



CHERRY HILLS VILLAGE COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

City Hall
Telephone 303-789-2541
FAX 303-761-9386

City meetings are now being conducted in-person at City Hall. The meetings will be held in conformance with public health orders and guidelines from the Colorado Department of Public Health and Environment and the Tri-County Health Department. In order to maintain social distancing requirements and ensure the safety of the public, elected officials, and City staff, attendance at City meetings will be limited to 20 members of the public. If attendance exceeds 20 members of the public, the meeting may need to be cancelled and rescheduled to preserve the public nature of the meeting and the health, safety and welfare of all involved.

Quincy Farm Committee Agenda Tuesday, August 18th, 2020 at 8:30 a.m. City Hall 2450 E. Quincy Ave.

To attend in person: All attendees must wear a mask in City Hall. There is no need to sign up to attend; if you'd like to speak during Audience Participation, there will be a sign-up sheet at the podium.

To watch virtually (no participation):

- 1) City website – [City Council Videos, Agendas, Packets, Minutes](#)
- 2) City YouTube channel – [City of Cherry Hills Village YouTube](#)

To participate virtually/speak during Audience Participation: Please email Parks and Recreation Coordinator Emily Black **by 8:00 a.m. on August 18th** at ebblack@cherryhillsvillage.com with your full name, home address, and that you plan to speak during Audience Participation. You will receive an email with the meeting information.

1. Call to Order
2. Roll Call of Members
3. Pledge of Allegiance
4. Audience Participation Period (limit 5 minutes per speaker)
5. Consent Agenda
 - a. Minutes - July 21st, 2020
6. Unfinished Business
7. New Business
 - a. Discussion of Letter of Interest from Anderson Family

Notice: Agenda is subject to change.
If you will need special assistance in order to attend any of the City's public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 72 hours in advance.



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8. Reports

- a. Chair
- b. Committee Members
- c. City Staff
 - i. Website Navigation

9. Adjournment

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ITEM: 5A

MEMORANDUM

TO: MEMBERS OF THE QUINCY FARM COMMITTEE

FROM: EMILY BLACK, PARKS AND RECREATION COORDINATOR

SUBJECT: MINUTES – JULY 21ST, 2020

DATE: AUGUST 18, 2020

DISCUSSION

The minutes from the July 21st, 2020 meeting will be included in the next meeting packet. In the meantime, a full audio recording of the meeting is available on the City's website at <http://www.cherryhillsvillage.com/501/City-Meeting-Videos> for reference and review.

RECOMMENDED MOTION

No motion is necessary for this agenda item; two sets of minutes will be approved at the next Quincy Farm Committee meeting.



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ITEM: 7A

MEMORANDUM

TO: MEMBERS OF THE QUINCY FARM COMMITTEE

FROM: EMILY BLACK, PARKS AND RECREATION COORDINATOR

SUBJECT: DISCUSSION OF LETTER OF INTEREST FROM ANDERSON FAMILY

DATE: AUGUST 18, 2020

ISSUE

Discussing a letter of interest from the Anderson family and next steps for Quincy Farm.

DISCUSSION

Catherine Anderson's family has submitted a letter to the City expressing interest in a potential transfer of Quincy Farm back to the Anderson family (Exhibit A). The conservation easement does allow for the transfer of the Farm, and the easement will continue to run with the land in perpetuity regardless of ownership (Exhibit B). Staff believes the Anderson family's proposal has merit and could present opportunities.

While the City and the Anderson family explore this possibility and perform due diligence, the Master Plan process for the Farm should logically be put on hold. The contract with Design Concepts contains a clause allowing the City to suspend services upon written notice.

STAFF RECOMMENDATION

Staff recommends that the current Master Plan process for the Farm be paused by City Council. Staff also recommends that the Committee recommend to City Council that they fully explore the opportunity to potentially transfer Quincy Farm to the Anderson family.

RECOMMENDED MOTION REGARDING MASTER PLAN

"I move to recommend that City Council suspend the contract for services with Design Concepts for the Quincy Farm Master Plan pursuant to the terms of the existing agreement."

