

# Purchase of Development Rights Citizens' Advisory Board Agenda

June 19, 2023  
1:00 PM

Gilpin Creek Conference Room  
135 6th Street Steamboat Springs

Click [HERE](#) to join Zoom meeting.

## 1. CALL TO ORDER

## 2. PDR IRS SAFE HARBOR EASEMENT AMENDMENTS

Consideration to recommend approval to the Board of County Commissioners for an amendment to conversation easements that used PDR funds, to include language required by and approved by the Secure 2.0 Act and the IRS.

### Documents:

[PDR MEMO RE SAFE HARBOR NOTICE\\_FINAL-TO PDR.PDF](#)  
[CE AMENDMENT APPROVAL IRS SAFE HARBOR 6.14.23.PDF](#)  
[N-23-30.PDF](#)  
[SAFE HARBOR MODEL AMENDMENT V4 CLEAN 6 8 2023.PDF](#)

## 3. EXECUTIVE SESSION

Executive Session may be required under C.R.S. 24-6-402 (4)(a) to discuss the purchase, acquisition, lease transfer, or sale of any real, personal, or other property.

### A. TIER I PDR APPLICATIONS

Consideration to recommend approval of Tier I funding for the following projects:

- a. 210
- b. 211
- c. 212
- d. 213
- e. 214
- f. 215
- g. 216

## 4. NEW BUSINESS

### A. PROGRAM COMMITTEES

- a. Project Criteria
- b. Transaction Costs

- c. Timeline
- d. Processes
- e. Other

**B. JULY 11 BCC MEETING**

Plan discussion with Commissioners for BCC meeting on July 11, 2023.

**5. MEETING ADJOURNED**



## MEMORANDUM

**TO:** ROUTT COUNTY PURCHASE OF DEVELOPMENT RIGHTS PROGRAM &  
ROUTT COUNTY COMMISSIONERS

**FROM:** MOLLY FALES, CCALT STAFF ATTORNEY

**CC:** ERIK GLENN, MEGAN KNOTT, JOHN GIOIA, LARRY KUETER, DAVID KUETER

**DATE:** JUNE 2, 2023

**SUBJECT:** **IRS Notice 2023-30: SAFE HARBOR AMENDMENTS**

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### Summary

- In December 2022, the Secure Act 2.0 of 2022, referred to as the Charitable Easement Program Integrity Act, was signed into law, introducing a time-limited provision allowing donors to amend conservation easements by adopting safe harbor language for two common deed terms that the IRS has challenged.
- The IRS issued Notice 2023-30 on April 2023, starting a 90-day window for grantors to record an amendment to take advantage of the safe harbor. The 90-day window ends on July 24, 2023. (See attachment 2).
- CCALT has notified potentially impacted landowners (both CCALT and YVLT) of the notice and is asking those interested in taking advantage of the safe harbor to notify us by June 30, 2023.
- To facilitate the amendment process, CCALT has prepared a template amendment and will help landowners complete the amendments before the deadline. (See attachment 3).
- Routt County must approve any amendment to a deed of conservation easement in which Routt County Purchase of Development Rights funds were utilized.
- CCALT urges Routt County to provide blanket approval for all safe harbor amendments due to the high volume of expected requests and the tight timing deadline.

The remainder of this memo provides more detailed information related to this issue and CCALT's plan for working with landowners who would like to take advantage of the safe harbor.

### **Federal Deduction for Qualified Conservation Easement Contributions**

Conservation easement grantors are eligible for a federal deduction for the donated value of the conservation easement, less the value of any State tax credits received for

the donation. Since 2006, grantors have been allowed to utilize the federal deduction in the year of the donation and carry it forward for the next 15 years. To create a federal deduction, the conservation easement must be consistent with § 170(h) of the I.R.C. and the Treasury Regulations adopted pursuant thereto, including the requirement that the conservation easement be granted in perpetuity. Failure to comply with the necessary requirements may result in an Internal Revenue Service (“IRS”) denial of the deduction.

