

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT for a perpetual conservation easement in gross is made this 30th day of August, 1999, by PARK EAST DEVELOPMENT COMPANY, LLC, a Colorado limited liability company having an address at P.O. Box 620, Basalt, Colorado 81621, its successors and assigns ("Grantor"), in favor of the ROARING FORK CONSERVANCY, a Colorado non-profit corporation qualified to do business in Colorado, having an address at P.O. Box 323, Basalt, Colorado 81621 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property located on the Roaring Fork River in the City of Glenwood Springs, Garfield County, Colorado, known as the Park East Subdivision (hereinafter "Subdivision"); and

WHEREAS, the Subdivision includes certain property located within the City of Glenwood Springs Hillside Preservation District (hereinafter the "Property"), which Property is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property possesses natural, ecological, riparian, wetlands habitat, wildlife habitat, scenic and other open space values, as defined in C.R.S. § 38-30.5-101 et seq., of great importance to Grantor, the Subdivision as a whole, the people of Glenwood Springs and Garfield County, and the people of the State of Colorado (collectively hereinafter referred to as "Conservation Values");

WHEREAS, the Roaring Fork River is an important part of the local ecosystem and as such provides important habitat for a wide variety of birds, fish, and both marine and terrestrial mammals and plants located on the Property, the preservation and protection of which is considered a prime Conservation Value by the parties; and

WHEREAS, there is a reasonable possibility that Grantee may acquire other valuable property rights in other nearby properties to expand the Conservation Values preserved by this Conservation Easement; and

WHEREAS, the biological integrity of the Property and other land in the vicinity has been modified by intense urbanization in the area, and the trend is expected to continue; and

WHEREAS, Grantor and Grantee desire to preserve and conserve the Conservation Values of the Property for the public benefit; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 19, 1999, on file at the offices of Grantor and Grantee (hereinafter "Baseline Documentation"), which Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties have mutually agreed provide, collectively, an accurate representation of the Property at the time of this grant and which is intended



RETURN TO:
CHAFFIN/LIGHT ASSOCIATES, INC.
P.O. BOX 620
BASALT, CO 81621

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to serve as an objective information baseline for monitoring subsequent compliance with the terms of this grant; and

WHEREAS, accordingly, Grantor desires to convey to Grantee the right to preserve and protect the Property and the Conservation Values associated thereto in perpetuity, and to bind itself, as well as any and all future successors or assigns of Grantor, by the obligations set forth herein; and

WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, and enhancement of the natural riparian corridors of the Roaring Fork and Frying Pan Rivers and the unique scenic, natural and historic features thereof; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, the State of Colorado has recognized the importance of private efforts to preserve natural ecosystems of the State by enactment of C.R.S. § 38-30.5-101, et seq.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Pursuant to the laws of Colorado and in particular, C.R.S. § 38-30.5-101, et seq., Grantor hereby voluntarily grants, assigns, sells and conveys to the Grantee and its successors and assigns in perpetuity a conservation easement in gross (hereinafter "Easement"), of the nature and to the extent hereinafter set forth, on, over, across and in respect to the Property, which Easement is more specifically illustrated on the Subdivision Final Plat Map, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

2. **Purpose.** The purpose of this grant is to assure that the Conservation Values of the Property, subject to the existing uses of the Property described herein, are retained forever and to prevent any use of the Property that will significantly impair or interfere with such Conservation Values. Grantor intends that the Easement will confine the use of the Property to activities that are consistent with the purposes set forth herein, and pursuant to the terms of C.R.S. § 38-30.5-101, et seq., the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein.

3. **Rights of Grantee.** To accomplish the purposes set forth herein for the Easement, the following rights are hereby conveyed to Grantee by Grantor, with such rights to be exercised subject to Grantee's reasonable judgment:

- (a) To identify, preserve and protect in perpetuity the Conservation Values of the Property, and in the event of their degradation or destruction, to restore the significant ecological features and values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's and the public's compliance with this Easement and otherwise enforce the terms of this grant of Easement;
- (c) To enhance the Conservation Values along the Roaring Fork River by conducting grading, planting, irrigation, and other activities as may be necessary to restore and enhance the edge of the river and the surrounding habitat located on the Property at the discretion of Grantee;
- (d) To enter the Property for educational and scientific purposes, and for any other purpose deemed necessary by the Grantee;
- (e) To encourage the public's enjoyment of the Conservation Values associated with the Property;
- (f) To enforce against and prevent any activity on or use of the Property that is inconsistent with the purpose of this grant of Easement, including use of the Property by the public which is not specifically allowed or recognized herein, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and
- (g) To place signs or other informational postings on the Property which identify the land as being protected by the conservation easement granted herein;
- (h) To require restoration of the areas or features of the Property which are damaged by activity inconsistent with this Conservation Easement;
- (g) To immediately enter upon the Property without notice if such entry is necessary to prevent damage to or the destruction or degradation of the Conservation Values identified in this Easement; and
- (h) To perform such activities on the Property as the Grantee deems reasonably necessary in order to carry out any and all rights granted by this Easement.

