

**General Form of the
DEED OF CONSERVATION EASEMENT**

PRAIRIE RIDGE ADDITION

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT # _____ (“GRANT”) FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND. THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

This DEED OF CONSERVATION EASEMENT (“**Deed**” or “**Conservation Easement**” or “**Easement**”) is granted this _____ day of _____, 2024 (“**Effective Date**”), by the Co-grantors **CITY OF FORT COLLINS, COLORADO**, a Colorado municipal corporation, having its principal address at 300 LaPorte Avenue, P.O. Box 580, Fort Collins, CO 80522 and the **CITY OF LOVELAND, COLORADO**, a Colorado municipal corporation having its principal address at 500 E 3rd St, Loveland, CO 80537 (hereinafter collectively referred to as “**Grantor**”), to and for the benefit of the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER, STATE OF COLORADO**, whose principal address is 200 W. Oak Street, Fort Collins, Colorado 80521 (hereinafter referred to as “**Grantee**”). (Grantor and Grantee may be individually referred to herein as a “**Party**” and collectively referred to herein as “**Parties.**”) The following exhibits are attached hereto and are incorporated by reference:

- Exhibit A - Legal Description and ALTA survey of the Property
- Exhibit B - Map of the Property [including roads, features and other areas designated in this Deed]
- Exhibit C - Baseline Acknowledgement

RECITALS

A. Grantor is the sole owner in fee simple of approximately 141.861 acres of real property located in Larimer County, Colorado more particularly described in **Exhibit A** attached hereto and generally depicted on the map attached hereto as **Exhibit B** (the “**Property**”). Hereinafter, “**Grantor**” means the Grantor described above and successors to, and transferees and assigns of, Grantor's interest in the Property.

B. The Property possesses relatively natural wildlife habitat and native plant communities, significant open space, cultural resources, agricultural land and scenic and other aesthetic and ecological values (the “**Conservation Values**”) of great importance to Grantor, Grantee, the people of Larimer County and the people of the State of Colorado. In particular, the Property contains the following characteristics which are also included within the definition of Conservation Values.

- i. **Habitat Values:** The Property provides relatively natural habitat (lower montane foothills shrublands) and migration corridors for a broad range of wildlife species, including mule deer, elk, black bear, mountain lion, coyote, fox, various small mammals, various reptile and amphibian species, raptors, and other resident and migratory bird species.
- ii. **Scenic and Open Space Values:** The Property is being conserved for the scenic enjoyment of the general public. The Property is highly visible from both W. 57th Street and Wilson Avenue in Loveland, CO and provides a viewshed of the foothills and mountains. Conservation of the Property also protects the community separator as well as the agricultural heritage of the front range.
- iii. **Agricultural Land Values:** The Property is suitable for Dryland wheat farming and limited livestock grazing.
- iv. **Recreational Values:** Conservation of the Property will provide potential for future public access for appropriate non-motorized trail-based recreation such as walking, hiking, horseback riding, and biking.

C. Conservation of this property is consistent with the following federal, state and local governmental policies:

- i. C.R.S. § 33-1-101, et seq., provides in relevant part that "[i]t 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."
- ii. C.R.S. § 38-30.5-101, et seq., provides for the establishment 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, environmental quality or life-sustaining ecological diversity, or appropriate to the conservation and preservation of buildings, sites, or structures having historical, architectural, or cultural interest or value."
- iii. Larimer County's Comprehensive Plan (2019) includes the following principles and policies:
 - "Larimer County supports and encourages the conservation, stewardship, and resiliency of our natural resources, wildlife habitat and ecosystems" (Sec. W&NR1).
 - "Larimer County promotes conservation of healthy, sustainable agricultural land and water resources" (Sec. W&NR2).
 - "Protect and provide adequate water resources for current and future uses in the County..." (Sec. W&NR3; 3.5).
- iv. Larimer County Open Lands Master Plan (2015) Chapter 3 establishes "priority areas" for conservation including the Laramie Foothills, Livermore, Buckeye, Buckhorn/Redstone, and Blue Mountain areas as well as partnership areas in Estes Valley, the Foothills Corridor, Bellvue, the Wellington Separator and the Laramie River Valley and states that "the Open Lands Program will primarily focus on the natural landscapes, areas of high ecological value, river

corridors, and agricultural priorities areas with willing landowners beyond municipal Growth Management Areas.” Additionally, the Larimer County Open Lands Master Plan identifies the Big Thompson River, Little Thompson River and Cache La Poudre River corridors as “priority areas” for conservation.

- v. Larimer County Open Lands Master Plan (2015) Chapter 3 also emphasizes agricultural and water rights conservation, stating that “Agriculture is an economically important land use and is integral to the local history of Larimer County and its communities. Preservation and interpretation of this important and declining land use is a benefit to the community for its food production, as a cornerstone of the local economy, as an urban delineator, providing community connection to the rural culture, and for historical context... Ensuring water availability for agriculture... is critical to sustaining conservation values throughout Larimer County.”
- vi. Larimer County Environmental Responsibility Policy states that Larimer County will "make every effort to protect the environmental integrity of the County's natural resources by developing policy to address these 11 environmental issues: Wildlife Habitats and Migration Corridors, Threatened and endangered species, Unique vegetation and critical plant communities, Wetlands/riparian/waterways, Aquatic/water quality, Hydrology/Groundwater, Unique Geological features, Agriculture, Viewsheds, Air Quality, Cultural and Traditional use features."
- vii. Larimer County’s Right to Farm and Ranch Policy (1998) states that “Ranching, farming, and all manner of agricultural activities and operations within and throughout Larimer County are integral elements of and necessary for the continued vitality of the County’s history, economy, landscape, open space, lifestyle and culture. Given their importance to Larimer County, Northern Colorado, and the State, agricultural lands and operations are worthy of recognition and protection.”
- viii. The Western Governors’ Association Policy Resolution 2021-04 states that the “Western Governors support all reasonable proactive management efforts to conserve species and the ecosystems upon which they depend to sustain populations of diverse wildlife and habitats, preclude the need to list a species under the ESA, and retain the West’s wildlife legacy for future generations. Western Governor’s also support initiatives that engage stakeholders to develop incentives for early, voluntary conservation measures to address multiple threats to species while preserving and enhancing western working landscapes.”
- ix. The Colorado Department of Transportation statutes, C.R.S. § 43-1-401, et seq., provide that the "preservation and enhancement of the natural and scenic beauty of this state" is a substantial state interest.
- x. Priority III of Colorado’s Statewide Comprehensive Outdoor Recreation Plan (SCORP) 2019-2023 is land, water, and wildlife conservation and the goal of Priority III is “Private and public lands and waters are conserved to support

sustainable outdoor recreation, the environment, and wildlife habitat. Objective I of Priority III is to advance landscape-scale conservation.