### **Charitable Easement Program Integrity Act (December 2022)**

The IRS successfully challenged the deductibility of conservation easements with frequently utilized proceeds/extinguishment and boundary line adjustment language that the IRS believes fails to meet the perpetuity requirement<sup>1</sup>. The Secure 2.0 Act of 2022 (the “Act”), which was signed into law on December 29, 2022, provided a time-limited cure provision allowing donors to amend conservation easements by adopting safe harbor language. Utilizing the safe harbor language safeguards the conservation easement donor’s deduction from a possible IRS denial of the deduction. The Act directed the IRS to create safe harbor language for the proceeds/extinguishment and boundary line adjustment clauses, contained a specific timeframe for the IRS to develop the safe harbor language, and mandated a 90-day window within which donors could amend their conservation easements to include the safe harbor language. On April 24, 2023, the IRS issued Notice 2023-30 (the “Notice”<sup>2</sup>). The Notice provided guidance on the implementation of the safe harbor language and started the 90-day window within which the safe harbor language can be adopted. The 90-day window requires that any grantor wishing to utilize the safe harbor language must record an amendment by July 24, 2023.

### **Landowner Notification**

On May 30, CCALT notified original easement grantors that granted a conservation easement to CCALT or the Yampa Valley Land Trust (YVLT) since January 1, 2006. CCALT delivered a similar notification to grantors and attorneys and accountants that frequently work with conservation easement donors via email. CCALT has requested that any grantor wishing to pursue a safe harbor amendment notify CCALT by June 23, 2023. CCALT cannot give landowners financial, tax, or legal advice. Therefore, if a landowner would like to complete a safe harbor amendment, CCALT will endeavor to help them complete the amendment by the July 24<sup>th</sup> deadline.

### **Completing a Safe Harbor Amendment**

The Notice requires that the original grantor and grantee sign the amendment. Further, for the amendment to be valid, it must be signed by the current landowner and current holder, if ownership of the property has changed since the conservation easement has been completed or the conservation easement has been transferred.

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<sup>1</sup> More details on the Proceeds/Extinguishment and Boundary Line Adjustment language at issue can be found in Attachment 1.

<sup>2</sup> The Notice is included as Attachment 2.

Any necessary subordination must be obtained if there is a deed of trust impacting the property. Finally, third-party funders with approval rights in the conservation easement must approve the amendment.

To facilitate the amendment process, CCALT will ask grantors wishing to pursue a safe harbor amendment to provide current proof of ownership of the property and signature authority if the property is owned by an entity. CCALT has drafted a template amendment<sup>3</sup>. Language is included within the template for transactions that received funding from the Natural Resource Conservation Service (“NRCS”) as NRCS will only consider amendments to the boundary line adjustment safe harbor. No negotiation of the CCALT template amendment will be permitted. Once CCALT has received all required documentation from the necessary parties, including the amendment drafted by CCALT and signed by the necessary parties, CCALT will sign and record the safe harbor amendment.

**Approval by Routt County Purchase of Development Rights & the Routt County Board of County Commissioners**

Routt County has the right to approve any amendments to conservation easements that received funding from the Routt County Purchase of Development Rights Program. This right of approval extends to approval of all safe harbor amendments. Due to the expected number of safe harbor amendment requests, CCALT requests that Routt County provide a blanket approval for all safe harbor amendments.

The safe harbor amendments will not alter any other aspects of the conservation easements. CCALT will provide Routt County with a list of requested safe harbor amendments no later than June 30, 2023, and a copy of all recorded safe harbor amendments no later than August 1, 2023.

Given the requirement to record the safe harbor amendments no later than July 24, 2023, CCALT believes a blanket approval of safe harbor amendment requests is the only way to adequately ensure that all grantors wishing to complete a safe harbor amendment can meet the required deadline.

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<sup>3</sup> CCALT’s template is included as Attachment 3.