RECOMMENDED MOTION REGARDING LETTER OF INTEREST

“I move to recommend that the City fully explore the opportunity of a potential transfer of Quincy Farm outlined in the letter of interest from the Anderson family.”

ATTACHMENTS

Exhibit A: Quincy Farm Letter of Interest, Aug. 7, 2020

Exhibit B: Conservation Easement

NATALIE ANDERSON

(307) 752-6282 • natalietanderson@gmail.com • Denver, Colorado

August 7, 2020

City of Cherry Hills Village
2450 Quincy Avenue
Cherry Hills Village, CO 80113

Re: Quincy Farm Letter of Interest

To Whom it May Concern:

I am writing on behalf of the family of Catherine Anderson to express our strong interest in exploring a potential transfer of Quincy Farm back to our family. Since the original transfer of the property to Cherry Hills Village, we have continued to follow along with developments at the farm and remain eager to bring Cat's vision to life.

Throughout this process, we have also come to understand the unique challenges of balancing the public's desire to access and use Quincy Farm with the private restrictions imposed by the conservation easement. Despite the best efforts of all involved, these and other obstacles have made it challenging for the community to arrive at a plan for use of the property that meets the needs of all parties and furthers the preservation of the conservation values of the property in perpetuity. We believe that a transfer of the property to private ownership would best accomplish Cat's intent to preserve the property and enable the property to flourish in its highest and best use.

We are grateful to the City for carefully considering what is best for both the farm and the community, and approaching our family about ownership of Quincy Farm. As a result of this transaction, the family or newly formed family foundation would assume the role and obligations of the City of Cherry Hills Village as the owner of the property. Given our family's many years of experience with the property, commitment to upholding the conservation easement and to bring Cat's vision for this property to life, we feel uniquely positioned to serve as stewards of Quincy Farm.

We look forward to working with both the City of Cherry Hills Village and the community to understand how we can enable a successful outcome for all involved and preserve this special property for years to come.


Sincerely,

Natalie Anderson

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AFTER RECORDING RETURN TO:
MS. MELINDA BECK
FAEGRE & BENSON
1700 LINCOLN STREET
3200 WELLS FARGO CENTER
DENVER, CO 80203

Arapahoe County Clerk & Recorder, Nancy A. Doty
Reception #: B7157828
Receipt #: 5373155
Pages Recorded: 28
Date Recorded: 12/18/2007 12:39:42 PM
Recording Fee: \$141.00



DEED OF CONSERVATION EASEMENT
[CATHERINE H. ANDERSON PROPERTY]

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a transfer fee of $\frac{1}{4}$ of 1% of the sale price to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 14th day of December, 2007, by CATHERINE H. ANDERSON, whose address is 4400 East Quincy Ave., Englewood, CO 80113 ("Grantor"), to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is Suite 320, 274 Union Boulevard, Lakewood, Colorado 80228, collectively the "Parties".

RECITALS:

A. **Description of Property.** Grantor is the owner of the fee simple interest in the subject Property legally described in Exhibit A and depicted in Exhibit B, both attached hereto and made a part of this Deed, which consists of approximately 17.555 acres of land, together with existing improvements (as further described in Section 4(A)), water and mineral rights, located in Arapahoe County, State of Colorado (the "Property").

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

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

Recreation or Education [§ 1.170A-14(d)(2)]. The Highline Canal, with its public trail, traverses the Property. The Highline Canal, which was built between 1879 and 1883, extends for more than 66 miles from Waterton Canyon on the South Platte River, through Arapahoe, Denver and Adams Counties. Starting in 1970 the maintenance road along the Canal was opened to public use. A portion of the trail passes through this Property and is utilized by hundreds of people every week for walking, jogging, hiking, bicycle riding, and horseback riding and is available for the substantial and regular use of the public. Significant natural areas, wetland areas and a pond exist on the Property adjacent to the trail, providing a natural area recreation corridor for public use. Public use of the Highline Canal (the "Canal Area") is permitted subject to rules and regulations established by the City and County of Denver, Colorado, acting by and through its Board of Water Commissioners ("Denver Water"), or its licensees, as described in the Easement Agreement recorded on October 20, 1993 in Book

7198 at Page 466, in the records of the Arapahoe County, Colorado Clerk and Recorder (the "Denver Water Easement").

