

Any time the Property itself, or any interest in it, is transferred by Grantor or their personal representatives, heirs, successors and assigns to any third party, Grantor or their personal representatives, heirs, successors and assigns shall notify the Land Trust and pay the Land Trust a transfer fee of \$500, adjusted for inflation, pursuant to the terms and provisions of Paragraphs 21 and 22 of this Deed.

**DEED OF CONSERVATION EASEMENT  
MIDDLE PARK LAND TRUST  
Zook Farm**

THIS DEED OF CONSERVATION EASEMENT is granted this 5<sup>th</sup> day of October, 2011, by **DOUGLAS L. ZOOK** on behalf of himself and his representatives, heirs, successors and assigns (collectively, the "Grantor"), to and for the benefit of the **MIDDLE PARK LAND TRUST**, a Colorado nonprofit corporation, certified under C.R.S. Section 12-61-720 to hold conservation easements for which a state conservation easement tax credit is claimed, 52 N. First Street, P.O. Box 1938, Granby, Colorado 80446, and its successors and assigns (the "Land Trust") for the purpose of forever conserving the **open space character, agricultural productivity, and scenic qualities** of the subject property. The Grantor and the Land Trust are individually referred to as a "Party" and collectively as the "Parties."

The following Exhibits are attached hereto and made a part of this Conservation Easement:

- Exhibit A - Legal Description of the Original Property
- Exhibit B - Map of the Property
- Exhibit C - Baseline Acknowledgement Statement
- Exhibit D - Exceptions to Title

RECITALS:

- A. Grantor Douglas L. Zook is the sole owner in fee simple of certain real property located in Grand County, Colorado, consisting of 42.48 acres of land, more or less, (together with buildings and other improvements) more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- B. The Property possesses agricultural and scenic open space, water, riparian, wildlife habitat and biodiversity values (collectively, "Conservation Values") of great importance to the Grantor, the area residents, the people of Grand County and the people of the State of Colorado. The conservation purposes described in these Recitals are part of the Conservation Values of the Property.
  - 1. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(4) is furthered by this Easement, "The preservation of certain open space (including farmland and forest land) for the scenic enjoyment of the general public and [that] will yield a significant public benefit." The Property, characterized by native sagebrush and grass rangeland, irrigated grass pastures and irrigated grass/alfalfa hay land, can be viewed by the general public from County Roads 60, 608 and 6237 and from Legacy Park Ranch. The Property includes acres in agricultural production, pasture land, and view corridors. The Property has been in agricultural production historically, providing grass pasture and hay for cattle, and was also actively farmed for vegetable crops in the past. There is a strong likelihood that, if the Property were to be developed instead of preserved, it would contribute to the degradation of the scenic, rural and

natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values. The preservation of the Property pursuant to this Conservation Easement will yield significant public benefit, for at least the following reasons: The Property includes property that has significant areas in agricultural production that are open and undeveloped in a County experiencing substantial development resulting in reduced open and scenic vistas available to the public; preservation of the Property is consistent with Federal, State and local public conservation programs and with conservation efforts completed on adjoining or nearby properties; and development of the Property will contribute to the ongoing degradation of the scenic vistas available to the public, which degradation may ultimately result in a loss of tourism and commerce to the area.

2. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(3) is furthered by this Easement, "To protect relatively natural habitat in which a fish, wildlife or plant community, or similar ecosystem normally lives." The Property is located on Granby Mesa, a high mountain valley at 8200 elevation, and has important conservation values as relatively natural habitat for wildlife due to the open space values of the Property, adjacent properties and the surrounding rural private farm and ranch lands, conservation easement properties, nearby public lands, and Legacy Ranch's open space lands. The Colorado Division of Wildlife Natural Diversity Information Source lists the Property and its surrounding area as overall range for elk, black bear and mountain lion. The Property also provides overall range for moose as well as moose summer range; and overall range and summer range for mule deer. Smaller mammals known to occur on the Property are bobcat, red fox, coyote, snowshoe hare, marmot, jackrabbit, raccoon and badger. The Property also provides habitat for other small mammals, and birds such as ducks and geese. The Easement provides connectivity between wildlife habitat on the Property and habitat occurring on surrounding public and private lands.

C. The Property has significant relatively natural habitat and agriculture and open space values as defined in C.R.S. § 38-30.5- 101, et seq. The Property also has values as indicated by the following conservation policies and studies concerning community needs:

1. The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. § 4201, et seq., the purpose of which is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with States, units of local government and private programs and policies to protect farmland."
2. C.R.S. § 33-1-101, et seq., which provide in 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" and that "it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state."
3. C.R.S. § 35-1-101, et seq., which provide in 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 food and other agricultural products."
4. Colorado Revised Statutes Sec. 38-30.5-101, et seq., providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for

- wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity.”
5. The Western Governors’ Association Policy Resolution 08-21 supports "voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife, and other values."
  6. The voters of the State of Colorado, by creation of the Great Outdoors Colorado Trust Fund program and by adopting and administrating grant applications and due diligence review processes, have established that it is the policy of the State of Colorado and its people to encourage donation and to fund the voluntary bargain sale and acquisition of conservation easements, among other things, to preserve, protect and enhance scenic and open space lands, agricultural lands, wildlife, and wildlife habitat.
  7. Grand County Planning Commission Resolution 1998-4-20 adopting the Grand County Master Plan which provides for in part Primary County Goals such as "Maintain open space and wildlife habitat throughout the county." Specific environmental quality goals include the following: "Preserve unique, sensitive or critical natural areas, lakes streams, scenic vistas, wildlife habitats and aquifer recharge areas" as well as to "establish and maintain an open space program which utilizes open space as a means of preserving and protecting the natural environment." Strategic Growth Strategies and Implementation Actions include the following: "Maintain open space and wildlife habitat throughout the county."
  8. Grand County Resolution No. 1999-8-8 established a "Right to Farm and Ranch" Policy which provides in part that "Ranching, farming and all manner of agricultural activities and operations within and throughout Grand County are integral elements of and necessary for the continued vitality of the County's history, economy, landscape, open space, lifestyle and culture. Given their importance to Grand County, Northwestern Colorado, and the State, agricultural land and operations are worthy of recognition and protection."
  9. C.R.S. § 30-28-101(10)(c)(X) which gives the authority to Grand County to adopt the Grand County Rural Land Use Plan that "provides the means of preserving open space." Grand County adopted the Rural Land Use Regulations in 1998 with Resolution No. 1998-5-11.
  10. C.R.S. §43-1-401, et seq., the Colorado Department of Transportation statutes, which provide that the preservation and enhancement of the natural and scenic beauty of this state is a matter of substantial state interest.
  11. Grand County Land Conservation Plan, 1999, states "the intended purposes of conserved lands represent ways in which areas can be used to provide community benefits through buffering, agriculture or recreation." The definition of "Conserved Lands" includes lands that conserve significant wildlife and natural areas, land that conserve areas of high scenic quality and visual exposure, and land that remain private for ranching and other agricultural practices that help to retain the rural and undeveloped character of the area.
  12. A June 2007 to June 2008 Grand County Needs Assessment Survey, conducted by the National Research Center, Inc. and contracted by the Grand Foundation, the Grand County Board of County Commissioners and the Grand County Needs Assessment Committee, showed that the most important need among Grand County's residents is the

preservation of the natural environment, including wildlife habitat, scenic beauty, air quality and open space; and that nothing is more important to residents than the beauty, vitality and sustainability of the mountain environment.