- xi. Colorado’s 2015 State Wildlife Action Plan (SWAP) contains the following guiding principles:
 - “Encourage and support conservation actions that meet the needs of Species of Greatest Conservation Need;
 - Acknowledge the pivotal role that private landowners and local stakeholders play in conservation;
 - Maintain an atmosphere of cooperation, participation, and commitment among wildlife managers, landowners, private and public land managers, and other stakeholders in development and implementation of conservation actions.”
- xii. The City of Loveland Parks, Recreation, Open Lands & Trails Master Plan 2023, Section V. Standards, Guidelines and Policies, identifies Natural Resource and Wildlife Areas to support resource and habitat conservation or protection in areas that provide an ecological or environmental benefit to the community, and Regional Open Lands and Trails to support open lands that enhance connectivity to regional trail, protect viewsheds or unique landmarks, or otherwise provide a unique benefit to City residents.
- xiii. The City of Fort Collins Natural Areas Master Plan (2014) states that “the mission of the Natural Areas Department is to conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities.”
- xiv. A Plan for the Region Between Fort Collins & Loveland (1995) which prioritizes the preservation of open lands to protect views to foothills, preserve rural character and maintain a sense of separation between communities.

D. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibit any uses that would materially adversely affect the Conservation Values or that otherwise would be inconsistent with the Purpose (defined below). The Parties acknowledge and agree that uses expressly permitted by this Deed and Grantor’s land use patterns existing on the Property as of the Effective Date (as defined in **Section 26**, below) do not materially adversely affect the Conservation Values and are consistent with the Purpose.

E. By granting this Deed, Grantor further intends to create a conservation easement interest that binds Grantor and future owners of the Property and to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

F. Grantee is a governmental subdivision of the State of Colorado, with an open space program dedicated to land conservation, and a “qualified organization” under I.R.C. § 170(h) and Treas. Reg. § 1.170A-14(c), whose primary purpose is to preserve and protect significant open space, natural areas, wildlife habitat, and develop parks and trails for present and future generations.

G. Grantee is qualified to hold conservation easements as a governmental entity under C.R.S. § 38-30.5-104, *et seq.*, which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

H. Larimer County is certified as license number **CE035** by the State of Colorado's Division of Conservation pursuant to C.R.S. § 12-15-104 and 4 C.C.R. 752-1, Chapter 2, to hold conservation easements for which a tax credit is claimed.

I. Funding for this project has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the State Board of the Great Outdoors Colorado Trust Fund ("Board"), by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

J. Grantee agrees by accepting this Deed to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

NOW, THEREFORE, pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101, *et seq.*, and in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained in this Deed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a conservation easement in gross in perpetuity over the Property for the Purpose set forth below and of the nature and character and to the extent set forth in this Deed.

1. **PURPOSE.** The purpose of this Deed is to preserve and protect in perpetuity the Conservation Values as they exist upon the Effective Date and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14 and C.R.S. § 38-30.5-101, *et seq.* ("**Purpose**"). To effectuate the Purpose, Grantor and Grantee agree: (i) to allow those uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Deed or will materially adversely affect the Conservation Values. Notwithstanding the foregoing, 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.

2. **BASELINE DOCUMENTATION REPORT.** The Parties acknowledge that a written report has been prepared by Colorado Natural Heritage Program and has been reviewed and approved by the Parties, which documents the Property's condition as of the Effective Date (the "Baseline Report"). The Baseline Report contains a natural resources inventory of the Property

and also documents existing improvements on and current uses of the Property. A copy of the Baseline Report shall be kept on file with each Party and by this reference made a part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represents the condition of the Property as of the Effective Date, and the Parties have acknowledged the same in a signed statement, a copy of which is attached as **Exhibit D**. The Parties will use the Baseline Report to ensure that any future changes to the Property are consistent with the Purpose. However, the Parties agree that the existence of the Baseline Report shall in no way limit the Parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the Effective Date.

3. RIGHTS OF GRANTEE. To accomplish the Purpose, in addition to the rights of the Grantee described in C.R.S. § 38-30.5-101, *et seq.*, and the rights of Grantee described elsewhere in this Deed, the Deed conveys the following rights to Grantee:

- a. To preserve and protect the Conservation Values in perpetuity;
- b. To enter upon the Property at reasonable times to monitor Grantor's compliance with and, if necessary, to enforce the terms of this Deed. Such entry shall be made upon prior reasonable notice to Grantor, except in the event Grantee reasonably determines that immediate entry upon the Property is necessary to prevent or mitigate a violation of this Deed. In the case where Grantee has determined that immediate entry is necessary, a reasonable attempt will be made to notify Grantor prior to such entry. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property when exercising any such rights;
- c. To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Deed and to require the restoration of areas or features of the Property that may be damaged by any inconsistent use; and
- d. To require Grantor to consult with Grantee regarding the negotiations of any and all agreements between Grantor and third parties that may impact or disturb any portion of the surface of the Property, including but not limited to easement agreements, utility easements, right-of-way agreements, surface use agreements, and lease agreements (other than those specifically related to the agricultural operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed. Nothing in this Deed is intended to require Grantee to approve any action or agreement that is inconsistent with the terms of this Deed.

