

EXHIBIT A TO RESOLUTION 2024-098

INTERGOVERNMENTAL AGREEMENT
CONCERNING THE ROCKY RIDGE CONSERVATION PROJECT

This Intergovernmental Agreement (Agreement) is made this ____ day of _____, 2024, by and between the CITY OF FORT COLLINS, COLORADO (the "City") and LARIMER COUNTY, COLORADO (the "County")

WHEREAS, part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

WHEREAS, the County has imposed a sales and use tax via the "Help Preserve Open Spaces Initiative" for the purchase and maintenance of open space, natural areas, wildlife habitat, parks and trails and a portion of the funds generated by said sales tax are distributed to municipalities located within Larimer County, including the City; and

WHEREAS, the City has imposed a dedicated 0.25% sales and use tax known as "Open Space Yes!", portions of the revenues from which are intended and available for the purchase and maintenance of open space, natural areas, and trails; and

WHEREAS, the parties recognize through the Larimer County Open Lands Master Plan and Fort Collins Natural Areas Master Plans that certain lands in the foothills and along the mountain backdrop to the cities of Fort Collins and Wellington (the "Conservation Area") are important to be conserved through various means such as fee acquisition, conservation easements, and regulatory measures; and

WHEREAS, the Larimer County Natural Resources Department and the City of Fort Collins Natural Areas Department share common goals in conserving land in the Conservation Area, and by this IGA intend to form a partnership to carry out a land conservation project known as the "Rocky Ridge Conservation Project" to conserve in fee and in conservation easement approximately 484 acres of land; and

WHEREAS, the Natural Areas Department has prioritized encumbering City Natural Areas' properties with conservation easements to add further protection to Natural Areas land based on the advice of the City Land Conservation and Stewardship Board; and

WHEREAS, the City has acquired through purchase of fee interest, the real property referred to as the "Rocky Ridge Property", described in **Exhibit A**, attached hereto and incorporated herein by reference ("Rocky Ridge"); and

WHEREAS, in consideration of a \$1,500,000 contribution from the County towards the purchase of Rocky Ridge, the City intends to convey a conservation easement (the "Conservation Easement") to the County on Rocky Ridge; and

WHEREAS, the parties desire to cooperate and contract with one another concerning the sharing of costs and responsibilities for the conservation of the Rocky Ridge property.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

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A. Subject Properties/Easement

1. The City acquired Rocky Ridge on April 30, 2024.

2. The cost for conserving the Rocky Ridge, including the purchase price, conveyance of the Conservation Easement, closing costs, title insurance, Mineral Remoteness Opinion, and Baseline Report is estimated to be approximately \$5,117,600 as shown in **Exhibit B**, attached hereto and incorporated herein by reference. The County and City are responsible for paying the estimated costs designated to each of them in Exhibit B.

- (a) The County, within sixty (60) days of full execution of this Agreement, will contribute \$1,500,000 toward the cost of the acquisition of Rocky Ridge in exchange for the City granting the Conservation Easement on said property.
- (b) The City will pay all due diligence costs associated with the fee acquisition of Rocky Ridge. The parties agree to share the due diligence costs associated with the conveyance of the Conservation Easement from the City to the County on Rocky Ridge. These estimated costs are shown in Exhibit B.
- (c) If either the City or County determines it is unable to pay its share of any unanticipated costs, they agree to negotiate in good faith to reach a resolution such that the acquisition may be completed. Such resolution may include modifying the amount each party will pay for the unanticipated costs.

3. Within eighteen (18) months of the execution of this IGA, the City will convey the Conservation Easement on Rocky Ridge to the County. The terms and conditions of the Conservation Easement will be substantially the same as the form conservation easement template attached as **Exhibit C** which the County and City agree must be completed and revised (including exhibits thereto) subject to approval of both County and City each in their sole and separate subjective discretion prior to the conveyance of the Conservation Easement.

- (a) Conveyance of the Conservation Easement and the Option as defined in paragraph C.1 below, are both subject to prior approval by the Fort Collins City Council in its discretion by final adoption of an ordinance. If the City Council does not pass such an ordinance on second reading on or before October 1, 2024, or if the Council approves such ordinance but within ten (10) days of the passage of the ordinance a notice of protest against the ordinance is filed with the City Clerk of the City of Fort Collins pursuant to Section 2(b) of Article X of the Charter of the City of Fort Collins, then this IGA shall terminate and both parties shall be released from their obligations hereunder and the County shall be entitled to a refund of its contribution towards the City's purchase of Rocky Ridge.
- (b) The County will prepare the Conservation Easement instrument covering Rocky Ridge, in collaboration with the City. Upon completion of the transaction the County shall submit the Conservation Easement to the Larimer County Clerk and Recorder for recording in the real property records of the County and shall provide a copy of the recorded Conservation Easement to the City upon completion of recording. If the Parties cannot agree on the terms of the Conservation Easement, the County shall be entitled to a refund of its contribution towards the City's purchase of Rocky

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Ridge.