- D. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated September, 2011, entitled "**Zook Property Baseline Documentation Report,**" on file at the offices of the Land Trust and incorporated by this reference and which consists of reports, maps, photographs, and other documentation that the Parties agree provide, collectively, an accurate representation of the Property at the time of the conveyance of this Easement ("**Baseline Documentation Report**") and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.
- E. The Grantor intends that the Conservation Values of the Property be preserved and maintained forever by the continuation of only those current land use patterns documented in the Baseline Documentation Report and those relating to farming practices and low impact recreation allowed herein which do not significantly impair or interfere with the Conservation Values.
- F. The Grantor further intends, as owner of the Property, to convey to the Land Trust the right to preserve and protect in perpetuity, as provided for herein, the Conservation Values of the Property.
- G. The Land Trust agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come.
- H. The Grantor intends to make a charitable gift of this Conservation Easement.
- I. The Middle Park Land Trust is a charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and is a publicly supported organization as described in Section 170(b)(1)(A) of the Code whose primary purpose is to preserve and protect the scenery, water, wildlife, biodiversity and agricultural lands and open space of Grand County, including the area in which the Property is located, by assisting landowners who wish to protect their land in perpetuity for the benefit of the public, and is a "qualified organization" to do so within the meaning of Section 170(h)(3) of the Code.
- J. The Board of Directors of the Middle Park Land Trust has duly adopted a resolution approving the execution, and acceptance of Grantor's full donation, of this Conservation Easement.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 et seq., Grantor hereby voluntarily grants and conveys to the Land Trust, its successors and assigns, a Conservation Easement in perpetuity, consisting of the rights and restrictions enumerated herein, over and across the Property (the "**Easement**").

- 1. Purpose. It is the purpose of this Easement to assure that the Property will remain forever in its agricultural, natural, scenic, and open space condition, subject to the uses of the Property permitted hereunder, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property and, in the event of their degradation or

destruction, to restore such Conservation Values of the Property. Furthermore, it is also the purpose of this Easement to remove the right to develop housing and buildings on the land as limited herein, and to preserve the ecology of the land. Grantor intends that this Easement will confine the use of the Property to activities such as farming, ranching, fishing, hunting and low impact recreation, including a private target shooting range, as are consistent with the purpose of this Easement. Pursuant to the terms of C.R.S. §38-30.5-101 et seq., the Property preserved hereby may not be converted or directed to any other uses other than those provided herein.

2. **Baseline Documentation Report.** The Parties acknowledge that the Baseline Documentation Report has been prepared, reviewed and approved by the Land Trust and the Grantor. A copy of the final Baseline Documentation Report is on file with both Grantor and the Land Trust and by this reference made a part hereof. The Parties acknowledge that the Baseline Documentation Report is intended to establish the condition of the Property subject to the Easement as of the date written above and that Grantor, the Land Trust and the baseline preparer have acknowledged in a signed Baseline Acknowledgement Statement, the original of which is included in the Baseline Documentation Report and a copy of which original is attached hereto as **Exhibit C**, that the Baseline Documentation Report accurately represents the condition of the Property at the time of the conveyance of this Easement. The Parties agree that, in the event a controversy arises with respect to the condition of the Property as of the date of conveyance of the Easement, or compliance with or violation of any term or provision of this Easement, the Parties shall not be precluded from also utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.
3. **Rights of the Land Trust.** To accomplish the purposes of this Easement, in addition to the rights described in C.R.S. Sec. 38-30.5-101, *et seq.*, as amended from time to time, Grantor conveys the following rights to the Land Trust by this Easement:
  - 3.1. The right to preserve and protect in perpetuity the Conservation Values of the Property and, in the event of their degradation or destruction, to restore the Conservation Values to their condition prior to the degradation or destruction;
  - 3.2. The right to enter upon the Property, at reasonable times, to conduct annual monitoring visit(s) to confirm that any construction on the Property is consistent with the construction permitted herein, to meet with new landowners after any transfer of Property ownership, and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable written notice given by or on behalf of the Land Trust to one or more of the then owners of the Property, except that no such notice shall be required (and the aforementioned limitation on the frequency of inspection shall not apply) in the event the Land Trust reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement. In the case where the Land Trust has determined that immediate entry is necessary, a reasonable attempt will be made to notify the Grantor by phone or, if it is known that the Grantor is in Grand County, Colorado, in person. The Land Trust shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property when exercising any such monitoring rights. The Grantor shall have the right and is encouraged to accompany the Land Trust during such monitoring and the Land Trust shall make every effort to coordinate the scheduling of the monitoring with the Grantor;
  - 3.3. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, or which may be reasonably expected to have a material

adverse impact on the Conservation Values of the Property, and to require the restoration of such areas or features of the Property that are materially damaged by any inconsistent activity or use, as provided in Paragraph 9, herein;

- 3.4. The right to place and maintain on the perimeter of the Property a sign, as appropriate, indicating that a conservation easement is held by the Land Trust on the Property. The size of the sign and the location, design and content of such shall be determined through mutual agreement of the Grantor and the Land Trust and shall be in accordance with Grand County signage regulations; and
  - 3.5. The right to take photographs of the Property, the right to identify the location of the conservation easement on maps and other materials and the right to use the maps, materials and photographs for mapping projects, presentations on land conservation and for protecting open space, alone or in conjunction with other organizations.
4. Consistent Uses of the Property. The following uses and practices by Grantor, though not an exhaustive recital, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by the Land Trust. Procedures for prior approval are listed below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.
- 4.1. Agriculture. Grantor has the right to conduct agricultural and ranching operations on the Property consistent with the current open use of the land and the terms of this Easement, including, but not limited to the following agricultural practices: farming, ranching, pasturing of livestock, and raising trees for commercial purposes. Any agricultural use shall utilize sound farming and ranching techniques which do not materially degrade the condition of the Property and which shall preserve the Conservation Values of the Property. The provisions contained in this Easement are intended to insure that the Property remain available for agriculture, farming and/or livestock production in accordance with Section 170(b) (1)(E)(iv) of the Code, provided that such uses preserve the Conservation Values of the Property.
  - 4.2. Lease. Grantor has the right to lease the Property provided such activities conform to applicable laws and regulations and are consistent with the conservation purposes of this Easement. Grantor shall discuss with any lessee the limitations on the use of the Property contained in this Easement. All such leases shall be in writing and upon request the Grantor shall provide a copy of any such lease to the Land Trust.
  - 4.3. Fences. Grantor may construct and maintain fences for purposes of reasonable and customary management of livestock. If new fencing is needed for a purpose other than preventing the entry of wildlife, new fencing shall be constructed of a material and erected so as to be compatible with the movement of wildlife through and across the Property consistent with guidelines of the Colorado Division of Wildlife or consistent with the recommendation of a qualified wildlife biologist/specialist.
  - 4.4. Irrigation. Grantor has the right to utilize, maintain, enlarge, repair, or if destroyed, reconstruct or replace the existing ditches and ponds and other irrigation structures. New ditches, ponds, irrigation structures and other new or existing irrigation technology (including, but not limited to gated pipe and irrigation machinery, such as roller/sprayer and center pivots and wheel lines) may be constructed or utilized as reasonably necessary

or reasonably advantageous for agricultural operations on the Property provided they do not have a material adverse impact on the Conservation Values of the Property.

