantee an opportunity to address Gunnison County's concerns. If Gunnison County's concerns are not addressed to its satisfaction, Gunnison County may require that Grantee assign this Easement to an organization designated by Gunnison County that complies with (i), (ii), and (iii) above. In the case that Grantee ceases to exist, Gunnison County shall transfer the Easement itself. "

And further:

"If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but Gunnison County has refused to approve the transfer, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Easement, provided that Grantor and Gunnison County shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter. "

And further:

"Grantee and Gunnison County shall provide notice to and consult with Grantor prior to any assignment or transfer of this Easement. Upon compliance with the applicable portions of this Section, the Parties shall record an instrument completing the assignment in the records of the county or counties in which

the Property is located. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances."

8. The following language will be included in a section describing "Condemnation" or similarly titled section:

"Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall notify Gunnison County."

And further:

"If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, all expenses reasonably incurred by Grantor, Grantee, and Gunnison County in connection with the taking or in lieu purchase shall be paid out first out of the amount recovered, and Grantee shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed."

9. The following language will be included in a section describing "Termination or Extinguishment of Easement" or similarly titled section:

"Except as provided in Section 15 (Condemnation) of this Deed, this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Easement can be terminated or extinguished is the total loss of all Conservation Values. If termination or extinguishment occurs, Grantee shall notify Gunnison County. Grantee and Gunnison County shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed."

10. The following language will be included in a section describing "Compensation upon Condemnation, Termination, or Extinguishment" or similarly titled section:

[Insert only if the GVLPB contributed to the conservation easement purchase]:

"If the Property is condemned, in whole or in part, pursuant to Section 15 (Condemnation) or if this Easement is terminated or extinguished pursuant to Section 16 (Termination or Extinguishment of Easement), Grantee and Gunnison County shall be entitled to a share of the proceeds of such action at least equal to the Proportionate Share of the full fair market value of the Property unrestricted by this

Easement pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii). Grantor shall not voluntarily accept less than full fair market value of the affected Property unrestricted by this Easement without Grantee's approval."

"The allocation of the Proportionate Share between Grantee and Gunnison County will be as follows: (a) to Grantee or its designee, _____ percent of the Proportionate Share and (b) to Gunnison County_____ percent of the Proportionate Share. Until such time as Grantee and Gunnison County receive the Proportionate Share from Grantor or Grantor's successor or assign, Grantee and Gunnison County each have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, Grantee must reimburse Gunnison County for the amount of the Proportionate Share due to Gunnison County."

[Insert only if the GVLPB contributed to transaction costs]:

"Gunnison County shall be entitled to reimbursement of all transaction costs paid by a GVLPF grant if the Easement is terminated or extinguished in whole. If the Easement is terminated or extinguished in part, Gunnison County shall be entitled to reimbursement of a proportion of the transaction costs it contributed; such proportion calculated as a fraction, the numerator of which is the number of acres terminated or extinguished and the denominator of which is the total number of acres of the Easement. Reimbursement is provided by Grantor."

11. The following language will be included in a section describing "No Merger, Abandonment, Release, or Adverse Possession" or similarly titled section:

"Should Grantee in the future own all or a portion of the fee interest in the Property, Grantee as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Deed. In addition, this Easement shall not merge with the fee title without the prior written approval of Grantor and Gunnison County. As a condition of such approval, Gunnison County may require that Grantee first transfer either the Deed or the fee title to another qualified organization consistent with Section 12 (Transfer of Easement) above. In the event Grantee acquires fee title to the Property without Grantee's prior knowledge (e.g. a bequest of fee title by will), upon its learning of such conveyance, Grantee shall promptly provide notice of the same to Gunnison County, and Gunnison County may require that Grantee transfer this Deed or the fee title to another qualified organization consistent with Section 12 (Transfer of Easement) above. The Easement

shall not be extinguished, in whole or in part, through the legal doctrine of merger in view of the public interest in its enforcement. This Easement cannot be abandoned, released, or affected by adverse possession."

12. The following language will be included in a section describing "Perpetual Duration" or similarly titled section:

"This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to either Party shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Notwithstanding the foregoing, each party's rights and obligations under the Easement created by this Deed 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 the party's entire interest in this Easement or the Property (provided that Gunnison County has consented to a transfer of this Easement by Grantee pursuant to Section 12 (Transfer of Easement) herein), except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer."

13. The following language will be included in a section describing "Written Notices" or similarly titled section:

To Gunnison County: Board of County Commissioners
200 E. Virginia Ave.
Gunnison, CO 81230

14. The following language will be included in a section describing "No Third Party Enforcement" or similarly titled section:

"This Deed is entered into by and between Grantor and Grantee, and does not create rights or responsibilities for the enforcement of its terms in any third parties beyond Grantor, Grantee, and Gunnison County."