## **ATTACHMENT 1**

### Proceeds/Extinguishment

Under the Treasury Regulations, the extinguishment of a conservation easement requires that any proceeds from the extinguishment of a conservation easement must be shared between the donor and CCALT based on the proportionate value the conservation easement bears to the value of the unrestricted property. This ratio is determined by an appraisal at the time the conservation easement is completed. For example, if a conservation easement appraisal determined that the conservation easement reduced the value of a property by 30%, then the land trust would be entitled to 30% of a condemnation award and the landowner would receive the remaining 70%. The land trust is obligated to use its portion of the award to further the conservation purposes of the conservation easement. The IRS considers the failure of the land trust to receive its portion of the award as a failure of the easement's perpetuity requirement.

CCALT has always utilized the appropriate ratio in our conservation easements. However, for a period of time CCALT included language that would reduce the proceeds received by CCALT by: 1) the satisfaction of prior claims; 2) by the value of improvements, like houses, added after the conservation easement was in place; or 3) after expenses of obtaining the condemnation award. These reductions were included by many land trusts in the interest of fairness. There was no case law or other indication that their inclusion was contrary to the regulations. However, in 2018 the IRS successfully challenged the deductibility of a conservation easement containing these provisions. Consequently, and conservation easement grantor who's conservation easement contains language reducing the land trust's share of the proceeds for satisfaction of prior claims, the value of after added improvements, or expenses of obtaining the condemnation award may want to complete a safe harbor amendment.

### Boundary Line Adjustment

Similarly, the IRS has challenged conservation easements that permit boundary line adjustments for failing to uphold the perpetuity requirement. Most CCALT conservation easements have a subparagraph addressing "boundary line adjustments" included in the subdivision paragraph. CCALT's language permits a grantor to request approval to convey a portion of the property to another owner in conjunction with the resolution of a boundary line issue or agricultural reconstitution. Under CCALT's language, the subdivided property remains subject to the conservation easement and no adjustments to what land is subject to the conservation easement are allowed. However, the IRS may not recognize a distinction between the CCALT language, which permits additional subdivision of the property while remaining subject to the conservation easement, and the IRS prohibition on the adjustment of the boundaries of what is conserved. The IRS has commented that rights of subdivision are allowed, but when posed with a question describing CCALT's language declined to answer whether or not the language would

invoke the need to utilize a safe harbor amendment. It's possible that having the term "boundary line adjustment" in the easement will be a trigger for audit. Consequently, easement grantor with the boundary line adjustment provision may wish to complete a safe harbor amendment.

**ATTACHMENT 2**  
**IRS NOTICE 2023-30**

*[IRS NOTICE 2023-30 INCLUDED ON THE FOLLOWING PAGES]*



**ATTACHMENT 3  
CCALT TEMPLATE SAFE HARBOR AMENDMENT**

*[CCALT TEMPLATE SAFE HARBOR AMENDMENT INCLUDED ON THE FOLLOWING  
PAGES]*

July \_\_, 2023

Colorado Cattlemen's Agricultural Land Trust  
8833 Ralston Road  
Arvada, Colorado 80002  
Attn: Erik Glenn

Re:

Dear Mr. Glenn:

In December 2022, the Secure Act 2.0 of 2022, referred to as the Charitable Easement Program Integrity Act, was signed into law, introducing a time-limited provision allowing donors to amend conservation easements by adopting safe harbor language for two common deed terms that the IRS has challenged. The IRS issued Notice 2023-30 on April 2023, starting a 90-day window for grantors to record an amendment to take advantage of the safe harbor. The 90-day window ends on July 24, 2023.

The Colorado Cattlemen's Agricultural Land Trust is undertaking a process to provide landowners the opportunity to amend their conservation easements in accordance with the IRS safe harbor. This applies to easements held by CCALT as well as Yampa Valley Land Trust. For any conservation easement that utilized Routt County Purchase of Development Rights funds, the County must approve any amendment to the easement.