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains wetlands, riparian areas, a pond, and natural areas that provide food, shelter, breeding ground, and migration corridors for several wildlife species. The Property serves as natural habitat for several bird species, including waterfowl, shorebirds, hawks and neo-tropical migrants. The habitat on the Property is also "significant" as required by the Treasury Regulations, as it represents wildlife habitat in an urban area, and is the first verified and documented breeding site in Colorado for the Hooded Merganser.

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit.

Scenic enjoyment. The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. The Property is visually accessible to the general public from the public Highline Canal Trail which traverses the Property and from Quincy Avenue, which adjoins the Property. There are scenic vistas of the Front Range of the Rocky Mountains from the Property.

Significant public benefit. The Highline Canal Trail through the Property is utilized by thousands of people every year. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic and recreational values.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

Historic [§ 1.170A-14(d)(5)(ii)]. The Property qualifies as an historically important land area because it is an independently significant land area and is listed in the National Register of Historic Places by the United States Department of the Interior.

These Conservation Values are of great importance to Grantor, Grantee, the residents of Arapahoe County, residents of the greater metropolitan Denver area, and residents of the State of Colorado.

D. **State Policy Concerning Conservation Easements.** C.R.S. §§33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. §§38-30.5-102, provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land . . .".

E. Other Supporting Government Policy.

- City of Cherry Hills Village Resolution No. 13, Series of 2006 supporting Open Space, which recognizes the need to preserve the Highline Canal Corridor and other areas that are:
 - Lands which maintain urban open space, natural areas, water quality, urban wildlife habitat and movement corridors, views, trail corridors, floodplains and wetlands;
 - Lands which serve to maintain community identity; and
 - Lands for passive and active recreational needs including, but not limited to, walking, cycling, horseback riding, cross country skiing, photography and nature studies
- The Arapahoe County Comprehensive Plan which provides in part that the intent of Arapahoe County is to use "open space as a means to help...maintain rural character, conserve wildlife habitat...and provide opportunities for...wildlife observation."
- The Arapahoe County Comprehensive Plan Goals NCR 1, provides in part that it is the goal of Arapahoe County to "conserve its natural areas and resources that provide habitat and maintain environmental quality."

F. Documentation of Present Conditions. The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property as of the date of this Deed are further documented in a "**Present Conditions Report**," dated August, 2007 and prepared by LREP, Inc., which report is acknowledged as accurate by Grantor and Grantee. The Present Conditions Report has been provided to both Parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

G. Charitable Donation. Grantor intends to create a conservation easement under C.R.S. §§38-30.5-101 *et seq.*, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee.

H. Gift to Cherry Hills Village. In order to further assure preservation of the Conservation Values of the Property, after granting this Easement Catherine H. Anderson the Grantor intends to donate the Property to the City of Cherry Hills Village. The Property will be donated subject to reservation of a life estate for the benefit of the Grantor (the "**Life Estate**") which will allow Grantor to continue to live on the Property, subject to the terms of this Easement. This Easement has been granted subject to the terms of two existing leases (the "**Leases**"): the lease to Jeri Neff for the Hopkins House located on the West Area (the "**Hopkins House Lease**"), and the lease to Cynthia Norton Gray for the house on the East Area (the "**East Area House Lease**"). The Parties acknowledge that during the Life Estate, Catherine H. Anderson, as life tenant, is

responsible for complying with the terms and conditions of this Deed that are applicable to the Grantor; after termination of the Life Estate, the City of Cherry Hills Village, as remainderman, shall be responsible for complying with the terms and conditions of this Deed that are applicable to the Grantor.

ACKNOWLEDGEMENT OF INTENT:

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

1. **Purpose.** The purpose (the “**Purpose**”) of this Easement (defined below) is to preserve and protect in perpetuity the Conservation Values of the Property. This Purpose is in accordance with §170(h) of the Internal Revenue Code. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever.

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

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

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and of the nature and character described in this Deed, for the purpose of preserving and protecting the Conservation Values of the Property in perpetuity (“**Easement**”).