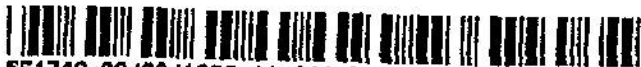
4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this grant of Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, unless specifically allowed elsewhere in this Agreement;

- (a) Subdivision of any nature;
- (b) Any residential, commercial or industrial development or use;
- (c) Any recreational activities incompatible with the purpose of the Easement, at the discretion of Grantee;
- (d) Any vehicular (car, truck, motorcycle, snowmobile, etc.) use, except as may be necessary to preserve, enhance or protect the Easement at the discretion of Grantee;
- (e) Parking, storage, or dumping of any kind;
- (f) Coverage of land by asphalt, concrete, or other material that does not constitute a natural cover for the land, except in connection with those trails and buildings specifically allowed hereunder;

- (g) Location of any buildings, structures, roads, trails or other improvements, except as otherwise specifically allowed hereunder or at the discretion of Grantee;
- (h) Alteration of the land surface through grading, soil dumping or trenching, except as may be necessary for activities related to the purpose of this grant of Easement such as irrigation improvements, utility repair subject to remediation, habitat restoration/preservation, approved trail and structure construction, etc.;
- (i) Exploration or mining for any mineral, coal or other hydrocarbons, or other materials or substances, or excavation or quarrying for gravel, soil, rock, sand or similar materials;
- (k) Placement of any advertising signs or billboards;
- (l) Cutting or removal of trees, shrubs, or other vegetation, except as necessary for fire protection, elimination of diseased growth, and similar protective measures related to habitat preservation/enhancement at the discretion of Grantee;
- (m) Introduction of nonnative plants and animal species within riparian area that may compete with and result in the decline or elimination of natural species. Any new plantings shall be confined to native plants characteristic of the riparian region;
- (n) No livestock shall be brought upon the Property, and the parties shall cooperate to remove any livestock which enters onto the Easement;
- (o) Any use that would cause, increase or substantially add to the risk of soil erosion;
- (p) Use of any chemical agents such as weed control agents or other herbicides or pesticides not approved by state law or otherwise approved by Grantee;
- (q) Public use of and access upon the Property, except as otherwise authorized herein or upon the discretion of Grantee; and
- (r) Dumping or other disposal of toxic and/or hazardous materials or of other forms of refuse or trash.

5. **Reserved Rights.** Grantor reserves unto itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this grant of Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- (a) The right to restore damage to the Property or Easement that may be caused by fire, flood, storm, earth movements, or acts beyond the Grantor's control;
- (b) The right to maintain, or direct or allow applicable governmental entities to maintain, all existing public trails and structures, if any, lawfully erected and maintained upon the Property as set forth herein;
- (c) All water rights within the Easement. Water rights reserved include but are not limited to riparian, groundwater, and appropriated water rights;
- (d) The right to mutually, with Grantee, enforce against and prevent any prohibited action set forth herein on the Property by any entity and to erect appropriate signage and fencing indicating the presence of the Easement and the boundaries thereof; and



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(e) Rights of access on, over and upon the Property in a manner consistent with the maintenance and preservation of the Easement and the Conservation Values set forth therein.

5.1 Park East Subdivision Documents. Grantor agrees to incorporate within any and all Subdivision homeowner covenants, rules and regulations, provisions which inform all Subdivision property owners of, and bind all such owners by, this Easement and which restrict all Subdivision property owners' access upon the Property and establish a mechanism by which any future Subdivision homeowner's association may lien any homeowner for violating the terms of the Easement. Such Subdivision covenants and/or rules shall also mandate that no amendment of any provision contained therein addressing this Easement may be amended without the prior written approval of Grantee. Any deed executed by Grantor in connection with the sale of Subdivision lots shall specifically make such conveyances subject to this Easement and bind such lot owners by any and all terms and provisions set forth herein.