- 4.5. Removal of Trees and Vegetation. Grantor has the right to cut and remove trees and shrubs from the Property for the following purposes: (1) to control any imminent threat of disease or insect infestation; (2) to remove dead, diseased or downed shrubs and trees that present a safety hazard or obstruction; (3) to remove invasive non-native species; (4) to remove trees and shrubs that interfere with fencing from and along fence lines; (5) for fuel reduction for defensible space around residences and (6) for the purpose of expanding and maintaining agricultural lands or for irrigation ditch maintenance of irrigation systems.
- 4.6. Water Rights. Subject to the conditions set forth below, Grantor shall retain and reserve the right to use and lease the water rights described as follows:

Water Right	Date of Appropriation	Date of Adjudication	Court Reference No.	Amount Allocated
Grand County Irrigated Land Company.				10 shares

as well as all non-tributary ground water, including re-permitting of the existing household use well on Grantor's adjacent Tract 27, Great Divide Head Lettuce Colony, as a domestic well or permitting for a new domestic well on the Property and/or on Grantor's adjacent Tract 27, and all water rights appurtenant to the Property, known or unknown (collectively the "Water Rights") on the Property for agricultural production, livestock and livestock watering, irrigation, domestic, wildlife, piscatorial and recreational purposes and use (the "Permitted Water Uses. To the extent possible, the Grantor shall not sell or otherwise separate the Water Rights, as defined above, from the Property. With respect to the Water Rights, the Parties understand and acknowledge the following facts and limitations: (1) legal title to the Water Rights is owned by the Grand County Irrigated Land Company (the "Ditch Company") and the Grantor is a minority shareholder in that company; (2) Grantor, through its stock ownership in the Ditch Company, uses their proportionate share of Ditch Company water on the Property and on other lands owned or leased by Grantor; and (3) the Water Rights are subject to certain limitations and restrictions as described in the Articles and Bylaws of the of the Ditch Company. Notwithstanding, it is Grantor's intent and preference that the Water Rights remain in their present status for agricultural production, livestock and livestock watering, irrigation, domestic, wildlife piscatorial and recreational purposes on the Property. Thus, Grantor, to the extent of their 10 share interest in the Ditch Company, covenants and agrees to vote against any Ditch Company sale or change in use of the Water Rights. Grantor shall retain and reserve the right to supplement, change points of diversion, enlarge or modify such Water Rights, provided that there is no diminution or loss of such Water Rights. In the event the Grantor does supplement, change points of diversion, enlarge or modify the Water Rights, any such increase in rights to use or divert water shall not be a part of the Water Rights, unless such supplementation, change, enlargement or modification is necessary to maintain the historic flow of the Water Rights for irrigation or livestock purposes on the Property. The Parties intend and desire that the obligations and restrictions set forth in this section be enforceable pursuant to C.R.S. Section 38-30.5-101 *et. seq.* Alternatively, the Parties intend and desire that the

obligations and restrictions set forth in this section be enforceable as a restrictive covenant, or that such obligations and restrictions be enforceable as an equitable servitude. Subject to the foregoing stated limitations on Grantors' ability to unilaterally protect the Water Rights, Grantor shall not cause the Water Rights to (i) be changed to or used for municipal, industrial, commercial or any other new uses, except for new agricultural uses, (ii) be changed for use other than on the Property, or (iii) be sold or encumbered separately from the Property or otherwise legally separated from the Property.

- 4.7. Minor Agricultural Structures. At the time of the granting of this Easement, there are no existing minor agricultural structures on the Property. Grantor has the right to construct, maintain, repair, reasonably enlarge, and in the event of destruction, reconstruct, minor agricultural structures, including but not limited to greenhouses, corrals, windbreak structures, hay sheds and storage sheds, reasonably necessary or reasonably advantageous for agricultural operations anywhere on the Property except that all structures must be set back at least one hundred (100) feet from rivers, creeks, or wetlands in such a manner as to minimize their impact on the water resources. No new structures on the Property with a roof shall exceed 600 square feet in floor size nor shall the total of structures with a roof exceed 1200 sq. ft. in size. Grantor shall notify the Land Trust at least forty-five (45) days in advance of any construction of new structures so that the Land Trust may approve the plans regarding location and size and update its records.
- 4.8. Storage of Materials. No materials shall be stored on the Property except within any minor agricultural structure permitted to be constructed pursuant to Paragraph 4.7 above and as necessary and appropriate for the use of the Property permitted hereby.
- 4.9. Accessory Improvements and Utilities. Grantor may install, construct and maintain accessory improvements and utilities for the benefit of the Property and Grantor's adjacent property (Tract 27, Great Divide Head Lettuce Colony), but for no other properties. New utility lines shall be placed underground.
- 4.10. Hunting and Fishing. The Grantor may allow hunting, target shooting, and fishing on the Property in accordance with all laws and regulations, including leasing or charging third parties for the hunting, target shooting, and fishing opportunities.
5. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
  - 5.1. Subdivision. The division or subdivision of the Property, physically, or by legal process, including partition, is strictly prohibited. At all times, the entire Property (Lots 25, 26, 28 and the easternmost 8-acre parcel) shall be owned, conveyed, mortgaged and transferred only in its respective entirety, as a single parcel. Notwithstanding the foregoing restriction, nothing contained within this Easement shall prohibit Grantor at its expense from causing the appropriate governmental entity to vacate the perimeter line between Lot 28 and the eastern-most 8-acre parcel, or internal lot lines, of the Great Divide Head Lettuce Colony subdivision contained within or around the Property, or within or around Grantor's adjacent property (Tract 27, Great Divide Head Lettuce Colony) for the purpose of creating one un-subdivided tract of land, comprised of the Property and Tract 27, provided that (a) no such action shall remove any of the Property from the encumbrance of this Easement; (b) no such action shall affect the validity of the title

insurance issued for this Easement and the insurability and marketability of this Easement; and (c) Grantor shall notify Grantee and obtain its approval for such action, as provided in Paragraphs 7 and 8, herein. In the event Grantor elects to cause such a vacation of property lines and merger, the Parties may agree to amend the Easement to also encumber Tract 27, on terms and conditions as are acceptable to each at such time, provided that Grantor shall pay the costs of Grantee for such amendment, as provided in Paragraph 25, herein.