2. **Rights of Grantee.** To accomplish the Purpose of this Easement the following rights are hereby conveyed to Grantee:

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

B. To enter upon the Property at reasonable times in order to monitor Grantor’s compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, such entry shall be upon at least 48 hours prior notice to Grantor, and Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property;

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

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

3. ***Rights Retained by Catherine H. Anderson.*** Catherine H. Anderson retains the right to occupy the Property pursuant to the terms of the Life Estate, to comply with the terms of the Leases, and to perform any act not specifically prohibited or restricted by this Easement. These ownership rights include, but are not limited to, the retention of the economic viability of the Property, provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values. During the Life Estate Catherine H. Anderson, as life tenant, shall be the Grantor hereunder, and shall have all of the rights and responsibilities of the Grantor hereunder.

4. ***Structures, Areas.*** For the purposes of this Easement the Parties have identified three areas (the “**Areas**”) on the Property as depicted on the attached **Exhibit B**. The Areas are: (1) the “**West Area**” which lies west of the Highline Canal; (2) the “**East Area**” which lies east of the Highline Canal, and (3) the “**Canal Area**” which encompasses the Highline Canal. The structures and improvements which exist on the Areas at the time of granting of this Easement are described as “**Existing Improvements**”. The Parties agree that the current and permitted uses of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted, and also agree that the Grantor may charge fees for use of the Property. Without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:

A. ***West Area - Structures and Uses.*** The West Area may be used for Preservation Uses as described in Paragraph 5(A), below, subject to the limitations described in Paragraph 4(A)(4), below, and for Agricultural Uses that are described in Paragraph 5(C), below. The existing and permitted structures within the West Area and their permitted uses are described as follows:

(1) ***Hopkins House.*** At the time of granting of this Deed on the West Area there is a single family residence (the “**Hopkins House**”) of approximately 1400 square feet, which has been leased for caretaker residence use pursuant to the Hopkins House Lease. Without the express written permission of the Grantee, no demolition, construction, alteration, or remodeling or any other thing shall be undertaken or permitted to be undertaken on the Property which would affect either the present facade or increase or decrease the height of the Hopkins House, including without limitation anything which would alter the external appearance of the Hopkins House, as depicted in the Present Conditions Report. The reconstruction, repair, or refinishing of the present facade, damage to which has resulted from casualty loss, deterioration, or wear and tear, and including damage

from natural causes (aka "Acts of God") shall be permitted provided that such reconstruction, repair, or refinishing is performed according to The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, issued and as may from time to time be amended by the U.S. Secretary of Interior, or similar standards acceptable to Grantee (hereinafter, collectively the "**Standards**"), subject to the prior written approval of Grantee, and in a manner which maintains or recreates, as the case may be, a substantially similar appearance of the present façade. The Hopkins House may be used for a caretaker residence for a caretaker of the Property or for one or more of the Preservation Uses, described in Paragraph 5(A), below.

(2) **Main Residence and Detached Garage.** At the time of granting of this Deed on the West Area there is a single family residence of approximately 3600 square feet (the "**Main Residence**"), and a detached garage of approximately 700 square feet.

(a) During the Life Estate Catherine H. Anderson or a caretaker may occupy the Main Residence for residential purposes, and may maintain, repair and replace the Main Residence and the detached garage (but shall not enlarge those structures), at their current locations without further permission of the Grantee. If the Main Residence or detached garage are replaced, any replacement structures shall be in the same architectural style as the existing structures to the extent reasonably possible.

(b) After termination of the Life Estate the Main Residence may be used only as a caretaker's residence for a caretaker of the Property or as a nature center/interpretive facility. The Main Residence and the detached garage may be maintained, repaired and replaced (but not enlarged), at their current location, without further permission of the Grantee. Alternatively, if the Main Residence and detached garage are demolished or removed and no new structures are constructed in their place, then the area shall be re-graded to a natural contour, replanted and thereafter maintained in native or other non-invasive vegetation.