5.2 City of Glenwood Springs Trail and Park. Grantee acknowledges that Grantor shall dedicate to the City of Glenwood Springs, Colorado on the Subdivision Final Plat a trail easement which shall be made part of the City of Glenwood Springs Master Trail Plan, which trail easement shall be adjacent to, and constitutes the westerly boundary of, the Property, as illustrated and labeled on Exhibit B attached hereto. Grantee further acknowledges that Grantor shall dedicate a park area to the City, which park area shall also be located on the westerly boundary of the Property. While Grantee acknowledges that there will be heavy public use of said trail easement and park by members of the public, Grantee does not waive any right of enforcement against any member of the public who enters upon the Property from such trail easement or park or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its discretion, may post signage along said City trail informing the public of the existence of the Easement and that access onto the Property is prohibited.

5.3 Fisherman's Easement. Grantee acknowledges that a fisherman's easement shall exist upon the Property, which easement is located approximately ten feet (10') above the Roaring Fork River high water line, as illustrated and labeled on Exhibit B attached hereto. Such fisherman's easement shall be dedicated by Grantor to the City of Glenwood Springs on the Final Plat. Grantee acknowledges the public's right to utilize said fisherman's easement but does not waive any right of enforcement against any member of the public utilizing the easement who enters upon the Property from such easement or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its sole discretion, may post said fisherman's easement with signage informing the public of the existence of the

Easement and that access onto the Property from the fisherman's easement is prohibited.

5.4 Existing Trails. Grantee acknowledges that two (2) existing trail easements shall exist upon the Property, which trails connect to the City of Glenwood Springs trail located on the westerly boundary of the Property and pass easterly through the Property to the Roaring Fork River. Said trails are commonly known as the "Wagon Trail" and the "Naturalist Trail" and are illustrated and labeled on that map attached hereto as Exhibit B. The parties acknowledge that these two trail easements shall be dedicated by Grantor to the City of Glenwood Springs on the Subdivision Final Plat and similar to the fisherman's easement described in Paragraph 5.3 above, shall not be included as part of the Property. Grantee acknowledges the public's right to utilize these easements upon the Property but does not waive any right of enforcement against any member of the public utilizing said easements who enters upon the Property from such easements or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its sole discretion, may post these trails with signage informing the public of the existence of the Easement and that access to the Property is prohibited. The City of Glenwood Springs shall be responsible for maintaining and repairing said existing trails and easements, including the fisherman's easement, as necessary.

5.5 Building Site. Grantor hereby grants to Grantee the right to construct a shelter/building for educational and other purposes at any time in the future upon that portion of Tract 4 located easterly of that City of Glenwood Springs trail described in Paragraph 5.2 above and adjacent to the Property, at the discretion of Grantee. "Tract 4" is illustrated on the Subdivision Plat and Exhibit B attached hereto. As Grantor is dedicating Tract 4 to the City of Glenwood Springs at the time of Final Plat for park purposes, Grantee's right to construct said shelter/building upon Tract 4 shall be subject to any and all pertinent City of Glenwood Springs rules and regulations, including but not limited to any special use permit issuance requirement which may be a condition precedent to building any structure. Grantor shall provide necessary conduit to the site for the extension of future utilities to the site in connection with its development of the Subdivision, which conduit Grantee may choose to utilize in connection with any future building infrastructure. In the event Grantee shall ever construct a shelter/building on the dedicated site, the parties acknowledge that Grantee shall be solely responsible for maintaining, monitoring, and insuring such building at Grantee's sole discretion.

5.6 Pump Station. Grantee acknowledges the contemplated construction by the City of Glenwood Springs or its assignee of a raw water irrigation pump station adjacent to the southerly boundary of the Property. The parties acknowledge that the pump station and its building pad/site shall be dedicated by Grantor to the City of

Glenwood Springs and shall not be included within the Property. Similarly, Grantor shall dedicate to the City a related utility easement for the pipeline and other underground infrastructure serving the pump station, which easement and infrastructure shall be located within the existing "Naturalist Trail" easement as shown on Exhibit B attached hereto and therefore shall also not be deemed to be located upon the Property. All operation, maintenance, repair or replacement of such pump house, pipeline, and related infrastructure shall be the sole responsibility of the City of Glenwood Springs. Grantor shall be responsible for limiting the City of Glenwood Springs access to and from the pump station and related facilities to on, over and across those trails and easements referenced in Paragraph 5.4 above. The City shall thereafter be subject to all terms and conditions of this Easement. Grantor shall be responsible for informing the City of this Easement and obligating the City to conduct any and all necessary repair, maintenance or replacement activities related to the pump house or related facilities. Grantor shall similarly be obligated to inform the City that should the City require entry upon or need to disturb any portion of the Property, the City is required to receive prior permission from Grantee prior to any such work and if such permission is granted, shall be obligated to fully repair, restore, and revegetate the Property to the condition existing prior to the time the work began.