- 5.2. Buildings or Other Structures. At the time of the granting of this Easement, there are no existing major structures such as houses, barns, garages, granaries and buildings on the Property. No major structures such as the above and mobile homes, house-trailers or other similar structures shall be erected or placed or constructed on the Property. Minor agricultural structures as described in Paragraph 4 entitled "Consistent Uses of Property," are allowed to the extent permitted under Paragraph 4.
- 5.3. Mining. The mining or extracting of soil, sand, gravel, rock, oil, natural gas, coal, fuel or any other mineral substance of any kind or description is prohibited.
- 5.4. Stream Bank and Other Topographical Changes. No excavating, grading, cut and fill, berming or other similar material topographical changes shall occur on the Property, except as reasonably necessary in connection with the agricultural operation and as reasonably necessary in connection with the enlargement, or reconstruction of improvements permitted hereunder. Notwithstanding the foregoing, Grantor shall have the right to construct and maintain new ponds on the Property as Grantor so desires.
- 5.5. Signs and Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for an appropriate and customary farm or ranch identification sign, sign informing the public of produce market location, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or for lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing and other low impact recreational uses, and signs informing the public of the status of ownership. No signs shall be erected that materially adversely impact the Conservation Values of the Property.
- 5.6. Paving. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or other paving materials.
- 5.7. Trash. The dumping or uncontained accumulation of trash or refuse on the Property is prohibited.
- 5.8. Hazardous Materials. The storage, dumping or other disposal of "hazardous or toxic materials" or of non-compostable refuse on the Property is prohibited. For the purpose of this Easement "hazardous or toxic materials" shall be taken in its broadest legal context and shall include any petroleum products as defined in ASTM Standard E 1527-05 and any hazardous or toxic substance, material or waste that is regulated under any federal, state or local law. Notwithstanding anything in this Easement to the contrary, the prohibitions in this Easement do not make or allow the Land Trust to become an owner or operator of the Property, nor does it permit the Land Trust to exercise physical or managerial control over the day-to-day operations of the Grantor or control any use of the Property by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Land Trust may bring an action

to protect the Conservation Values of the Property, as described in this Easement. (The prohibitions in this Easement do not impose liability on the Land Trust for hazardous materials, nor shall the Land Trust be construed as having liability as a "responsible party" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, or similar federal or state statutes.) Nothing in this paragraph shall prohibit the use of chemicals and products in accordance with applicable laws and manufacturer's instructions.

- 5.9. Retail, Commercial or Industrial Activity. No commercial, industrial or retail uses shall be allowed on the Property. For the purposes of this Easement, farming and ranching and related activities such as the sale of hay and livestock, the boarding of horses, growing and selling farm raised trees, or the leasing or charging for hunting or fishing on the Property shall not be considered commercial, industrial or retail uses of the Property. Examples of prohibited uses which are considered commercial, industrial or retail uses of the Property include but are not limited to the following: commercial feedlots, meat or poultry processing facilities, commercial nurseries and greenhouses, sawmills or logging operations or facilities, and retail outlets.
- 5.10. Water Pollution. The material degradation or pollution of any surface or sub-surface water on the Property by Grantor is prohibited.
- 5.11. Motorized Vehicles. Motorized vehicles may be used in a manner that does not diminish or impact the Conservation Values of the Property. Nothing in this paragraph is intended to prohibit the use of motorized vehicles such as snowmobiles, all terrain vehicles, motorcycles, or other motorized vehicles for any agricultural, recreational, or other use that is permitted under this Easement and that will not adversely impact the Conservation Values. There shall be no construction or development of off-road vehicle courses or tracks created for all-terrain vehicles, motorcycles or other motorized vehicles. Regular use of motorized vehicles shall generally be limited to roads, two track roads and trails, although off-trail / road winter snowmobile tracks are allowed.
6. Reserved Rights. Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein, and are not inconsistent with Section 170(h) of the Internal Revenue Code, or any regulation promulgated thereunder, and are not inconsistent with the purpose of this Easement and preservation of the Conservation Values of the Property.
7. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify the Land Trust prior to undertaking certain permitted activities, as identified herein, is to afford the Land Trust an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify the Land Trust in writing not less than forty-five (45) days prior to the date Grantor intends to undertake the activity in question, unless a different time period for the giving of notice is provided herein as to the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit the Land Trust to make an informed judgment as to its consistency with the purpose of this Easement.
8. The Land Trust's Approval. Whenever this Easement requires that Grantor obtain the Land Trust's approval of any activity on or use of the Property, such approval shall not be

unreasonably withheld or delayed. Where the Land Trust's approval is required, the Land Trust shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request unless a different time period is specified herein for the matter in question. The written request must be accompanied by information deemed sufficient by the Land Trust for the review of the proposed activity. The Land Trust's approval may be withheld only upon a reasonable determination by the Land Trust that the action as proposed would be inconsistent with the purpose of this Easement and materially adversely impact the Conservation Values of the Property; the reason(s) for such determination shall be set forth with specificity by the Land Trust in such written notice to Grantor. Where a reasonable modification of such proposed use or activity by Grantor would render the same consistent with the purpose of this Easement, the Land Trust may specify, in such written notice to Grantor, such required modifications.

9. Enforcement. The Land Trust shall have the right to prevent and correct, or require correction of, violations of the terms and purpose of this Easement. The Land Trust may enter the Property for the purpose of monitoring this Easement and inspecting for violations subject to the limitations set forth in Paragraph 3.2 and 3.3, above. If the Land Trust finds what it reasonably believes is a violation, the Land Trust shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to the Land Trust of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both Parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process. When, in the Land Trust's reasonable opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, the Land Trust may, in its sole discretion, take appropriate legal action. Further, should mediation fail to resolve the dispute, the Land Trust may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, the Land Trust may obtain an injunction to stop it, temporarily or permanently. A court may also issue an order to require Grantor to restore the Property to its condition prior to the violation. This easement is not intended to create rights in any third party to enforce the terms of this Easement.
10. Costs of Enforcement. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Land Trust for all its expenses incurred in stopping and correcting the violation, including reasonable attorneys' fees and court costs. If the court finds no violation, then the Land Trust shall reimburse the Grantor for all of Grantor's expenses and reasonable attorney fees incurred in defending such action. This Easement is not intended to create rights in any third party to enforce the terms of this Easement.
11. Land Trust's Discretion. Enforcement of the terms of this Easement shall be at the sole discretion of the Land Trust, and any forbearance by the Land Trust to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by the Land Trust of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Land Trust's rights under this Easement. No delay or omission by the Land Trust in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. No provision of this Easement shall be waived by Grantor unless such waiver shall be in writing, shall specifically refer to this Easement, and shall be executed and delivered by Grantor.
12. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription, and any defenses available under C.R.S. Section 38-41-119.

13. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Land Trust to bring any action against Grantor for any injury to or change in the Conservation Values of the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such natural events. For purposes of this Easement, "natural event" shall not include acts of third parties. Grantor understands that nothing in this Easement relieves the Grantor of any obligation or restriction on the use of the Property imposed by law.
14. No Public Access Created Hereby. Nothing herein contained shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the terms of this Easement.
15. Costs and Liabilities; Taxes. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication on the Property, and including the maintenance of reasonable comprehensive general liability insurance coverage. To the extent that Grantor maintains liability insurance coverage, Grantor warrants that Grantee is and will continue to be an additional insured on Grantor's liability insurance policy covering the Property. Grantor shall provide certificates of such insurance to Grantee upon reasonable request. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement. If Grantee is ever required to pay any Taxes or assessments on its interest in the Property, Grantor will promptly reimburse Grantee for the same.
16. Hold Harmless. Grantor shall hold harmless, indemnify, and defend the Land Trust and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence or intentional act of any of the Indemnified Parties; (2) the costs and expenses of the Land Trust in enforcement of this Easement; (3) the presence, or release by Grantor or persons under the direction or control of Grantor, of hazardous or toxic materials on, under or about the Property; (4) all costs and liabilities of ownership, operation, upkeep and maintenance of the Property as described herein. For the purposes of this Easement hazardous or toxic materials shall mean petroleum products as defined in ASTM Standard E 1527-05 and any hazardous or toxic substance or material that is regulated under any federal, state or local law.
17. Change of Circumstances; Extinguishment.
  - 17.1. If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other when it first learns of such circumstances.