(3) **Pond.** At the time of granting of this Deed there exists a Pond, a pump house and a well near the south end of the West Area. Grantor may maintain, repair, replace or remove the pump house without further permission of Grantee. If Grantor determines that it is too expensive to maintain and fill the pond, upon notice to but without further permission of Grantee the pond may be drained, provided that the area shall be re-graded to a natural contour, by filling in the existing area without materially affecting the existing contour and slopes, and replanted and thereafter maintained in native or other non-invasive vegetation. In addition, the regrading and re-contouring must be accomplished in a manner that does not alter the existing natural drainage flow across the Property.

(4) ***Limitations on Preservation Use.*** The Property shall be managed in accordance with a “**Management Plan**”, which shall be prepared by Cherry Hills Village, and approved by Grantee, within one (1) year after termination of the Life Estate. The West Area shall be managed primarily as a natural area with limited public access. The East Area shall be managed for Preservation Uses, Recreational Uses and Agricultural Uses described herein.

B. ***East Area – Structures and Uses.*** The East Area may be used for Preservation Uses, Recreation Uses and Agricultural Uses that are described in Paragraph 5(A), 5(B) and 5(C), below. At the time of granting of this Deed on the East Area there is a single family residence of approximately 1182 square feet (“East Area House”), a 1495 square foot barn (“Big Barn”), a 1207 square foot barn (“Horse Barn”), a 465 square foot wood frame barn (the “Small Barn”), and a 73 square foot chicken coop (“Chicken Coop”). The total square footage of the existing East Area structures is approximately 4421 square feet; for purposes of this Easement the “Maximum East Area Square Footage” shall be 4500 square feet. Grantor may maintain, repair, replace, relocate or reconstruct the existing East Area structures anywhere within East Area, or construct replacement structure(s) within the East Area, provided that no indoor riding arenas shall be permitted and at no time shall the total square footage of structures exceed the Maximum East Area Square Footage. Notwithstanding the foregoing, Grantor may not demolish the Big Barn unless it is destroyed by casualty or deteriorated by the passage of time to the degree that it is rendered unsafe for use. The East Area House may only be occupied for residential purposes by a caretaker of the Property. In addition, the structures within the East Area may be used for the Preservation Uses, Recreational Uses or Agricultural Uses described herein.

C. ***Canal Area – Structures and Uses.*** At the time of granting of this Deed on the Canal Area there is a bridge connecting the East Area to the West Area of the Property (“**Bridge**”). Grantor may maintain, repair and replace the bridge on the Canal Area upon notice to but without further permission of the Grantee. Grantor may also maintain the pathway on the Canal Area. The Canal Area may be used for the Preservation, Recreational and Agricultural Uses described below, and any uses which are permitted or required under the Denver Water Easement, described above, subject to the other limitations contained herein.

D. ***Notification of Replacement or Enlargement.*** If any improvements are replaced or enlarged in a manner not requiring Grantee’s approval, Grantor shall notify Grantee of the replacement or enlargement so that its records may be updated.

E. ***Definition of Floor Area.*** For purposes of Section 4, floor area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

F. ***Other Improvements.***

(1). **Road Construction and Paving.** Grantor may maintain the existing pavement or otherwise resurface those roads, driveways or parking areas in the West Area that are already paved as of the date of this Deed. Grantor shall not pave or otherwise place any impermeable surface on any roads, driveways or parking areas that are unpaved as of the date of this Deed without Grantee's prior written approval. In addition, the Grantor may maintain the Bridge and the road and trail along the Highline Canal and around the pond in the Pond Area, and may relocate the driveway in the East Area. The location of the roads, trails and Bridge are generally depicted on the attached Exhibit B. No such roads or driveways shall be wider than necessary to provide access or to meet local codes for width of access to improvements.

(2). **Fences.** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife not inconsistent with the preservation and protection of the Conservation Values without any further permission of Grantee. No white fences are permitted on the Property; all fencing shall be constructed of natural materials, such as split rail and wooden posts, and shall be unpainted.

(3). **Utilities.** Existing utilities may be repaired and replaced in the same location with a similar structure without any further permission of Grantee. Grantor may install new underground utility lines to serve the uses permitted on the Property without restriction.