6. **Notice of Intent to Undertake Certain Permitted Actions.** Grantor, its successors and assigns, shall provide reasonable notice to Grantee prior to undertaking any substantial permitted activities within the Easement in order to give Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Such notice requirement shall also be required of the City of Glenwood Springs in connection with any necessary maintenance, repair or replacement activity as contemplated in Section 5.6 above. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement. This notice provision shall not apply in cases of emergency.

7. **Grantee's Approval.** Where notice is provided to Grantee by Grantor or other third party as required in Section 6 above or otherwise pursuant to this Easement, Grantee shall grant, deny, or withhold its approval subject to objections and/or conditions, which approval, denial or conditional approval shall not be unreasonably withheld and based on consistency with the purpose of this Easement.

8. **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the

selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. A judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award. Notwithstanding the foregoing, no award of costs and fees shall be entered against Grantee unless the arbitrator first determines that Grantee has acted in bad faith or that grounds for an award of costs and attorneys' fees exists pursuant to C.R.S. §13-17-101 et seq.

9. Grantee's Remedies. If Grantee determines that Grantor or any other party is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor or such other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor or other party fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of ecological, riparian, wildlife or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

Without limiting Grantors' or any other parties' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph or Paragraph 8 without prior notice to Grantor or other party or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's

remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

9.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor or any other party, including without limitation costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's or other third party's violation of the terms of this Easement, shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including without limitation attorneys' fees, shall be borne by Grantee, but such an award shall only be made if it is determined that Grantee's acts or omissions were the result of bad faith on the part of Grantee or arose from other circumstances that would justify an award of costs and attorneys' fees pursuant to C.R.S. §13-17-101 et seq.

9.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor or other party shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor or other party shall impair such right or remedy or be construed as a waiver.

9.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

9.4 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation acts of third parties not agents or representatives of Grantor, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

9.5 Grantor's Absence. If Grantee determines that this Conservation Easement is, or is expected to be, violated, Grantee will make good-faith efforts to notify the Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values, then Grantee may pursue its lawful remedies without prior notice to and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all costs associated such actions.

9.6 Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm and that Grantee is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement in such cases.

10. Access. Unless otherwise set forth herein, no right of access by the general public on, over, across or through the Property, including without limitation homeowners within the Subdivision, is conveyed by this Easement.

11. Costs and Liabilities. Grantor, its successors and assigns, shall retain all responsibility, if any, and shall bear all costs and liabilities of any kind, if any, incident to ownership of the Property, including but not limited to the owners of Lots 70 through 83 whom shall be deemed the owners of the underlying Property for liability purposes pursuant to and delineated by their respective lot lines as shown on the Subdivision Final Plat. The parties acknowledge that Grantor shall be solely responsible for the maintenance, repair and replacement of all trails and related easements existing upon the Property as set forth above and shall maintain liability insurance coverage related to such trails and easements. To the extent Grantor dedicates, conveys or otherwise transfers such trail easements to the City of Glenwood Springs as contemplated, Grantor shall be responsible for ensuring that the City assumes all such maintenance, repair, replacement and insurance obligations related thereto. Notwithstanding the foregoing obligations, neither Grantor nor the City of Glenwood Springs shall be obligated to maintain or restore the Property outside of the trail easement areas in the event of damage caused by fire, flood, or other natural causes or acts of God.

11.1 Taxes. Grantor, its successors and assigns, shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

11.2 Stewardship Fee. Grantor, its successors and assigns, including any future Subdivision homeowner's association, shall pay to Grantee an annual fee of \$12,450.00 for undertaking those tasks related to overseeing and protecting the Conservation Values set forth herein (hereinafter "Stewardship Fee"). It is contemplated that such fee shall be paid by any future homeowner's association through a line item assessment assessed to and collected from each and every Subdivision homeowner as a component of monthly association dues and Grantor shall include such payment obligation in any protective covenants and other rules and regulations of the Subdivision. The Stewardship Fee is broken down into the following components:

- a. **Monitoring Fee.** In exchange for Grantee monitoring the Property to ensure that the terms and conditions of this Grant of Easement are being met and complied with, Grantor shall pay to Grantee \$3,360.00 annually ("Monitoring Fee").
- b. **Educational Fee:** In exchange for Grantee conducting educational programs on the Property as part of its valley-wide riparian educational curriculum, Grantor shall pay to Grantee \$6,720.00 annually ("Educational Fee"). It is acknowledged by the parties that Grantee, at its sole discretion, may expend up to fifty percent (50%) of the annual Educational Fee for no more than four (4) years for the purpose of creating and erecting signage upon the Property along those public easements crossing through the Property as set forth in this Grant of Easement, including without limitation interpretive signage, as such signage is deemed by the parties to constitute an important educational purpose as contemplated under this Grant of Easement.
- c. **Maintenance Reserve:** A Maintenance Reserve shall be paid to Grantee in an annual amount of \$2,370.00. The Maintenance Reserve constitutes that portion of the Stewardship Fee reserved and for the purpose of funding hard costs related to the Property including, but not limited to, the following: replacement of vegetation in the event of flooding, addition of beneficial vegetation, repair of vandalized property, and other foreseeable or unforeseeable contingencies or events related to the Property. In the event the amount maintained in the Stewardship Fee account for Maintenance Reserve, plus applicable interest, meets or exceeds the total of five (5) yearly Maintenance Reserve payments ("5 Year Total"), the charges assessed by Grantee for Maintenance Reserve may be reduced or delayed at Grantee's discretion until such time as funds are drawn below the 5 Year Total. In addition to payment of the Maintenance Reserve fee, Grantor, its successors and assigns, shall coordinate and participate with Grantee in an annual neighborhood cleanup and/or restoration activity related to the Property.
- d. **Billing; Payment; Reports.** Grantee shall provide Grantor, its successors and assigns, with monthly Stewardship Fee invoices setting forth the pro rata Monitoring Fee, Educational Fee, and Maintenance Reserve charges for that month. Grantor shall pay Grantee all charges set forth within the monthly invoice within thirty (30) days of Grantor's receipt of the same. In the event Grantor, its

successors and assigns, fails to pay to Grantee any payments contemplated herein within the time period set forth, default interest shall begin to accrue against Grantor and in favor of Grantee at the rate of one and one-half percent (1 ½ %) per month. Grantee shall provide Grantor, its successors and assigns, including any eventual homeowners association, with semi-annual reports indicating the monitoring, educational, and other type of work conducted by Grantee upon the Property in connection with the Easement over the previous six month period. Grantee shall also include any and all Subdivision homeowners on its mailing list and send such homeowners copies of Grantee's newsletters on a regular basis, as well as other informational material at Grantee's discretion.

- e. Stewardship Fee Adjustment. In the sole discretion of Grantee, the charges assessed by Grantee as part of its Stewardship Fee may be adjusted annually pursuant to annual Consumer Price Index increases based upon the most recent Denver/Boulder All Items Index, published by the U.S. Department of Labor, Bureau of Labor Statistics. Furthermore, upon mutual agreement of the parties, their successors and assigns, such charges may be otherwise increased to comport with historical costs incurred, costs expected to be incurred, or actual costs incurred by Grantee in fulfillment of its duties hereunder.

11.3 Hold Harmless. Grantor, its successors and assigns, including without limitation purchasers of Subdivision Lots 70-83, shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, invitees and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the gross negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 11, 11.1, and 11.2; and (3) the existence or administration of this Easement.

12. Extinguishment. If changed circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by mutual agreement by the parties in writing or by judicial proceedings in a court of competent jurisdiction; provided, however, that such

extinguishment shall be subject to the provisions set forth in Paragraph 13, below. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, if any, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with paragraph 12.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

12.1 Subsequent Sale, Exchange or Involuntary Conversion. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 12, the parties stipulate to 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 grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

12.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

13. Change of Conditions. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use determined to be inconsistent with the purpose of this Easement, may become more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely or partly to uses that are not permitted hereunder, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and Grantee that any such changes should not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Paragraph 12, above. In addition, the unprofitability to Grantor of allowing Grantee to carry on the permitted uses identified herein shall not impair the invalidity of this Easement or be considered grounds for its extinguishment pursuant to Paragraph 12, above. The parties acknowledge that should Grantee at any time in the future become unable to sufficiently provide monitoring and educational tasks as contemplated herein, due to financial reasons or otherwise, that such a changed condition shall be deemed to be a circumstance justifying the mutual termination or extinguishment, or assignment by Grantee, of this Easement.