This letter confirms that at a regularly and properly noticed public hearing, the Board of County Commissioners voted to consent to the form Amendment to Deed of Conservation Easement Under IRS Safe-Harbor Notice 2023-30, which addresses the following provisions: 1) proceeds in case of extinguishment; and 2) boundary line adjustments.

Due to the short timeframe in which landowners may act, and the potential impacts to not only the individual landowners but also the PDR program, the Board of County Commissioners reviewed the request for approval of amendments prior to having a final list of all projects that will be amended.

This approval is contingent on the Amendment being executed at closing in substantially the form presented to the Board at its public hearing. If there are any changes to the Amendment

language, this must be approved by the County Attorney. CCALT shall provide the County with a list of all projects that will be executing an amendment by June 30, 2023, and shall provide the County with a copy of the recorded amendments by August 1, 2023.

Sincerely,

Routt County Board of County Commissioners  
Tim Redmond  
Chair

## Part III – Administrative, Procedural, and Miscellaneous

### Conservation Easements -- Safe Harbor Deed Language for Extinguishment and Boundary Line Adjustment Clauses

Notice 2023-30

#### SECTION 1. OVERVIEW

.01 This notice sets forth the safe harbor deed language for extinguishment and boundary line adjustment clauses required by § 605(d)(1) of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (December 29, 2022). This notice also describes the process donors may use to amend an original eligible easement deed to substitute the safe harbor language for the corresponding language in the original deed, as provided by § 605(d)(2) of the SECURE 2.0 Act.

.02 This safe harbor notice addresses only amendments to extinguishment and boundary line adjustment clauses in accordance with § 605(d) of the SECURE 2.0 Act. This safe harbor notice does not address any other deed amendments. Donors are not required to make the amendments described in this notice.

#### SECTION 2. BACKGROUND

.01 Section 170(a) of the Internal Revenue Code (Code) provides, subject to certain limitations and requirements, a deduction for any charitable contribution, as defined in

§ 170(c), payment of which is made within the taxable year.<sup>1</sup> Section 170(f)(3)(A) denies a deduction under § 170 in the case of a contribution of a partial interest in property, except as provided in § 170(f)(3)(B). Section 170(f)(3)(B)(iii) provides an exception to the deduction denial in the case of a qualified conservation contribution as defined in § 170(h).

.02 Under § 170(h)(1), the term qualified conservation contribution means a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. For this purpose, a qualified real property interest is defined in § 170(h)(2)(C) to include a restriction (granted in perpetuity) on the use that may be made of the real property. Under § 1.170A-14(b)(2), a perpetual conservation restriction includes an easement or other interest in real property that under state law has attributes similar to an easement. Section 170(h)(3) defines the term qualified organization (donee organization). Section 170(h)(4) defines the term conservation purpose, which must be protected in perpetuity for the qualified conservation contribution to be treated as exclusively for conservation purposes pursuant to § 170(h)(5).

.03 Section 1.170A-14 provides further guidance on qualified conservation contributions. Section 1.170A-14(g) requires that such a restriction be enforceable in perpetuity. Section 1.170A-14(g)(6)(i) provides a rule pertaining to extinguishment. It provides that if a subsequent unexpected change in the conditions surrounding the property that is the subject of a perpetual conservation restriction makes it impossible or impractical to continue to use the property for conservation purposes, the conservation

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<sup>1</sup> Unless otherwise specified, all “section” and “§” references are to the Internal Revenue Code or the Income Tax Regulations (26 CFR Part 1).

purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of the donee's proceeds (determined under § 1.170A-14(g)(6)(ii)) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

.04 Section 1.170A-14(g)(6)(ii) provides that, for a deduction to be allowed under § 170(a), at the time of the gift, the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at that time. That proportionate value of the donee's property rights must remain constant. Accordingly, under § 1.170A-14(g)(6)(ii), if a change in conditions gives rise to the extinguishment of a perpetual conservation restriction under § 1.170A-14(g)(6)(i), the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

.05 Neither the Code nor the regulations specifically address boundary line adjustments. Under § 170(h)(2)(C), however, the restriction the donor grants on the use of the real property subject to the conservation easement must be made in perpetuity. See also § 170(h)(5)(A).