4. RESERVED RIGHTS. Subject to the terms of this Deed, Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Deed, subject to any limitations or restrictions stated in this Deed, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and retain income derived from the Property from all sources, unless otherwise provided in this Deed, that are consistent with the terms of this Deed. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Deed or that materially adversely

affects the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the specific rights set forth below.

a. Right to Convey. Grantor may sell, give, lease, bequeath, devise, mortgage, or otherwise encumber or convey the Property, subject to the following: (i) any lease, deed, or other conveyance or encumbrance is subject to this Deed, and any such document shall specifically incorporate the terms and conditions of this Deed by reference to this Deed; (ii) any lease or deed or other conveyance document shall specifically state which reserved rights have been exercised, if at all, and which reserved rights are specifically allocated to the new owner or lessee; and (iii) notice of any proposed conveyance or encumbrance as set forth in this **Section 4.a** shall be subject to the provisions of **Section 19** of this Deed.

b. Land Management. To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of **Section 6** of this Deed. Specifically, Grantor agrees to conduct the activities listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted if they are consistent with the Purpose.

(1) Habitat Management. Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not have more than a limited, short-term adverse effect on the Conservation Values.

(i) Weed/Pest Management. Management of land to control erosion, growth of weeds, rodents, pests, insects and pathogens, fire danger and other threats is permitted consistent with applicable laws and regulations and in keeping with maintenance of the Conservation Values of the Property, and in accordance with the Land Management Plan described in **Section 6** below. The Grantor agrees to manage noxious weeds in accordance with the requirements of Larimer County, the State of Colorado, and other applicable agencies.

(ii) Maintenance/Restoration. Maintenance, stabilization, replacement, or restoration of existing springs, wetlands, ditches, and rangeland are permitted if and to the extent consistent with the Purpose and the terms of this Deed.

(iii) Prescribed Fire. Igniting outdoor prescribed fires for ecological purposes shall be allowed on the Property, provided that such activity is conducted in accordance with accepted prescribed burn practices, all applicable laws or regulations, and the Land Management Plan described in **Section 6** below.

(2) Agriculture. Grantor reserves the right to use the Property for agricultural crops, grazing cattle, and domestic livestock including the lease of the property to individuals who intend to use the property for the same. Grantor shall conduct all agricultural activities using stewardship and management methods such as NRCS best practices that preserve the natural resources upon which agriculture is based, and will require that any tenant of the property conducts their operations in the same manner. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing and controlling invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of native vegetative cover.

(i) Grazing. Livestock grazing is permitted in accordance with sound stewardship and management practices, and in a manner that such activity does not result in overgrazing or material environmental degradation of the Property. Livestock grazing shall be managed so that the overall condition of the Property is preserved at its baseline condition and in no event in less than “fair” condition (as defined by *an applicable U.S. Department of Agriculture - Natural Resources Conservation Service Technical Guide*). For the purposes of this Deed “livestock” shall mean cattle, sheep, goats, llamas, alpaca, and bison. The raising of other livestock and/or game animals shall not be permitted unless specifically approved by the Grantee and described in the Land Management Plan. The Grantor shall comply with and have responsibility for compliance of the Property with the Colorado Noxious Weed Act and any other governmental noxious weed control regulations.

(3) Timber Management. Grantor may plant native trees on the Property. Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, to promote forest health, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Dead trees may also be cut for firewood and other uses on the Property. Any large-scale fire mitigation activities or commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester. Any large-scale fire mitigation activities or timber harvesting shall be conducted in a manner that is consistent with the Purpose. A copy of the forest management plan shall be approved by Grantee and provided to the Board prior to any large-scale fire mitigation activities or commercial timber harvesting.

c. Recreational Activities. Grantor reserves the right to engage in non-commercial, non-motorized recreational activities, such as horseback riding, hiking, mountain biking, cross-country skiing, snowshoeing, and other similar trail-based, low-impact recreational uses, and to make the Property available to the public for such uses, in accordance with an adopted Land Management Plan and **Section 12** below. Recreational trail activities for public use in the future are permitted in accordance with **Section 4.d(2)** of this Deed. Grantor reserves the right to impose

such usage fees and accommodation rental fees as are reasonable by contemporary standards from time to time to help it defray its maintenance and operating costs associated with the Property, and may impose other reasonable terms, conditions, rules and regulations on public access and use; and Grantor may impose and enforce such closures of areas of the Property to public use and access as Grantor, in the reasonable exercise of its discretion, deems necessary and appropriate.

d. Residential and Non-Residential Improvements. There are no Residential or Non-Residential Improvements, as defined below, existing on the Property as of the Effective Date. Grantor reserves the right to construct, place, enlarge and improve Non-Residential Improvements, the locations of which are limited to the area within the Building Envelope described in **Section 4.d(1)**, with the prior written approval of Grantee, and Grantor shall provide prior notice of such construction to Grantee in accordance with **Section 7** of this Deed. Grantor reserves the right to construct Minor Non-Residential Improvements, as defined below, within or outside of the Building Envelope, without Grantee's approval. Once constructed, Grantor may remove, maintain, repair and replace such Non-Residential Improvements and Minor Non-Residential Improvements in their initially constructed locations without Grantee's approval. The construction or placement of any Residential Improvements on the Property (within or outside of the Building Envelope) is prohibited.

"Residential Improvements" shall mean covered improvements containing habitable space intended for full- or part-time human habitation, including but not limited to homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch. This definition of residential improvements is not intended to include short-term campground accommodations, such as tents or recreational vehicles.

"Non-Residential Improvements" shall mean all other covered or uncovered non-residential improvements that may be intended for public use but are not intended for human habitation, including but not limited to trailhead parking areas (including vault toilets, shelters and kiosks), parking lots, picnic areas, entrance gates and fee stations, and non-residential improvements commonly associated with campground facilities (including tent pads, recreational vehicle hook-ups, bathrooms with flush toilets and shower houses). Such non-residential improvements shall also include improvements intended to support the management and operation of the Property as an open space, including but not limited to equipment sheds and well houses.