(4). **Billboards and Signs.** Grantor may place identification and informational signs on the Property. Grantor shall not construct, maintain, or erect any signs or billboards on the Property that are inconsistent with the preservation and protection of the Conservation Values.

(5). **Recreational and Educational Improvements.** Grantor may construct small recreational and educational improvements on the Property that are not inconsistent with the preservation and protection of the Conservation Values only with the prior written approval of Grantee.

(6). **Other Improvements.** The construction or reconstruction of any other improvement on the Property is prohibited unless Grantee determines in its sole discretion that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values.

5. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and

Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. ***Preservation Uses.*** The Parties intend that the Property remain in its substantially open condition with trees, grassed areas, gardens and the pond, and that only the permitted structures described herein shall be constructed or maintained on the Property. The Property, and the structures permitted thereon, may be used as a nature preserve, for historic preservation and interpretation, for gardens, for private and public meetings, gatherings and celebrations, for classes and education, for photography, painting and other artistic endeavors, and such other uses as help to preserve the Property and instill an appreciation and respect for the natural and human history of the vicinity (collectively the “**Preservation Uses**”).

B. ***Recreation Uses.*** Low-impact recreational uses such as bird watching, hiking, horseback riding and cross-country skiing are permitted on the Property; bicycling is permitted only on the Canal Area of the Property. Public Use of the Canal Area is permitted subject to the terms of the Denver Water Easement. These uses are referred to as the “**Recreational Uses**”.

C. ***Agricultural Uses.*** The Property may be used for agricultural purposes, subject to the limitations in this Easement. All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. The construction and maintenance of agricultural ditches, stock ponds or other agricultural water features is permitted. Maintenance of the Highline Canal in accordance with the Denver Water Easement is permitted. Maintenance of the pond is permitted. These uses are referred to as the “**Agricultural Uses.**”

D. ***Trees, Shrubs, Bushes.*** Trees, shrubs and bushes on the Property (except the Canal Area) may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Tree thinning activities on the Property (except the Canal Area) may take place to maintain the character and nature of the habitat. Trees, shrubs, bushes and other growth within the Canal Area may only be removed in accordance with the terms of the Denver Water Easement, described above.

E. ***Minerals and Other Deposits.*** The exploration, development, mining or other extraction of minerals of any kind or description, including oil, coal gas, hydrocarbons, coal, peat, sand, gravel, rock or soil, is prohibited.

F. ***Water Rights.***

(1). ***Owned Water Rights.*** Grantor owns the non-tributary and not

non-tributary water rights appurtenant to the Property (“**Owned Water Rights**”). The Owned Water Rights are currently accessed through a well (Permit No. 8283) and are used to irrigate the Property and for water storage in the pond described in Section 4.A(3). Grantor agrees not to approve, consent to, or undertake any action that would result in the transfer, encumbrance, sale, lease, abandonment, change of current use, or other separation of the Owned Water Rights from the Property, except as otherwise provided in Section 4.A(3), and unless otherwise approved by Grantee.

(2). ***Leased Water Rights.*** Grantor is the shareholder of an entity that is the lessee of certain leases entered into with the Denver Water Board, and Grantor is permitted to use those water rights described in the attached **Exhibit C-1** and made a part of this Deed (collectively, the “**Leased Water Rights**”). The Leased Water Rights are beneficially used on the Property as set forth in C.R.S. Section 38-30.5-102. Grantor shall have the right to improve, maintain, repair, relocate and reconstruct facilities related to the Leased Water Rights (such as ditches, wells and reservoirs). If Grantor transfers the Property to a successor or assign, Grantor shall use Grantor’s best efforts to cause the assignment of the Leased Water Rights to the new owner of the Property, however, Grantor does not represent or warrant that the Denver Water Board will approve, accept or honor any such assignment of the Leased Water Rights. The Leased Water Rights are currently used to irrigate the Property. Grantor agrees not to approve, consent to, or undertake any action that would result in the transfer, encumbrance, sale, lease, abandonment, change of current use or other separation of the Leased Water Rights from the Property, unless otherwise approved by Grantee. Notwithstanding any of the foregoing to the contrary, Grantor shall not be required in any one (1) year to use the Leased Water Rights to irrigate any portion of the Property. If Grantor wishes not to irrigate for a period of more than one (1) year, Grantor shall obtain Grantee’s approval, to be granted if Grantee determines that failure to irrigate is not inconsistent with the preservation and protection of the Conservation Values. If at any time the Denver Water Board does not approve the assignment of all or a part of the Leased Water Rights to a successor Grantor, the provisions of this Section 5.F(2) shall no longer apply to such portion of the Leased Water Rights for which the Denver Water Board has not approved an assignment, unless and until the successor Grantor or its successors and assigns subsequently obtain a right to all or such portion of the Leased Water Rights through a valid assignment approved by the Denver Water Board, which right neither the successor Grantor nor its successors and assigns shall have the obligation to obtain.