- 17.2. The amount of the proceeds to which the Land Trust shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined in accordance with the ratio determined pursuant to the "Proceeds" Paragraph 18 below.
- 17.3. In conveying this Easement the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Land Trust that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of the Grantor, or his heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.
18. Proceeds. This Easement constitutes a real property interest immediately vested in the Land Trust, which the Parties stipulate to have a fair market value determined by multiplying the fair market value of the Property (not including the value of any Structures on the Property) unencumbered by the Easement by the ratio of the value of the Easement at the time of this grant to the value of the Property (not including the value of any Structures on the Property) unencumbered by the Easement at the time of this grant (the "**Donation Percentage**"). For the purposes of this Paragraph, the Donation Percentage of the Easement shall remain constant. The Parties agree that the Donation Percentage is sixty-seven and 42/100s percent (67.42%) of the value of the Property (not including the value of the Structures on the Property) unencumbered by this Easement, as supported by the appraisal for the Easement. In the event this Easement is terminated in whole or in part, or is extinguished in whole or in part pursuant to Paragraph 17, "Change of Circumstances; Extinguishment," or the Property is condemned pursuant to Paragraph 19, "Condemnation," the Trust is entitled to receive from the net proceeds of the condemnation, extinguishment or sale of the Property, the greater of (a) the Donation Percentage, or (b) the percentage that the Easement represents of the Property unencumbered by the Easement at the time of termination of the Easement (the "**Extinguishment Percentage**").
19. Condemnation. If the Easement or the Property is taken or conveyed, in whole or in part, by threat or exercise of the power of eminent domain, the Grantor and the Land Trust shall be entitled to compensation for the value of their respective interests, in accordance with applicable law.
20. Assignment. This Easement is transferable by the Land Trust, but the Land Trust may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; (b) authorized to acquire and hold conservation easements under Colorado law; and (c) approved as a transferee by the Grantor and such approval of transferee organization shall not be unreasonably withheld by the Grantor. As a condition of such transfer, the Land Trust shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of the Land Trust set forth herein or created hereby. After such transfer, the Land Trust shall have no further obligation or liability under this Easement. If the Land Trust desires to transfer this Easement to a qualified organization having similar purposes as the Land Trust (grantee), but the Grantor unreasonably refuses to approve the transfer, a court with jurisdiction shall transfer the Easement

to another qualified organization having similar purposes which agrees to assume the responsibilities of the Land Trust. The Land Trust may record the assignment.

21. Subsequent Transfers by Grantor. Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property. Grantor agrees that it will reflect in any leasehold interest granted by Grantor that the lease is subject to and subordinate to the terms of this Easement. Grantor further agrees to give written notice to the Land Trust of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
22. Transfer Fee. Anytime the Property itself, or any interest in it, is transferred by Grantor, or its personal representatives, heirs, successors or assigns, to any third party, Grantor, or its personal representatives, heirs, successors or assigns, shall pay a \$500 transfer fee to the Land Trust within (5) business days after closing. The transfer fee is subject to yearly adjustment as determined by the Consumer Price Index Inflation Calculator (the "**CPI Inflation Calculator**") made available by the United States Department of Labor, Bureau of Labor Statistics, online at its website at <http://www.bls.gov/cpi/>. The CPI Inflation Calculator uses the average Consumer Price Index for a given calendar year. The data represent changes in prices of all goods and services purchased for consumption by urban households. If the CPI Inflation Calculator is no longer available or the Consumer Price Index is no longer published, then a similar successor index may be substituted to calculate any yearly adjustments. If at any time in the future the Property is classified as 'residential real property', as defined in C.R.S. Section 38-35-127(2)(e), then the Land Trust covenants and agrees that the transfer fee shall be used by the Land Trust only for the benefit of this Property, any common areas associated with this Property, any adjacent or contiguous real property, or the community in which the Property is located.
23. Notices. Any notice, demand, request, consent, approval, or communication that either Party to this Easement desires or is required to give to the other shall be in writing and shall either be served personally or sent by certified, registered or express mail (including Federal Express or UPS), postage prepaid, return receipt requested, addressed as follows or to such other address as either Party from time to time shall designate by written notice to the other:

To Grantor:

Douglas L. Zook  
P.O. Box 1750  
Granby, CO 80446

To the Land Trust:

Middle Park Land Trust  
P.O. Box 1938  
Granby, Colorado 80446

The notice shall be effective upon receipt if served personally, or three days after deposit with the carrier if sent via certified, registered, or express mail as identified above. The Land Trust need only notify Grantor and not other parties related to annual monitoring site visits.

24. Recordation. The Land Trust shall record this instrument in timely fashion in the official records of Grand County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement. The Land Trust may record any assignment of this easement.
25. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate to promote the purpose of this Easement and the protection of the Conservation Values of the Property, Grantor and the Land Trust are free to jointly amend this instrument; provided that no amendment to this Easement shall allow the division or subdivision of the Property or development or use thereof, except as provided for herein, and provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable law. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, and signed by both Parties, and recorded in the records of the Clerk and Recorder of Grand County, Colorado. If the Property is made up of parcels in different ownership or if the Easement permits any portion of the Property to be separately sold and conveyed while remaining subject to the Easement, then only the landowner(s) of the parcel(s) affected by the amendment need enter into the amendment with the Land Trust. The Grantor shall pay all costs, including all Land Trust attorney fees, for any amendment requested by the Grantor unless the Parties agree otherwise.
26. No Transfer of Development Rights. Grantor hereby grants to Land Trust all development rights except as specifically reserved herein, for the limited purpose of insuring that such rights are forever terminated and extinguished, and may not be used by Grantor, the Land Trust or any other party, on or transferred off of the Property to any other property adjacent or otherwise. Under no circumstances shall any portion of the Property be used for the purpose of calculating or giving credits, which result in additional density of development, beyond what is allowed in this Easement, on or off of the Property. Grantor shall not grant access across the Property to or for the benefit of any other Property without the prior written permission of the Land Trust which permission it may withhold in its discretion.
27. General Provisions.
- 27.1. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. Venue for any dispute shall be Grand County, Colorado.
- 27.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. § 38-30.5-101 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 27.3. Interpretation. If any reserved right of the Grantor under this Easement is found to be not in compliance with Section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder, then such provision shall be interpreted and applied in such a manner as to be in compliance with Section 170(h) of the Internal Revenue Code, and any regulations promulgated thereunder; provided, however, nothing in this Paragraph shall permit the Grantor to divide, subdivide or partition the property, or make any use of the Property or undertake any activity or development on the Property otherwise prohibited by this Easement. It is the intention of this Paragraph to require that any restriction herein be interpreted no less strictly that necessary to be in compliance with

Section 170(h) of the Internal Revenue Code, and any regulation promulgated thereunder, and no less strictly than as specifically provided herein.