"Minor Non-Residential Improvements" shall mean minor agricultural or non-residential improvements including but not limited to fences (subject to the terms of **Section 4.f** of this Deed), gates, corrals, cisterns, stock tanks, stock ponds, troughs, livestock feeding stations, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, trail markers (including trail-based interpretive signs), site signs and trash receptacles.

In no case shall any structure be built on the Property within three hundred (300) feet of any stream, surface spring running water all year, or wetland, as identified in the Baseline Report or as may subsequently develop or be determined to exist on the Property, with the exception of water facilities (wells) described in **Section 5.h**. below. No structure shall exceed thirty (30) feet in height, as

measured from the average elevation of the finished grade to the highest point of the structure, unless approved by Grantee. Any anticipated construction not defined in the Management Plan shall require Grantee approval. All development and construction must comply with local, state, and federal requirements.

(1) **Building Envelope.** Grantor may designate one Building Envelope totaling no more than _____ (___) acres. The specific location of the Building Envelope will be determined by Grantor after the conveyance of this Deed. Prior to construction of any Non-Residential Improvements within the Building Envelope, Grantor shall present Grantee with a plan describing and depicting the proposed boundaries of the Building Envelope within the Building Area. Grantee shall review the proposed location of the Building Envelope to ensure that it is located wholly within the Building Area. Upon acknowledgment that the boundaries of the proposed Building Envelope are located wholly within the Building Area, Grantor shall, at its expense, describe and depict the boundaries of the Building Envelope using a survey and provide a copy of such survey to Grantee. Grantor and Grantee shall execute and record an addendum to this Deed that utilizes the survey describing and depicting the exact boundaries of the Building Envelope, titled Exhibit E (“Building Envelope Survey”). After the addendum is properly executed and recorded, new Non-Residential Improvements may be built within the Building Envelope subject to the following limitations:

(i) There are no limits on the number or square footage of Non-Residential and Minor Non-Residential Improvements allowed within the Building Envelope. Any improvements or the enlargement of existing improvements shall be made in such a manner that will not substantially diminish or impair the conservation values of the Property. The intent of this allowance is to give Grantor the flexibility to accommodate the variety of facilities needed to support public recreational access and the management of such access on the Property.

(ii) The maximum height of all Non-Residential and Minor Non-Residential Improvements shall not exceed thirty (30) feet.

(iii) Small scale wind or solar energy generation equipment for onsite use may be installed subject to the Larimer County building code and **Section 4.g** herein.

e. **Roads and Trails.** Maintenance of existing Roads and Trails (in existence at the time of the Effective Date) is permitted. “**Roads**” shall mean any road that is graded, improved or maintained, including seasonal unimproved roads and two-track roads. “**Trails**” shall mean any unimproved or improved path or paved or unpaved trail constructed or established by human use, but shall not include game trails established and solely used by wildlife or cattle trails established and solely used by cattle.

(1) Roads. Grantor shall not construct or establish any new Road without express written permission of Grantee. Any such road will not be wider than necessary to provide access for all permitted uses or to meet local codes for width of access to improvements permitted by this Deed. Grantor may reconstruct existing roadways, as shown on **Exhibit B** and described in the baseline report, if necessitated by natural causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Such reconstructed roads shall be in the same location, width and level of improvement as pre-existed.

(2) Trails. While the Property is owned by the Grantor, the City of Loveland may construct unpaved trails of such number, type and nature as are normally associated with a natural area that is opened to the public for limited use. The City of Loveland will work with Grantee on the location of any potential future trail alignments by providing notice and accepting input on the extent and location of such trails to ensure their compliance with the Purpose of this Deed. Trail construction by an owner other than the City of Loveland shall be subject to prior written approval by the Grantee in its discretion. The City of Loveland may also install directional, educational, safety signs, benches or other customary trail improvements.

f. Fences. Existing fences may be maintained, repaired and replaced and new fences may be installed for purposes of reasonable and customary management of livestock, and for separation of ownership and other uses. Replacement and new fencing shall be installed in a manner that is not inconsistent with the preservation and protection of the Conservation Values of the property and shall permit the movement of wildlife across the property, following then current Colorado Parks and Wildlife wildlife-friendly fence standards. Low profile fencing that is designed to blend with or complement the natural and scenic features of the landscape should be incorporated where viewed from public vantage points.

g. Utility Improvements. If otherwise permitted in an instrument recorded as of the Effective Date, or approved by Grantor after notice to Grantee is provided in accordance with **Section 7** of this Deed, existing energy generation or transmission infrastructure and other existing utility improvements, if any, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including, but not limited to, wind, solar, geothermal, or hydroelectric for use on the Property ("**Utility Improvements**"). Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose. Nothing in this section shall be construed to permit large-scale or commercial utility improvements.

1) Additional Requirements. Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall seek approval for such enlargement or construction from Grantee in accordance with **Section 7** of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose. No Utility Improvement shall exceed thirty (30) feet in height.

(2) Alternative Energy.

(i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this **Section 4.f**. Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this **Section 4.f** are installed in conjunction with the operation of an agricultural improvement as described in **Section 4.b** of this Deed. Any other Alternative Energy Generation Facility may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors which Grantee may consider in determining whether to grant such approval shall include, but not be limited to, (a) whether the installation and siting would substantially diminish or impair the Conservation values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this **Section 4.f** shall be construed as permitting the construction or establishment of a commercial wind farm or solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this **Section 4.f** that is incidentally in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

(iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. For the purposes of this **Section 4.f**, the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by **Section 4.f**.

g. Historic Structures. Grantor shall have the right to maintain any historic or cultural features on the Property.