.06 The SECURE 2.0 Act was signed into law on December 29, 2022. Section 605(d)(1) of the SECURE 2.0 Act directs the Secretary of the Treasury or her delegate (Secretary) to publish safe harbor deed language for extinguishment clauses and boundary line adjustment clauses within 120 days after the date of the enactment of the SECURE 2.0 Act (that 120th day is April 28, 2023). Section 605(d)(2) of the SECURE 2.0 Act provides that, beginning on the date the safe harbor language is published by the Secretary, donors have a 90-day period in which to amend an original eligible easement deed to substitute the safe harbor language for the corresponding language in the original deed. Since this notice is published in the Internal Revenue Bulletin on April 24, 2023, the 90th day is July 22, 2023. Because that date is a Saturday, § 7503 extends the date until Monday, July 24, 2023. The amended deed must be signed by the donor and donee and recorded by July 24, 2023, and the amendment must be treated as effective as of the date of the recording of the original easement deed.

.07 Section 3 of this notice describes the process donors may use to amend an eligible easement deed to substitute the safe harbor language for the corresponding language in the original eligible easement deed, and which easement deeds are eligible to be amended, as provided by § 605(d)(2) of the SECURE 2.0 Act. Section 4 of this notice sets forth safe harbor deed language for extinguishment and boundary line adjustment clauses as required by § 605(d)(1) of the SECURE 2.0 Act.

### SECTION 3. PROCEDURE TO AMEND ELIGIBLE EASEMENT DEEDS

.01 In general. In accordance with § 605(d)(2) of the SECURE 2.0 Act, to amend an original eligible easement deed to substitute the safe harbor language in section 4.01 or 4.02 of this notice for the corresponding language in the original deed—

(1) The amended deed must be signed by the donor and donee and recorded

on or before July 24, 2023; and

(2) The amendment must be treated as effective as of the date of the recording of the original easement deed. See section 3.03 of this notice.

.02 Exceptions. The term eligible easement deed does not include an easement deed relating to any contribution—

(1) Which is part of a reportable transaction (as defined in § 6707A(c)(1)), or is described in Notice 2017-10, 2017-4 I.R.B. 544;

(2) Which, by reason of § 170(h)(7), is not treated as a qualified conservation contribution;

(3) If a deduction under § 170 has been disallowed by the Secretary and the donor is contesting such disallowance in a case that is docketed in a Federal court on a date before the date the amended deed is recorded by the donor; or

(4) If a claimed deduction for such contribution under § 170 resulted in an underpayment to which a penalty under § 6662 or § 6663 applies and either—

(i) The penalty has been finally determined administratively; or

(ii) If the penalty is challenged in court, the judicial proceeding with respect to such penalty has been concluded by a decision or judgment which has become final.

.03 Effect of correction. If a donor substitutes the safe harbor language in sections 4.01 or 4.02 (or sections 4.01 *and* 4.02) of this notice for the corresponding language in the original eligible easement deed and the amended deed is signed by the donor and donee and recorded on or before July 24, 2023, the amended eligible easement deed will be treated as effective for purposes of § 170, § 605(d)(2) of the SECURE 2.0 Act, and section 3.01(2) of this notice as of the date the eligible



easement deed was originally recorded, regardless of whether the amended eligible easement deed is effective retroactively under relevant state law.