- 27.4. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, 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.
- 27.5. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 27.6. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 27.7. Joint Obligation. In the event the Property is subsequently owned by more than one owner, all such owners shall be jointly and severally liable for the obligations imposed by this Easement upon Grantor.
- 27.8. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- 27.9. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Property, except that a Party's liability for acts or omissions occurring prior to transfer shall survive transfer.
- 27.10. 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.
- 27.11. 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 documents executed in the future affecting this Easement.
- 27.12. Warranty of Title. Grantor warrants that it has good and sufficient title to the Property, that it has good right, full power and lawful authority to grant and convey this Easement, that the Land Trust has access to the Property for the purposes described in this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement and the foreclosure of any such mortgage or deed of trust shall not adversely affect the existence or continuing validity of this Conservation Easement, and that the Property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever which are not subordinate to the terms of this Easement, except for those matters described on the attached Exhibit D. Grantor hereby grants to the Land Trust the right to access the Property for the purposes described herein, across any adjacent property owned by the Grantor, including this Property, or across any easements, rights of way or routes of access of any kind or description, now owned or later acquired by the Grantor, and to ensure that at all times the Land Trust has full right of access to the Property for the

purposes described in this Easement. The Parties intend that this Easement encumber the Property, including any and all soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance of any type or character on or thereunder, and the Water Rights described herein, whether any such interest is now owned or is later acquired. Grantor hereby promises to warrant and forever defend the title to the Easement in the quiet and peaceable possession of the Land Trust, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

- 27.13. Environmental Warranty. Grantor warrants that it has no knowledge of a release or threatened release of hazardous or toxic materials or wastes on the Property and promises to defend and indemnify the Land Trust, its successors and assigns, against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.
- 27.14. No Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and Grantee and their respective successors and assigns, and does not create rights or responsibilities in any third parties.
- 27.15. Grantee Acknowledgement of Donation. (I.R.C. Sec.170 (f)(8)). Grantee acknowledges receipt and acceptance of this Conservation Easement encumbering the Property described herein, for which no goods or services were provided.





**EXHIBIT A**

**Legal Description of Property**

Township 2 North, Range 76 West of the 6<sup>th</sup> P.M.

Tracts 25, 26 and 28,  
GREAT DIVIDE HEAD LETTUCE COLONY,  
according to the plat recorded at Reception No. 35671.

AND

A tract of land in the NW1/4SE1/4 of Section 34, Township 2 North, Range 76 West of the 6<sup>th</sup> P.M.,  
described as follows:

Beginning at the Center point of said Section 34; thence South along the West boundary line of the SE1/4  
of said Section 34, 600.00 feet; thence East 580.80 feet; thence North 600.00 feet; thence West along the  
north boundary line of said SE1/4 of Section 34, 580.80 feet to the point of beginning.

TOGETHER WITH an easement for ingress and egress for the benefit of the above-described property  
lying over and across the south 40 feet of Tract 28, GREAT DIVIDE HEAD LETTUCE COLONY,  
according to the plat recorded at Reception No. 35671.

County of Grand,  
State of Colorado.

**EXHIBIT B**

Map of Property

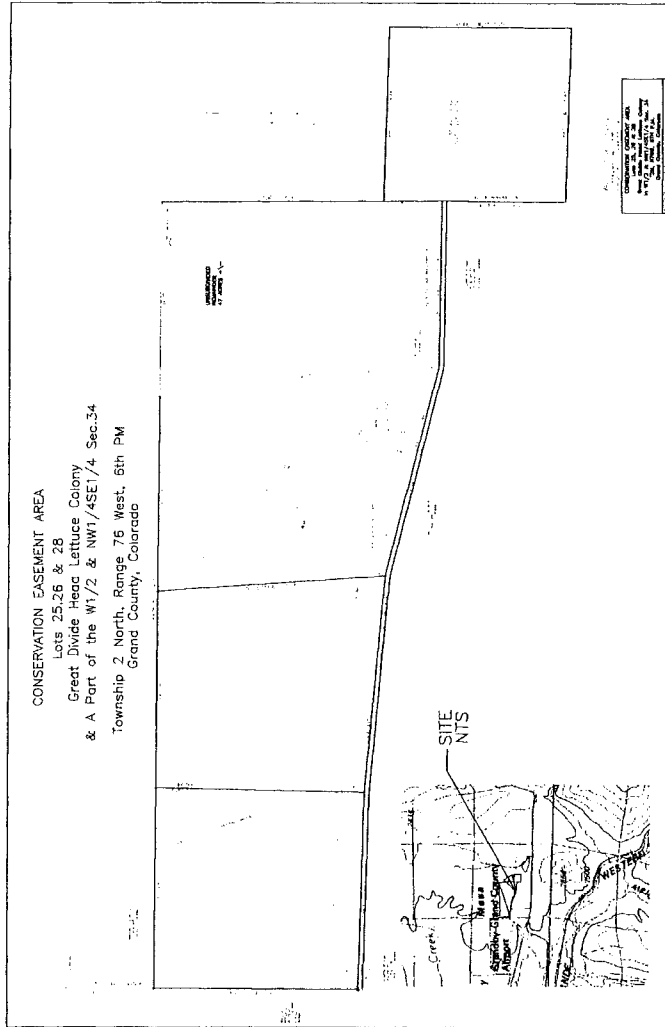


EXHIBIT C

**I. Baseline Acknowledgement Statement  
For The Zook Property**

**1. Grantor/Landowner**

Name: Douglas L Zook

Address: P.O. Box 1750, 1463 County Road 608, Granby, CO 80446

**2. Grantee/Easement Holder**

Name: Middle Park Land Trust

Address: P.O. Box 1938, 52 N. First Street, Granby, CO 80446

**3. Parcel Identification Number (PIN):**

Zook Property Deed of Conservation Easement:

PIN for the 4 parcels: 1329344000021, 132934200022, 132934200024, 132934200023

Addendum for Deed of Conservation Easement to the Zook Property:

PIN for Lot 27: 132934200015

**4. Property Location:**

Tracts 25-28 of the Great Divide Head Lettuce Colony subdivision, in Section 34, Township 2 North, Range 76 West and an 8 acre tract in NW4SE4 of Section 34, Township 2 North, Range 76 West

Physical Address: 1463 County Road 608, Granby, CO

Nearest Town and Mileage to it: The town of Granby is approximately 2 miles to the southwest of this property.

County: Grand

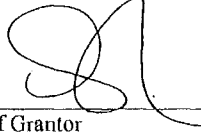
**5. Summary Description and Condition of the Property**

The Deed of Conservation Easement protects 42.28 acres of land on the Granby Mesa situated in Section 34, Township 2 North, Range 76 West of the 6th P.M. of Grand County, Colorado. The Addendum references the 12.68 acre Lot 27. The combined parcels total 55.16 acres and are referred to herein as the Property. The Property is 55.16 acres of native sagebrush and grass rangeland, irrigated grass pasture, and irrigated grass/alfalfa hay land.

The Property is situated on the Granby Mesa and is mostly flat to gently sloping. The elevation is 8200 feet above sea level. The current condition of the land is good. The primary conservation values of the Property are Relatively Natural Habitat, and Open Space (both Scenic and Agriculture). The land has been historically in agricultural production, providing grass pasture and hay for cattle, and was also actively farmed for vegetable row crops in the past.

In compliance with Reg. Sec. 1.170A-14(g)(5) of the Income Tax Regulation on Internal Revenue Code 1.170(h), the Landowner, Middle Park Land Trust and the prepared of the Baseline

Documentation Report hereby acknowledge they have received, reviewed and approved the Baseline Documentation Report for this property and agree that this natural resource inventory, called a Baseline Documentation Report, titled Zook Property Baseline Documentation Report and dated September 2011 (including maps and photographs), is an accurate representation of the condition of the Zook Property as of the date of conveyance (September, 2011) of the Deed of Conservation Easement.