5. PROHIBITED AND RESTRICTED USES. Any activity on or use of the Property inconsistent with the Purpose of this Conservation Easement or that would materially adversely affect the Conservation Values is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Property, though not an exhaustive list, are inconsistent with the Purpose and are expressly prohibited:

a. Development Rights. As of the Effective Date, no structures (residential or non-residential) exist on the Property. To fulfill the Purpose, Grantor hereby conveys to Grantee all development rights, except those expressly reserved by Grantor herein, deriving from, based upon, or attributable to the Property in any way, including but not limited to, all present and future rights to divide the Property for the purpose of development into residential, commercial, or industrial lots or units or to receive density or development credits for the same for use off of the Property (“**Grantee’s Development Rights**”). The parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible lot yield of the Property or any other property.

b. Improvements.

(1) Residential Improvements. Grantor shall not construct or place any Residential Improvements on the Property. Residential Improvements are defined in **Section 4.d** of this Deed.

(2) Non-Residential, and Minor Non-Residential Improvements. Grantor shall not construct or place any Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with **Section 4.d** of this Deed. The construction or placement of Non-Residential Improvements outside of the Building Envelope described in **Section 4.d(1)** is prohibited.

(3) Recreational and Commercial Improvements. Grantor shall not construct or place any new recreational improvements on the Property, including but not limited to, athletic fields, golf courses or ranges, racetracks, airstrips, helicopter pads, zip lines, or shooting ranges, except as allowed for those uses specifically reserved in **Section 4.c** above. No campsites or campgrounds shall be allowed outside the designated Building Envelope.

c. Subdivision. Division or subdivision of the Property, physically or by legal process, including partition, is strictly prohibited. At all times the Property shall be owned, conveyed and transferred subject to the terms of this Conservation Easement, and any such transfer shall convey the Property in its entirety, regardless of whether the Property consists of separate parcels as of the Effective Date, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

d. Removal of Vegetation and Timber Harvesting. Except as set forth in **Section 4.b** of this Deed, Grantor may not remove any vegetation, including shrubs and trees, or harvest any timber from the Property.

e. Sodbusting. Sodbusting of native habitat is prohibited, including but not limited to grassland, riparian, forest and wetland habitats. Sodbusting is defined as the practice of breaking, tilling, and/or turning over virgin soils not previously farmed. This prohibition extends to previously farmed areas that have been restored to native vegetation.

f. Mineral and Hydrocarbon Extraction. As of the Effective Date, Grantor does not own all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind of description (the “**Minerals**”) located on, under, or in the Property or otherwise associated with the Property. For this reason, a minerals assessment report has been completed by _____ dated _____, in compliance with I.R.C. § 170(h)(5)(b)(ii) and Treas. Reg. § 1.170A-14(g)(4). The report concludes that, as of the Effective Date, the probability of extraction or removal of Minerals from the Property by any surface mining method is so remote as to be negligible. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Grantor may permit subsurface access to Minerals from locations off the Property, provided that Grantor shall not permit such subsurface access to disturb the subjacent and lateral support of the Property or to materially adversely affect the Conservation Values. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values. However, Grantor and Grantee agree that the following provisions shall apply to any proposed mineral extraction by Grantor or any third party, as applicable:

(1) Soil, Sand, Gravel and Rock. Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the Conservation Values; (iv) does not involve disturbing by such extraction more than one half-acre (0.5 acres) of the Property at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irretrievably destructive of the Conservation Values; (v) does not result in the establishment of new roads; (vi) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed, including revegetation with appropriate seed mix to match the vegetation that was on-site prior to the disturbance; and (vii) does not disturb the

subjacent and lateral support of the Property. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.

(2) Oil and Gas. As of the Effective Date there are no active oil or gas wells on the Property. Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

(i) The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the “**Oil and Gas Plan**”), prepared at Grantor’s expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) the proposed operation restrictions to minimize the impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (g) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring the soils to the original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (h) remedies for damages to the Conservation Values.

(ii) No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

(iii) Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

(iv) Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

(v) Well facilities shall either be placed underground, or screened or concealed from view by the use of existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located underground along or under existing roadways.

(vi) Drilling equipment may be located above ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is complete.

(vii) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Grantor.

(viii) Any water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

(ix) Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

(x) Grantor shall not allow use of the Water Rights for any oil and gas activities.

(xi) Grantor shall restore the well pad to the smallest footprint required post drilling as soon as initial drilling operations cease.

(xii) Grantee shall be released, indemnified and held harmless by the oil and gas operator, provided the operator is not the Grantor, from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(3) Third-Party Mineral Extraction. If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals associated with the Property (each, a “**Mineral Document**”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval. Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii) must (a) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize

impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property, and shall not allow any use that would materially adversely affect the Conservation Values.

(4) This **Section 5.f** shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

g. Trash. The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other farm-related trash and refuse produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. Recreation related trash is permitted to be accumulated on site provided that it is contained within trash cans and dumpsters and removed from the property within a reasonable period of time. This **Section 5.g** shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

h. Topographical Changes. No excavating, grading, cut and fill, berming or other similar topographical changes shall occur on the Property, except in connection with the construction of permitted improvements or in acts of restoration, if any.

i. Erosion or Water Pollution. Any activity or use that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited.

j. Hazardous Materials. The storage, dumping or other disposal of hazardous and/or toxic materials, industrial wastes or other similar materials on the Property is prohibited.

k. Commercial or Industrial Activity.

1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C. § 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

(i) Grazing livestock, as defined in **Section 4.b(2)** above;

(ii) Commercial activities permitted in City of Loveland Natural Areas such as photography, seed collection, filming and guided programs (including but not limited to hikes, bike rides, horseback rides and environmental or cultural education programs).

(iii) For any commercial use not expressly set forth in this paragraph, Grantor shall provide Grantee with written notice of Grantor's proposed use, and Grantor shall only commence such use with Grantee's written approval, in accordance with **Section 7** of this Deed. Grantee shall have the right to require Grantor to supply sufficient detail to inform Grantee's approval.