#### SECTION 4. SAFE HARBOR DEED LANGUAGE

.01 Extinguishment clause. The safe harbor deed language for extinguishment clauses is:

*Pursuant to Notice 2023-30, Donor and Donee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Donee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Donee in a manner consistent with the conservation purposes of the original contribution.*

*Determination of Proceeds. Donor and Donee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Donee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Donee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Donee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.*

.02 Boundary line adjustments clause. The safe harbor boundary line adjustment clause is:

*Pursuant to Notice 2023-30, Donor and Donee agree that boundary line adjustments to the real property subject to the restrictions may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a*

*boundary line's location.*

.03 Similar terms with the same meaning. In substituting deed language, the donor may use the precise terms used in sections 4.01 and 4.02 of this notice, or the donor may use terms that have the same meaning as the terms in sections 4.01 and 4.02. For example, if the original deed uses the terms "Grantor" and "Grantee" instead of "Donor" and "Donee," the donor can use either "Grantor" and "Grantee" or "Donor" and "Donee" because these terms have the same meaning. Also, for example, if the original deed uses the term "easement" or "servitude" instead of "restriction," the donor may use any of those terms, provided the term refers to a qualified real property interest within the meaning of § 170(h)(2)(C) and § 1.170A-14(b)(2).

#### SECTION 5. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Elizabeth Boone and Hannah Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Boone at (202) 317-5100, or Ms. Kim at (202) 317-7003 (not toll-free numbers).

Recording requested by and return to:  
Colorado Cattlemen's Agricultural Land Trust  
PO Box 16088  
Denver, CO 80216-0088

**AMENDMENT TO DEED OF CONSERVATION EASEMENT  
UNDER IRS SAFE-HARBOR NOTICE 2023-30  
FOR THE \_\_\_ RANCH**

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT FOR THE \_\_\_\_\_ RANCH (this "Amendment") is made this \_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, whose address is \_\_\_\_\_, **([if multiple parties, insert the word "collectively" here]** "Grantor"), and COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST, a Colorado nonprofit corporation having its mailing address at PO Box 16088, Denver, CO 80216-0088 ("Grantee"). The Grantor and Grantee are collectively referred to herein as the "Parties".

RECITALS

- A. Grantor conveyed to Grantee that certain Deed of Conservation Easement for the \_\_\_\_\_ Ranch dated \_\_\_\_\_, and recorded on \_\_\_\_\_, at Reception No. \_\_\_\_\_ in the records of the Clerk and Recorder of \_\_\_\_\_ County, Colorado (the "Conservation Easement"), which encumbered the real property described on Exhibit A attached thereto, which as described contained approximately \_\_\_\_\_ acres of land located in \_\_\_\_\_ County, Colorado legally described on **Exhibit A**, attached hereto and made a part hereof (the "Property").
- B. **(Add reference to any amended and restated deed of conservation easement if necessary and revise the preceding paragraph as necessary:** The Conservation Easement was amended and restated by an Amended and Restated Deed of Conservation Easement that amended, restated, replaced, and superseded the Original Conservation Easement and was recorded on \_\_\_\_\_, at Reception No. \_\_\_\_\_ in the records of the Clerk and Recorder of \_\_\_\_\_ County, Colorado (the "Amended and Restated Conservation Easement"), which Amended and Restated Conservation Easement encumbered an additional approximately ## acres (the 20## Property). The Conservation Easement, as amended and restated by the First Amended and Restated Conservation Easement, is referred to herein as the "Conservation Easement" The 20## Property and the 20## Property are referred to herein collectively as the Property.)
- C. Grantor owns the fee simple interest in the Property **[subject to a Deed of Trust held by \_\_\_\_\_, which has agreed to subordinate its interest in the Property to this Easement as evidenced by the Consent and Subordination attached to this Amendment as Exhibit B.]**