\_\_\_\_\_  
Name of Grantor

Douglas C. Zook  
Name of Signatory

10/5/11  
Date

\_\_\_\_\_  
Title of Signatory

Middle Park Land Trust  
Grantee: Middle Park Land Trust

Carole Postmueller  
Name of Signatory

10.4.2011  
Date

Executive Director  
Title of Signatory

Audrey Volt  
Audrey Volt  
Preparer, Baseline Documentation Report

9/19/11  
Date

**EXHIBIT D**  
**EXCEPTIONS TO TITLE**  
**(Page 1 of 2)**

- 1) Reservation for the right of way for ditches and canals constructed under the authority of the United States recorded January 2, 1918 in Book 53 at Page 265 and February 19, 1920 in Book 53 at Page 96.
- 2) Exceptions, ditches, restrictions, reservations, easements, trails and rights of way as set forth on the plat of Great Divide Head Lettuce Company recorded December 3, 1928 at Reception No. 35671.
- 3) Easement and right of way granted to County of Grand in instrument recorded January 23, 1913 in Book 49 at Page 35.
- 4) Easement and right of way granted to Board of County Commissioners in instrument recorded October 4, 1911 in Book 7 at Page 598.
- 5) Easement and right of way for Vail Ditch and laterals granted to Richard W. McQueary and A.F. Polhamus in instrument recorded July 8, 1912 in Book 49 at Page 4.
- 6) Right of way granted Mountain Parks Electric, Inc., by instruments recorded September 17, 1968 in Book 162 at Page 62 and October 2, 1996 at Reception No. 96008484.
- 7) Declaration of Covenants recorded May 29, 1973 in Book 197 at Page 320 and September 4, 1996 at Reception No. 96007542, pertaining to sewage disposal systems.
- 8) Order and Stipulation recorded May 2, 1986 in Book 393 at Pages 953 and 954.
- 9) Easements and rights of way granted to Joe M. Morales aka Joe Morales and Carol L. Morales in instruments recorded September 30, 1986 in Book 404 at Page 416 and Book 404 at Page 417.
- 10) Easements, ditches and rights of way granted to Granby Mesa, LLC in instrument recorded July 8, 1996 at Reception No. 96005539.
- 11) Easements, ditches and rights of way as evidenced on Land Survey Plat recorded March 13, 1997 at Reception No. 97002014.
- 12) Easement reservation by Grand Investment Partners, Ltd., recorded August 5, 1999 at Reception No. 99008145.
- 13) Covenants, conditions, restrictions, reservations, easements, liens for assessments (whether by statute or otherwise), options, powers of attorney, and limitations on title, as set forth in the Declaration of Covenants and Restrictions for Crestview Ranch Estates recorded August 6, 2001 at Reception No. 2001-007462 as amended by instruments recorded August 6, 2001 at Reception No. 2001-007463 and 2001-007464; and October 30, 2006-011541; in the related Bylaws; in any instrument creating the estate or interest insured by this policy; and in any other allied instrument referred to in any of the instruments aforesaid.

**EXHIBIT D**  
**EXCEPTIONS TO TITLE**  
**(Page 2 of 2)**

- 14) Easement Reservation by Grand Investment Partners, Ltd., recorded August 5, 1999 at Reception No. 99008145, as amended by instrument recorded October 30, 2006 at Reception No. 2006-011541.
- 15) Resolution No. 2002-8-36 recorded October 15, 2003 at Reception No. 2003-013460.
- 16) Resolution No. 2006-12-48 recorded February 7, 2007 at Reception No. 2007-001486.

**MIDDLE PARK LAND TRUST  
ADDENDUM TO DEED OF CONSERVATION EASEMENT  
Zook Farm**

THIS ADDENDUM TO DEED OF CONSERVATION EASEMENT (the "Addendum") is granted this 5<sup>th</sup> day of October, 2011, by **DOUGLAS L. ZOOK**, whose mailing address is **P.O. Box 1750, Granby, CO 80446** (the "Grantor"), to and for the benefit of **MIDDLE PARK LAND TRUST**, a Colorado nonprofit corporation certified under C.R.S. Section 12-61-720 to hold conservation easements for which a state conservation easement tax credit is claimed, 52 N. First Street, P.O. Box 1938, Granby, Colorado 80446, and its successors and assigns (the "**Land Trust**") for the purpose of forever conserving the open space character, wildlife habitat, scenic qualities and availability for agricultural uses of the subject property. The following Exhibits are attached hereto and made a part of this Addendum:

- Exhibit A - Description of the Conservation Easement Property
- Exhibit A-1 - Description of Property Encumbered by this Addendum
- Exhibit B - Map of Property Encumbered by this Addendum

RECITALS:

- A. Grantor has granted to the Land Trust a Deed of Conservation Easement encumbering the Property, which is described in the attached **Exhibit A** which Deed of Conservation Easement was recorded on October 20<sup>th</sup>, 2011, at Reception No. 21007600 of the records of Grand County, Colorado, Clerk and Recorder (the "**Zook Conservation Easement**"). The property encumbered by the Zook Conservation Easement is herein referred to as the "**Conservation Easement Property**".
- B. Grantor Douglas L. Zook is also the owner of Tract 27 of the Great Divide Head Lettuce Colony, according to the plat recorded at Reception No. 35671, County of Grand, State of Colorado ("**Tract 27**"). Tract 27 is adjacent to the Conservation Easement Property, but is not encumbered by the Zook Conservation Easement.
- C. As part of the agreement for the granting of the Zook Conservation Easement, the parties agreed to enter into this Addendum for the purpose of adding an additional and separate requirement that the Conservation Easement Property and Tract 27 (together referred to as the "**Property**" and described in the attached **Exhibit A-1** and depicted on the attached **Exhibit B**) forever remain under single ownership, and shall not be divided or subdivided.
- D. The parties acknowledge that Tract 27 is encumbered by a deed of trust granted for the benefit of Wells Fargo Bank, N.A., recorded October 13, 2006 at Reception No. 2006-010867 ("**Deed of Trust**") which, at Grantor's request, has not been subordinated to the terms of this Addendum, and agree that accordingly, this Addendum does not qualify as a deductible conservation easement under Internal Revenue Code Section 170(h) or under the tax laws of the state of Colorado, and that this Addendum is not eligible for state of Colorado conservation easement tax credits under C.R.S. Sec. 39-22-522.

NOW, THEREFORE, as part of the agreement for the granting of the Zook Conservation Easement, and in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, in particular CRS § 38-30.5-101 et seq., Grantor hereby voluntarily enters into this Addendum with the Trust, its successors and assigns.