(3). ***Excluded Water Rights.*** Grantor is also the lessee of certain additional water rights owned by the Denver Water Board and more specifically described in the Lease attached hereto as **Exhibit C-2** as the “**Excluded Water Rights**.” The Excluded Water Rights shall be expressly excluded from and shall not in any way be subject to or encumbered by this Deed.

G. **Habitat Improvements.** Habitat improvement and maintenance activities may be permitted upon Grantee's approval and determination that said improvements and activities are not inconsistent with the preservation and protection of the Conservation Values. Notwithstanding the foregoing, Grantor may replant native grasses anywhere on the Property that currently consists of non-native grasses without Grantee's approval.

6. **Restricted Practices.**

A. **Subdivision.** Grantor and Grantee agree that the division, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times the Property shall be owned and conveyed as a single parcel which shall be subject to the terms and conditions of this Easement.

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

C. **Existing Water Features.** Except as permitted within this Deed, alteration, impairment, modification or adverse change in or to existing ponds, wetlands or stream channels that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

D. **Commercial or Industrial Activity.** Industrial uses are prohibited. Commercial uses inconsistent with the preservation and protection of the Conservation Values of this Deed are prohibited. However, fees may be charged for the activities and uses that are permitted herein. No fee shall be charged for use of the Highline Canal, except to the extent such fee is permitted or required under the Denver Water Easement.

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

F. **Public Access.** Public access is permitted on the Highline Canal trail on the Canal Area, subject to rules and regulations established in the Denver Water Easement. Nothing contained herein shall be construed as affording the public access to the remainder 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 not inconsistent with the preservation and protection of the Conservation Values of the Property.

G. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals (organic agri-chemicals to the extent reasonably possible) on the Property in accordance with all applicable federal, state or local laws and manufacturer's specifications. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition does not impose any liability on Grantee for hazardous materials, nor does it make Grantee an owner of the Property, nor does it permit or require Grantee to control any use of the Property that may result in the treatment, storage, disposal or release of hazardous materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible. Grantor shall utilize natural and organic weed control methods to the extent reasonably possible.

J. **Other Restricted Uses.** Golf courses, sod farms, helicopter pads, airstrips and ball fields are prohibited.

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

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

B. ***Liability.*** To the extent allowed by law, if allowed at all, Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, except to the extent due to the acts or omissions of the Indemnified Parties; (ii) the obligations under this Section 7 or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to the injury to or death of any person, or damage to property, occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

8. ***Enforcement.*** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice but shall provide notice to Grantor as soon as possible. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both Parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the Parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. The Parties will share equally in the mediation fees. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

9. ***Transfer of Easement.*** Grantee shall have the right to transfer this Easement to the Cherry Hills Land Preserve, Inc., a Colorado non-profit corporation, with the permission of

Grantor which permission shall not be unreasonably withheld. In addition, Grantee shall have the right to transfer this Easement subject to Grantor's approval not to be unreasonably withheld, to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, only if Grantee requires and the agency or the organization expressly agrees as a condition to the transfer, that the conservation purposes set forth in the Recitals to this Easement continue to be carried out and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. ***Transfer of Property.*** Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of 1/4 of 1% of the purchase price to Grantee to be used for the purpose of the defense of conservation easements or for other purposes consistent with Grantee's mission. Grantor shall notify Grantee in writing within (5) business days after closing using the form in Exhibit D attached hereto. The document of conveyance shall expressly refer to this Deed of Conservation Easement. Said transfer fee shall be waived if the Property is transferred to The Conservation Fund, the City of Cherry Hills Village or Grantor's immediate family members, heirs or beneficiaries.