- D. Section 605(d) of the SECURE 2.0 Act of 2022 (the “Secure 2.0 Act”), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (December 29, 2022) directs the Secretary of the Treasury to provide donors with an opportunity to replace extinguishment and boundary line adjustment clauses in eligible easement deeds with certain safe harbor deed language for those clauses.
- E. The Internal Revenue Service (the “IRS”) issued Notice 2023-30 (“Notice 2023-30”) on April 24, 2023, which sets forth the safe harbor deed language for extinguishment and boundary line adjustment clauses and describes the process donors may use to amend an original eligible easement to substitute the safe harbor language for the corresponding language in the original eligible easement deed, as provided by section 605(d)(2) of the Secure 2.0 Act.
- F. The term “Conservation Easement” in this Amendment is a similar term with the same meaning as the term “eligible easement deed” as referenced in the Secure Act 2.0 and Notice 2023-30.
- G. The Parties agree that by including language in the Conservation Easement at the time of conveyance related to boundary line adjustments the Parties’ shared intent was that any such boundary line adjustment would not change the boundaries of the real property subject to the Conservation Easement (the “Property”), which the Parties intended to remain subject to the terms of the Conservation Easement in perpetuity regardless of any permitted change in ownership lines contemplated under Paragraph # of the Conservation Easement.
- H. Grantor and Grantee acknowledge that this Amendment is being executed in accordance with Notice 2023-30 and will in no way diminish or impair the Property’s Conservation Values.
- I. **[Sample reference to funders – adjust as applicable, or delete if no funder(s)]** The Commodity Credit Corporation, through the Agricultural Conservation Easement Program, which is administered by the United States Department of Agriculture Natural Resources Conservation Service (“NRCS”), and the State Board of the Great Outdoors Colorado Trust Fund (the “Board”), provided funding for the purchase of the Conservation Easement. NRCS and the Board have reviewed and approved this Amendment.

NOW, THEREFORE, the Parties hereby ratify and affirm that the Conservation Easement remains as a perpetual conservation easement on the Property, an immediately vested interest in real property defined by Colorado Revised Statutes § 38-30.5-101, *et. Seq.*, of the nature and character described in the Conservation Easement, as amended by this Amendment. The Parties hereby agree to the following.

1. Notwithstanding anything in the Conservation Easement to the contrary, pursuant to Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the real property subject to the restrictions may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location. **[Add only when NRCS approval is required (NOTE: For NRCS amendments, strike Paragraphs 2 and 3 (below)): Any such boundary line adjustment must also be approved by the United States as an amendment to the Easement in accordance with Section \_\_.]**
2. Notwithstanding anything in the Conservation Easement to the contrary, pursuant to Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the Property that is the subject of a donation of the perpetual Conservation Easement renders impossible or impractical the continued use of the Property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution. **[Exclude for NRCS funded easements]**
3. Notwithstanding anything in the Conservation Easement to the contrary, regarding the determination of proceeds, Grantor and Grantee agree that the donation of the perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual Conservation Easement, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the Property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual Conservation Easement, unless state law provides that the Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual Conservation Easement. **[Exclude for NRCS funded easements]**
4. All capitalized terms in this Amendment shall have the meanings assigned to them in the Conservation Easement.
5. In the event of a conflict between the terms of the Conservation Easement and this Amendment, the terms of this Amendment shall prevail.

6. The Parties hereby ratify and confirm the terms of the Conservation Easement. Except as amended by this Amendment, the terms of the Conservation Easement shall remain in full force and effect.
7. Grantee has determined that this Amendment does not confer a private benefit to either Grantor or any other individual greater than the benefit to the general public and does not result in any private inurement.
8. The parties agree that although the Grantee drafted a template for this Amendment, Grantee has not provided any legal, tax, or title advice in relation to this Amendment.
9. This Amendment shall be effective as of \_\_\_\_\_, the date of recording of the Conservation Easement.

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

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGES FOLLOW]*



**ACCEPTED:**

COLORADO CATTLEMEN’S AGRICULTURAL  
LAND TRUST, a Colorado nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

\_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF                    )

The forgoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2023 by \_\_\_\_\_ as \_\_\_\_\_ of Colorado Cattlemen’s  
Agricultural Land Trust, a Colorado nonprofit corporation.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public

**Exhibit A**    Legal Description of the Property



**Exhibit A**  
**Legal Description of the Property**