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial 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 for purposes of engaging in the commercial business of the reception and feeding of livestock.

m. Signs and Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, signs identifying the Property as an Open Space area and related informational, directional, and other signage of a number, nature and type typical of other Larimer County Open Spaces (including kiosks and educational signs), "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing or other low-impact recreational uses, and signs informing the public of the status of ownership. No signs shall significantly diminish or impair the Conservation Values. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board's Grant and investment in this Property to the public.

n. Outdoor Lighting. Except for existing lighting not in conformity with this requirement, all external lighting shall comply with local lighting ordinances, including any dark sky requirements of the Larimer County building code.

o. Motorized Vehicles. Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Motorized vehicles may not be operated or ridden "off road" on the Property, except as may be necessary for the conduct of land maintenance, including trail maintenance, patrol and construction, and agricultural activities as may be permitted by this Conservation Easement. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

6. LAND MANAGEMENT PLAN. Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed require careful and thoughtful stewardship of the Property. Grantor and Grantee shall jointly prepare a Land Management Plan ("**Management Plan**") within ten (10) years of the Effective Date of this Deed. In the event Grantee believes at any time prior to development of the Management Plan, that the resource management practices used on the Property are not consistent with the Purpose, Grantor and Grantee shall jointly prepare an interim Land Stewardship Plan ("**Stewardship Plan**")

detailing requirements for the preservation and protection of the Conservation Values regarding: agricultural, timber, mining, water, wildlife, weed control or other management practices that Grantee has identified as being at issue. Grantor shall comply with the requirements established in the Management Plan. Grantee shall provide the Management Plan to the Board. The Parties will cooperate in an effort to update the Management Plan if either Party determines an update is necessary. Grantor shall adopt reasonable rules, regulations and enforcement practices concerning the allowed public recreational uses and shall actively manage the Property and implement and enforce such regulations and practices, in accordance with its practices for similar open space properties, so that the permitted usage of the Property by the public will not have a material adverse effect on the Conservation Values associated with the Property. The budgeted funds and resources allocated and devoted to the management of the Property, including those utilized for the implementation and enforcement of rules, regulations and practices, are solely within the discretion of Grantor.

7. GRANTOR NOTICE AND GRANTEE APPROVAL. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. 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 consistency with the Purpose. Where Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee's approval in writing. Grantee shall grant or withhold its approval in writing within a reasonable period of time within receipt of Grantor's written request thereof and submittal sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee's reasonable determination that the activity as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.

8. ENFORCEMENT. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:

- a. Restore the Property to its condition prior to the violation; or
- b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If Grantor refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole

discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition. The Board shall in no event be required to participate in any mediation.

9. COSTS OF ENFORCEMENT. Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed. If the deciding body determines that Grantor has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee's legal action was frivolous or groundless, Grantee shall pay Grantor's costs and attorney fees in defending the legal action.

10. NO WAIVER OR ESTOPPEL. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation of the same or any other term of this Deed or of any of Grantee's rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*

11. ACTS BEYOND GRANTOR'S CONTROL. Nothing contained in this Deed 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 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. Notwithstanding the foregoing, Grantor shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that is inconsistent with the Purpose.

12. ACCESS. The general public shall have access to the Property, in Grantor's discretion, subject to any regulations by Grantor necessary and appropriate to protect the public health and safety, and subject to the requirements of this Deed. The Parties acknowledge that Grantor may "post" and close portions of the Property to public access to protect areas of environmental sensitivity and for other management purposes that are consistent with the purposes of this Deed. Grantor at Grantor's sole discretion may close the entire site to public access in the event of an emergency or other exigent circumstances.

13. COSTS AND LIABILITIES. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive

general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. TAXES. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “**Taxes**”), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.

15. LIABILITY. As government entities, Grantor and Grantee are responsible for their own wrongful or negligent acts and omissions and those of their respective officers and employees. Anything else in this Deed to the contrary notwithstanding, no term or condition of this Deed shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to Grantor and Grantee under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. Seq., as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted), subject to any applicable provisions of the Colorado Constitution and applicable laws. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law of regulation.

16. REAL PROPERTY INTEREST. The conservation easement interest created by this Deed constitutes a real property interest immediately vested in Grantee, the value of which has not been determined as of the Effective Date. Should the Deed be taken for the public use or otherwise terminated according to **Section 17** below, Grantee shall be entitled to compensation for its interest, which shall be determined by a qualified appraisal that establishes the ratio of the value of the Deed interest to the value of the fee simple interest in the Property, expressed as a percentage, as of the date of the taking or termination (the “Easement Value Percentage”). The Easement Value Percentage shall be used to determine Grantee’s compensation according to the following **Section 17**.

17. CONDEMNATION OR OTHER EXTINGUISHMENT. If this Deed is taken, in whole or in part, by exercise of the power of eminent domain (“**Condemnation**”), or if circumstances arise in the future that render the Purpose impossible to accomplish, this Deed can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party and the Board in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Deed that is terminated as a result of Condemnation or other proceedings. Grantee’s proceeds shall be an amount at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest (excluding the value of any improvements) in the portion of the Property that will no longer be encumbered by this Deed as a result of Condemnation or termination. Grantor and Grantee will require an appraisal to be completed by a qualified appraiser on the Colorado Department of Transportation Appraiser List to deliver a report of their

findings to all Parties, at the expense of the condemning party to determine Easement Value Percentage. Payments to the Grantee for the easement value will coincide with the percentages in which each Grantee initially contributed to the Property: City of Loveland 75%, City of Fort Collins 25%. The Board shall be entitled to receive sixteen percent (16%) of Grantee's compensation. Grantee shall promptly remit the Board's share of these proceeds to the Board.

Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed as determined by an appraisal or through a valuation hearing in an eminent domain proceeding without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed or the mission of the Grantee. Grantee's remedies described in this **Section 17** shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

18. ASSIGNMENT.

a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

- (1) is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;
- (2) is authorized to acquire and hold conservation easements under Colorado law;
- (3) agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and
- (4) is approved in writing as a transferee by the Board in its sole and absolute discretion. Grantee shall provide the Board with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction.

b. If Grantee ever shall cease to exist or is no longer qualified to enforce the terms and provisions of this Deed, a court with jurisdiction shall transfer the Grantee's rights and obligations under this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

c. The Board shall have the right to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Easement; or is unwilling or unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Paragraph 18.c., the Board shall consult with Grantee and provide Grantee an opportunity to address the Board's concerns. If the Board's concerns are not addressed to its satisfaction, the Board may require that Grantee

assign this Easement to an organization designated by the Board that complies with Paragraph 18.a.(1), (2), and (3) above.