11. ***Real Property Interest.*** The granting of this Deed immediately vests Grantee with a property interest. Grantor and Grantee also agree that this Easement shall have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this Easement attributable to improvements) by the ratio of the value of the Easement at the time of this Easement to the value of the Property, without deduction for the value of the Easement, at the time of this Easement. Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant.

12. ***Termination of Easement.*** This Easement may only be terminated or extinguished by judicial proceedings by a court of competent jurisdiction. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property, unless otherwise provided by Colorado law. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

13. ***Perpetual Duration.*** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the

Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

14. ***Change of Circumstance.*** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 12. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 12.

15. ***Notices.*** As specified herein, any notices required by this Deed shall be sent as appropriate to the following Parties or their successors in writing. All Parties shall be notified of any change of address. During the Life Estate of Catherine H. Anderson any notices required hereunder shall also be given to the City of Cherry Hills Village, so that it may protect its remainder interest as successor Grantor hereunder.

Grantor (Life Tenant):

Catherine H. Anderson
4400 East Quincy Ave.
Englewood, CO 80113
(303) 771-4113

Successor Grantor (Remainderman):

City of Cherry Hills Village
2450 E. Quincy Ave.
Cherry Hills Village, CO 80113
Attention: City Manager

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

16. ***Liens on the Property.***

A. ***Current Liens.*** There are no mortgages or deeds of trust encumbering the Property at the time of granting of this Easement.

B. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Easement.

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

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

A. Except as provided in Section 16, Grantor warrants that Grantor has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except *ad valorem* property taxes for the current year, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, without investigation and to the best of her knowledge:

(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property, except for septic tanks located on the Property;

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

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

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

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

20. ***General Provisions:***

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

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

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

D. **Controlling Law and Interpretation.** This Easement shall be performed and broadly interpreted under the laws of State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

E. **Counterparts.** The Parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** This Easement may be amended only with the written consent of the Grantor and the Grantee. No amendment shall be allowed that will confer a private benefit to the Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values of the Property and shall not affect the perpetual duration of the Easement. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any amendment must be in writing, signed by both Parties, and recorded in the official records of Arapahoe County, Colorado.

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

21. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the Parties agree that such rights are terminated and extinguished.

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

23. **No Third Party Beneficiary.** This Deed is entered into by and between Grantor and Grantee, and has been consented to by the City of Cherry Hills Village, and is solely for the

benefit of Grantor, Grantee, the City of Cherry Hills Village as successor Grantor, and their respective successors in interest and assigns, and does not create rights or responsibilities in any third parties.

24. *Grantee Acknowledgement of Donation.* Grantee acknowledges receipt and acceptance of this Easement encumbering the Property described herein, for which no goods or services were provided.

25. *Annual Appropriations.* In the event the Property is conveyed to the City of Cherry Hills Village or any other public entity, and in the event that obligations under the Conservation Easement are deemed to be multi-fiscal year obligations, the financial obligations of Grantor shall extend only to monies duly and lawfully appropriated and budgeted by Grantor and encumbered for the purpose of this Conservation Easement, pursuant to C.R.S. Sec. 29-1-101, et seq., as amended.

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

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

GRANTOR:

Catherine H. Anderson

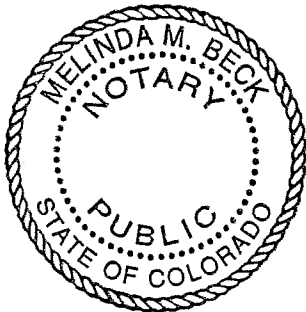
Catherine H Anderson

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 14th day of December, 2007, by Catherine H. Anderson, as Grantor.

Witness my hand and official seal.

My commission expires: _____



My Commission Expires 08/25/2008

Melinda M Beck
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By *Daniel E. Pike*
Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 13th day of December, 2007, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 11-21-2008

Cecelia Thomas
Notary Public