14. Assignment by Grantee. This Easement is transferable by Grantee upon not less than forty-five (45) days prior written notice to Grantor; provided, however, Grantee may only assign its

rights and obligations under this Easement: (1) to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Colorado law and; (2) upon written consent of Grantor as to the assignment and assignee, which authorization and approval shall not be unreasonably withheld. As a condition of such transfer, Grantee shall require that the conservation purposes and Conservation Values of this grant continue to exist and be carried out; provided, however, that Grantor and any assignee of Grantee may delete, amend and/or modify the specific obligations of Grantee set forth herein (i.e., educational tasks), as well as Grantor's payment obligations related thereto, as mutually agreed upon by such parties and subject to the amendment provisions set forth in Paragraph 16 hereof.

15. Assignment or Subsequent Transfer by Grantor. It is contemplated by the parties that Grantor shall subsequently convey Subdivision lots underlying the Property to third parties and assign its rights and obligations as developer of the Subdivision, including its rights and obligations hereunder, to a Subdivision homeowners association. In the event Grantor by any deed, assignment or other legal instrument divests itself of or conveys any interest in all or a portion of the Property, including, without limitation, a leasehold interest, to a homeowners association or any other party, Grantor agrees to incorporate the terms of this Easement within such conveyance document and bind any assignee by the terms and conditions of this Easement. Grantor further agrees to provide reasonable written notice to Grantee of the transfer of any of Grantor's interest in the Property prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Subsequent successors or assigns of Grantor, including but not limited to a homeowner's association, shall be required to provide written acknowledgment to Grantee of its intent to be bound and abide by all terms and provisions of this Easement and perform all duties and obligations of Grantor as identified herein.

16. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the parties may jointly amend the Easement in writing pursuant to C.R.S. §38-30.5-107; provided, however, that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or C.R.S. § 38-30.5-101 et seq., any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvement permitted or contemplated under the Easement, and shall not impair any of the Conservation Values of the Easement. Any such amendment shall be recorded in the official records of Garfield County, Colorado.

17. Interpretation. The provisions of this Easement shall be liberally construed to effectuate their purpose of preserving and protecting the Property's wildlife habitat, unique native animals, and related riparian community. No remedy or election given by any provision herein shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed

and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions or directives of the State of Colorado, Garfield County, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

18. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation contained within this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

19. Notice of Agreement. Grantor shall inform and provide notice to all prospective lessees, purchasers and lenders of the Property of the terms and provisions of this Agreement, including requesting subordination by any and all lenders in that form attached hereto as Exhibit C and incorporated herein by reference or similar subordination form.

20. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Park East Development Company, LLC
c/o CLH Properties, LLC, Manager
P.O. Box 620
Basalt, Colorado 81621
Phone: (970) 927-0847

To Grantee: Roaring Fork Conservancy
P.O. Box 323
Basalt, Colorado 81621
Phone: (970) 927-1290

21. Recordation. Grantee shall record this instrument in timely fashion in the official records of Garfield County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

22. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

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

(c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running perpetually with the Property.

(f) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) Authority; Title. Each person executing this Agreement represents and warrants that he or she has been duly authorized by one of the parties to execute this Agreement and has authority to bind said party to the terms and conditions hereof. Grantor further acknowledges that it holds good title to the Property free and clear and has the authority to grant the Easement herein described, which Easement shall be conveyed only subject to existing encumbrances either referenced herein or of public record.

(h) 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.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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IN WITNESS WHEREOF Grantor and Grantee have executed this grant of Easement on the day and year first written above.

GRANTOR:

PARK EAST DEVELOPMENT COMPANY, LLC, a Colorado limited liability company

By: CLH PROPERTIES, LLC, a Colorado limited liability company, its Manager

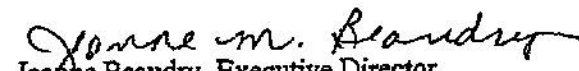
By:


James A. Horn, Manager

GRANTEE:

ROARING FORK CONSERVANCY, a Colorado non-profit corporation

By:


Jeanne Beaudry, Executive Director

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EXHIBIT A
TO GRANT OF CONSERVATION EASEMENT

PROPERTY DESCRIPTION

That portion of Lots 70 through 83 lying easterly of the east line of the 20' Trail Easement, excepting that portion designated as Public Trail Easement, Utility, Irrigation & Public Trail Easement and Fishermen's Easement as shown on the Final Plat of Park East Subdivision recorded September __, 1999 at Book __, Page __, as Reception No. _____.