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

e. Upon compliance with the applicable portions of this **Section 18**, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located. Assignment of the Deed shall not be construed as affecting the Deed's perpetual duration and shall not affect the Deed's priority against any intervening liens, mortgages, easements, or other encumbrances.

19. SUBSEQUENT TRANSFERS. Grantor shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. Grantor further agrees to give written notice to Grantee and the Board of the transfer of any interest at least forty-five (45) days prior to the date of such transfer and may be required to pay the Board an Additional Board Refund under **Section 20** below. The failure of Grantor to perform any act required by this **Section 19** shall not impair the validity of this Deed or limit its enforceability in any way.

20. ADDITIONAL BOARD REFUND. The Board's Grant has provided partial consideration for Grantor's acquisition of fee title to the Property, associated water rights, and/or partial real estate interest in the Property above and beyond this Easement; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated water rights ("Sale"), excluding any lease of the Property or the water rights to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "Additional Board Refund"), in addition to any payment that the Board may be entitled to receive under **Sections 16 and 17** above.

A. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale (which shall be defined as the fair market value of the property being sold in the Sale, minus direct transaction costs) ("Net Proceeds"). The Additional Board Refund shall be determined by: a) first dividing the Board's Grant amount by the original purchase price for fee title to the Property; b) then by multiplying the resulting ratio by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale. The Additional

Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale.

b. Possible Exception to Refund Requirement. If a Sale occurs to a third party which is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board. (For example, if the Grantor proposed that the Grant project would include public access to the Property, and the Sale will result in substantially the same amount and type of public access, the Board will deem that a material change in the Grant project's scope has not occurred, and Grantor shall not be required to pay the Board an Additional Board Refund, unless another aspect of the Grant project has changed that reduces the Grant project's scope from that of the original Grant as approved by the Board).

20. NOTICES. Any notice, demand, request, consent, approval, or communication that either Party or the Board is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

TO GRANTEE:
Open Lands Program Manager
Larimer County Natural Resources
1800 S. County Road 31
Loveland, CO 80537

TO GRANTOR:
Natural Areas Director
City of Fort Collins, Natural Areas Department
P.O. Box 580
Fort Collins, CO 80522

AND

Open Lands & Trails Manager
Parks and Recreation Department
City of Loveland
500 E. 3rd Street Suite 200
Loveland, CO 80537

TO THE BOARD:
Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1900 Grant Street, Suite 725

Denver, CO 80203

or to such other addresses as the Parties or the Board from time to time shall designate by written notice to the other.

21. **GRANTOR'S TITLE WARRANTY.** Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all claims whatsoever.
22. **SUBSEQUENT LIENS ON THE PROPERTY.** No provisions of this Deed shall be construed as allowing the Grantor to use this Property as collateral for subsequent borrowing including but not limited to deeds of trusts and mortgages. This provision is not intended to limit Grantor's ability to seek or provide support for grant funding that utilizes the value of the Property as match.
23. **RECORDING.** Grantee shall record this Deed in a timely fashion in the official records of each county or counties in which the Property is situated and may re-record it at any time as may be required to preserve its rights in this Deed.
24. **ENVIRONMENTAL ATTRIBUTES.** Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. "**Environmental Attributes**" shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this **Section 24** shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.
25. **DEED CORRECTION.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement. Any corrections shall be recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located.
26. **EFFECTIVE DATE.** The Effective Date of this Deed shall be the date and year first written above.
27. **JURISDICTION.** Any mediation or arbitration concerning this Conservation Easement shall take place in Larimer County, Colorado, or other location mutually agreed to by the parties, and only upon consent from Grantee. Any court action concerning this Conservation Easement shall take place in the District Court for Larimer County, Colorado, and Grantor and Grantee hereby consent to personal jurisdiction in Larimer County, Colorado.
28. **GENERAL PROVISIONS.**

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

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the Purpose and the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this Deed is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Deed, and the balance of this Deed shall otherwise remain in full force and effect.

d. Entire Agreement. The Recitals above are a material part of this Deed and are incorporated into this Deed. With the exception of the Intergovernmental Agreement between the Parties dated _____, 2024 regarding the Prairie Ridge Addition this Deed sets forth the entire agreement of the Parties with respect to the grant of a conservation easement over the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the grant, all of which are merged in this Deed.

e. Joint Obligation. The obligations imposed upon Grantor and Grantee in this Deed shall be joint and several in the event that more than one entity or individual holds either interest at any given time.

f. Obligations Subject to Annual Appropriations. Any obligations of the Parties under this Deed for fiscal years after the year of this Deed are subject to annual appropriation by such Parties' governing bodies, in their sole discretion, of funds sufficient and intended for such purposes.

g. Non-Merger. Unless Grantor and Grantee expressly state in writing that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Conservation Easement. If Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that the Grantee first transfer the Easement to another qualified organization consistent with **Section 18** above.

h. Successors. The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Termination of Rights and Obligations. Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's

interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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

k. No Third Party Beneficiaries. This Deed is entered into by and between Grantor and Grantee and is solely for the benefit of Grantor and Grantee and the Board and their respective successors and assigns for the purposes set forth in this Deed. This Deed does not create rights or responsibilities in any third parties beyond Grantor, Grantee, and the Board.

l. Amendment. If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed, (ii) does not affect the perpetual duration of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, (iv) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time) and (v) receives the Board's prior written approval. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. In order to preserve the Easement's priority, the Board may require that the Grantee obtain subordinations of any liens, mortgages, easements, or other encumbrances. For the purposes of the Board's approval under item (v) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement. Nothing in this paragraph shall be construed as requiring Grantee or the Board to agree to any particular proposed amendment.

m. Change of Conditions or Circumstances. A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.

o. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the Board, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

p. Authority to Execute. Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of each Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of each Party enforceable against each Party in accordance with its terms.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

[Signatures on following pages.]