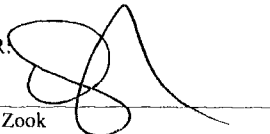
1. **No Subdivision of Property.** It is the intention of the parties that the Property (the Conservation Easement Property and Tract 27) shall at all times remain in a single ownership, and shall not be divided, subdivided or partitioned; provided that the parties acknowledge that in the event of foreclosure of a deed of trust, or a deed-in-lieu of foreclosure given to the beneficiary of a deed of trust, then Tract 27 may be separately owned and conveyed from the ownership of the Conservation Easement Property. Except as provided herein, any other division or subdivision of title to the Property by Grantor, whether by physical or legal process, including partition, is prohibited.
2. **Tract 27, Division and Partial Encumbrance.** Nothing in this Addendum precludes Grantor from (a) encumbering all or a part of Tract 27 with a new deed of trust; or (b) dividing Tract 27 for the purpose of facilitating the refinancing of a new loan that encumbers less than all of Tract 27 and adding the remaining portions of Tract 27 to Tract 26 and/or Tract 28. Further, in the event Grantor were to divide Tract 27 for the purpose of facilitating a refinancing, those portions of Tract 27 not encumbered by a new deed of trust may, at Grantor's election and with the approval of the Land Trust in its sole discretion, be added to the Conservation Easement Property and encumbered by the Zook Conservation Easement in accordance with the terms of this Addendum. However, until such time as the Grantor elects to include, and the Land Trust approves the inclusion in its sole discretion of, any portion of Tract 27 in the Conservation Easement Property, all of Tract 27, or the remaining portion thereof after subdivision, shall be encumbered only by the terms and conditions of this Addendum. The intent of the parties under this provision is to allow Grantor the perpetual availability of Tract 27, or some portion thereof, for use as security for loans unencumbered by the Zook Conservation Easement. In addition, it is the intent of the parties through this provision to allow Grantor flexibility with regard to subdivision of Tract 27 for the purpose of creating a parcel that fits within traditional loan security parameters. Last, it is the intent of the parties under this provision to allow, at Grantor's election, for the possible future inclusion into the Conservation Easement Property and encumbrance by the Zook Conservation Easement of any portion of Tract 27 removed for the purpose of creating a more traditional property for loan security purposes.
3. **Vacation of Lot Lines and Merger.** Nothing in this Addendum shall prohibit Grantor at its expense from causing the appropriate governmental entity to vacate the perimeter line between Lot 28 and the eastern-most 8-acre parcel, or internal lot lines, of the Great Divide Head Lettuce Colony subdivision contained within or around the Property, or within or around Grantor's adjacent property (Tract 27, Great Divide Head Lettuce Colony) for the purpose of creating one un-subdivided tract of land, comprised of the Property and Tract 27, provided that (a) no such action shall remove any of the Property from the encumbrance of this Easement; (b) no such action shall affect the validity of the title insurance issued for this Easement and the insurability and marketability of this Easement; and (c) Grantor shall notify Land Trust and obtain its approval for such action, as provided in Paragraphs 7 and 8, of the Zook Conservation Easement. In the event Grantor elects to cause such a vacation of property lines and merger, the Parties may agree to amend the Zook Conservation Easement to also encumber Tract 27, on terms and conditions as are acceptable to each at such time; provided that Grantor shall pay the costs of Land Trust for such amendment, as provided in Paragraph 25 of the Zook Conservation Easement.
4. **Addendum does Not Affect Zook Conservation Easement.** This Addendum is a separate covenant from the Zook Conservation Easement. Any foreclosure of the Deed of Trust which results in termination of this Addendum does not and shall not in any way affect the validity and perpetual duration of the Zook Conservation Easement which encumbers the Conservation Easement Property that is not encumbered by the Deed of Trust. However, the parties understand

and agree that the foreclosure of any deed of trust encumbering Tract 27, or other involuntary conveyance of the same, shall effectively terminate the encumbrance of this Addendum on Tract 27, irrespective of whether the deed of trust being foreclosed is senior or junior to the Addendum.

- 5. **Addendum does not Qualify for Tax Deductions or Tax Credits.** Grantor covenants and agrees that Grantor shall not claim any tax deduction or tax credit for the granting of this Addendum, and that the Land Trust shall not be required to execute an IRS form 8283 or any other document the purpose of which is to support a claim for any tax deduction or tax credit for the granting of this Addendum.
- 6. **Complete Agreement; Remedies.** Except as modified herein, the terms of the Zook Conservation Easement are unchanged and shall remain in full force and effect. It is the intention of the parties that the entire Property (which includes the Conservation Easement Property and Tract 27) shall at all times remain in a single ownership, and shall not be divided, subdivided or partitioned. Each party shall have all of the remedies available under the Zook Conservation Easement to enforce the terms of this Addendum.

TO HAVE AND TO HOLD unto the Land Trust, its successors and assigns forever.

IN WITNESS WHEREOF Grantor and the Land Trust have executed this Addendum to Deed of Conservation Easement on this 5<sup>th</sup> day of October, 2011.

GRANTOR:   
 \_\_\_\_\_  
 Douglas L. Zook

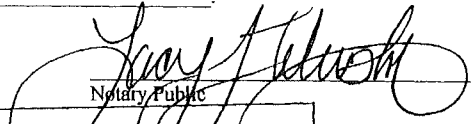
STATE OF COLORADO        )  
   ) ss.  
 COUNTY OF GRAND        )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of October, 2011, by Douglas L. Zook, as Grantor.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

(SEAL)

  
 \_\_\_\_\_  
 Notary Public  
 Lacy J Thurston  
 Notary Public State of Colorado

My Commission Expires  
May 19, 2013

The LAND TRUST:

MIDDLE PARK LAND TRUST, a Colorado Nonprofit Corporation

by:  Terry Lange

its:  Board member

attest:  Carole Pestrucci

its:  Executive Director

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF GRAND     )

The foregoing instrument was acknowledged before me this  6  day of October, 2011 by  Terry Lange , as  Board member  of the MIDDLE PARK LAND TRUST, a Colorado nonprofit corporation, as the Land Trust (Grantee).

WITNESS my hand and official seal.

My commission expires:  9-22-2015



Michael R. Gray   
Notary Public

**EXHIBIT A**

**Description of Property Encumbered by Zook Conservation Easement**

The following property located in the County of Grand, State of Colorado:

Tracts 25, 26 and 28, Great Divide Head Lettuce Colony, according to the plat recorded at Reception No. 35671

And

A tract of land in the NW1/4SE1/4 of Section 34, Township 2 North, Range 76 West of the 6<sup>th</sup> p.m., described as follows:

Beginning at the center point of said Section 34; thence South along the West boundary line of the SE1/4 of said Section 34, 600 feet; thence East 580.80 feet; thence North 600 feet, thence west along the north boundary line of said SE1/4 of Section 34, 580.80 feet to the point of beginning.

Together with an easement for ingress and egress for the benefit of the above described property lying over and across the south 40 feet of Tract 28, Great Divide Head Lettuce Colony, according to the plat recorded at Reception No. 35671.

**EXHIBIT A-1**

**Description of Property Encumbered by this Addendum**

The following property located in the County of Grand, State of Colorado:

Tracts 25, 26, 27 and 28, Great Divide Head Lettuce Colony, according to the plat recorded at Reception No. 35671

And

A tract of land in the NW1/4SE1/4 of Section 34, Township 2 North, Range 76 West of the 6<sup>th</sup> p.m., described as follows:

Beginning at the center point of said Section 34; thence South along the West boundary line of the SE1/4 of said Section 34, 600 feet; thence East 580.80 feet; thence North 600 feet, thence west along the north boundary line of said SE1/4 of Section 34, 580.80 feet to the point of beginning.

Together with an easement for ingress and egress for the benefit of the above described property lying over and across the south 40 feet of Tract 28, Great Divide Head Lettuce Colony, according to the plat recorded at Reception No. 35671.

**EXHIBIT B**

**Map of Property Encumbered by this Addendum  
(Lot 27 is shaded because it is only encumbered by the Addendum  
and not by the Zook Conservation Easement)**