GRANTEE:

**BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO**

BY: _____
Chair

ATTEST:

APPROVED AS TO FORM:

Deputy Clerk of the Board
Date: _____

County Attorney
Date: _____

STATE OF COLORADO)
) ss:
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____,
2024 by _____ as Chair of the Board of County Commissioners, Larimer County,
Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

GRANTOR:

CITY OF FORT COLLINS

By: _____
Kelly DiMartino, City Manager

Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk
Printed Name: _____

Assistant City Attorney
Printed Name: _____

STATE OF COLORADO)
) ss:
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Kelly DiMartino as City Manager of the City of Fort Collins.

Witness my hand and official seal.

Notary Public

My commission expires: _____

GRANTOR:

CITY OF LOVELAND

By: _____
Rod Wensing, Acting City Manager

Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

Assistant City Attorney

STATE OF COLORADO)
) ss:
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Rod Wensing as Acting City Manager of the City of Loveland.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION AND ALTA SURVEY OF THE PROPERTY

The S ½ of Section 28, Township 6 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado.

Except those parcels described in deeds recorded: May 31, 2000 at Reception No. 2000035785 and October 19, 2016 at Reception No. 20160071291, and except any portion lying within County Road 19.

EXHIBIT A

EXHIBIT A
LEGAL DESCRIPTION AND ALTA SURVEY OF THE PROPERTY continued

EXHIBIT A TO ORDINANCE NO. 131, 2024

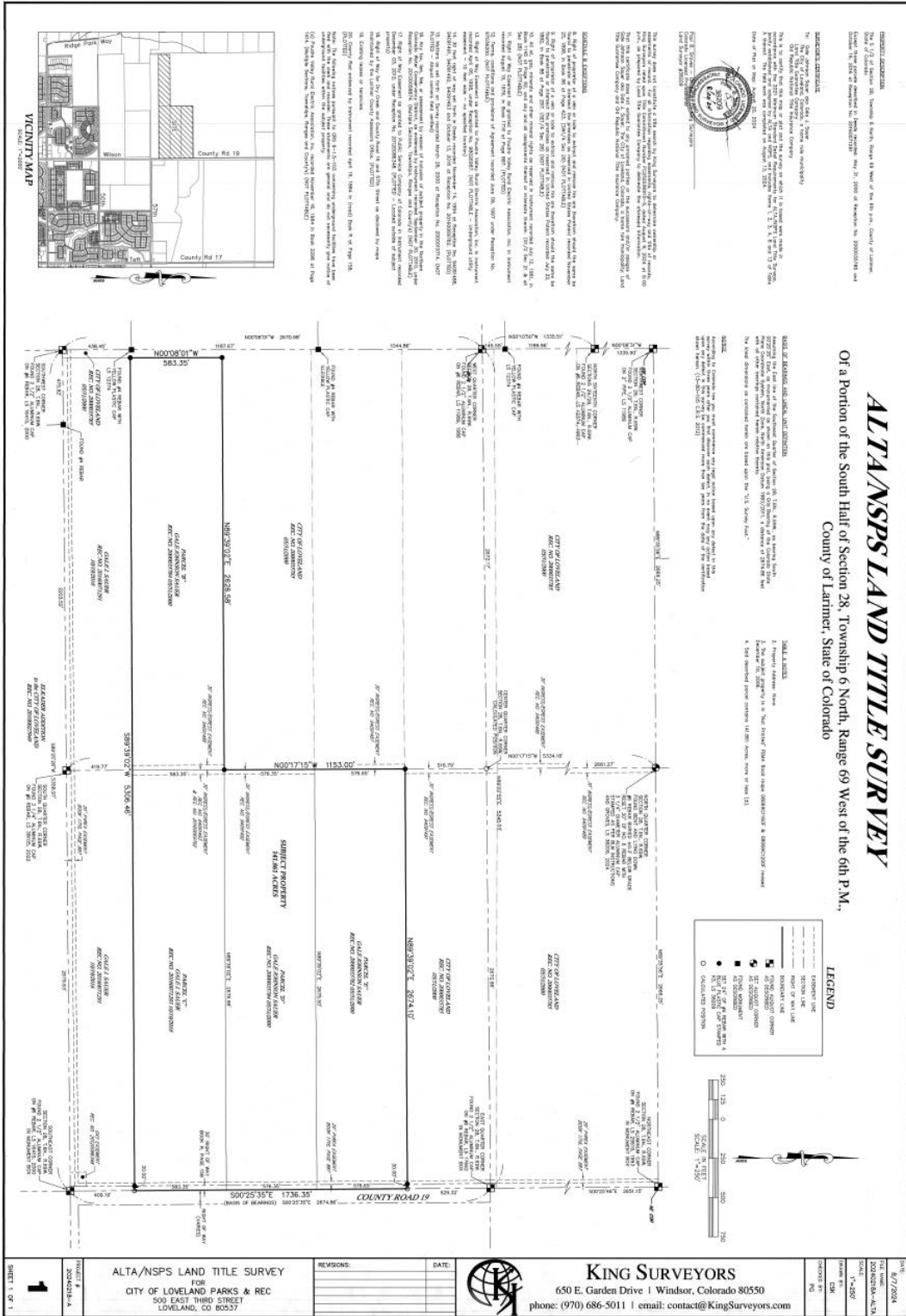


EXHIBIT B

MAP OF THE PROPERTY



EXHIBIT A TO ORDINANCE NO. 131, 2024

EXHIBIT C

BASELINE ACKNOWLEDGEMENT

ACKNOWLEDGEMENT SHEET FROM BASELINE INVENTORY (to be inserted)

EXHIBIT A TO ORDINANCE NO. 131, 2024