4. Following the closing of the fee acquisition and conservation easement conveyance, the City will prepare a summary report similar to Exhibit B showing the exact costs paid by each party. It is not necessarily the parties' intent that the costs paid by each party will be equivalent to the value of the property interest held by such party.

5. The City shall have the discretion to make decisions related to the negotiations including choice of surveyor, title company, and other administrative matters, consistent with this Agreement. The parties shall promptly communicate with each other on any new material information related to Rocky Ridge and the Conservation Easement acquisition.

B. Management of Rocky Ridge

1. The City will manage Rocky Ridge in accordance with management priorities for City Natural Areas properties in a similar geographic location. Within 18 months of Conservation Easement conveyance the City will complete an onboarding planning process for the site and establish management tactics for the site. Subsequent management tactics will be established through a Zone Update to be completed within five years of conveyance.

2. In the event of emergency circumstances requiring immediate response prior to the Mountains to Plains Zone Update which will be used to guide the management of Rocky Ridge, the City shall be entitled to use reasonable discretion in responding to such circumstances. If possible, the City shall consult with the County in advance of any action being taken. In the event advance consultation is not reasonably possible, the City shall limit its actions to those necessary to address the existing emergency and shall make reasonable efforts to inform the County promptly of any such event and chosen course of action.

C. Subsequent Sale and/or Transfer of Rocky Ridge or Conservation Easement Interests

1. If the City desires to sell all or any portion of its fee interest in Rocky Ridge, the City shall provide written notice to the County of its intention to sell its interest ("Notice of Intent to Sell"). The County shall have a right of first refusal ("Option") to purchase such interest ("Interest") for its fair market value.

- (a) The County shall have 30 days from the date of the Notice of Intent to Sell to notify the City if it is interested in purchasing the Interest. The parties shall then jointly select an appraiser to determine the fair market value of the Interest. The cost of such appraisal shall be split equally between the parties.
- (b) The County shall notify the City within 30 days following the completion of the appraisal whether it intends to purchase the Interest. The parties shall then work in good faith to negotiate a purchase and sale agreement and any necessary documents for completion of the sale. The Option shall expire if the County does not, within 30 days of the completion of the appraisal, notify the City that it intends to purchase the Interest.
- (c) If the County timely notifies the City of its intent to purchase, the Option shall nonetheless expire two years after the date of the Notice of Intent to Purchase if the parties, acting in good faith, have not closed on the

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conveyance of the Interest by that time.

- (d) If the County declines to purchase the Interest, either before or after having the Interest appraised, the City may then convey the Interest to a third-party as it chooses without compensation to the County, as long as such sale of the Interest is subject to the terms of the Conservation Easement and any other existing encumbrances, restrictions, or conditions applicable to the conveyed property.

2. If the City desires to sell all or any portion of its fee interest in Rocky Ridge, including easements or rights of way, and the County notifies the City of a potential adverse impact of the proposed sale on the remaining interests in Rocky Ridge or the Conservation Easement, the parties agree to negotiate in good faith to resolve the issue prior to the conveyance of such interests, as described in the Conservation Easement.

3. If all or any portion of Rocky Ridge is taken by eminent domain prior to the City's conveyance of the Conservation Easement to the County, the net proceeds from such disposition shall be divided between the City and the County in the same percentage as their respective contributions to the initial purchase payments for acquiring the property interests taken as defined in Exhibit B. Proceeds from such conveyance shall be subject to the provisions of each party's respective applicable policies, ordinances, resolutions, and plans. If all or any portion of Rocky Ridge is taken by eminent domain after conveyance of the Conservation Easement, the compensation received for the taking shall be divided between the parties as described in the Conservation Easement.

4. If the County wishes to assign the Conservation Easement (including any form of transfer or conveyance) to a third party, it shall provide written notice to the City of its intention to do so and the identity of the proposed assignee ("Notice"). The City shall have thirty (30) days from receipt of the Notice to notify the County of any objection the City has to the proposed assignment and the basis for such objection. If the City raises such an objection, the parties agree to negotiate in good faith to resolve the issue prior to the assignment of the Conservation Easement. Per the terms of the Conservation Easement, the County shall have the authority to assign the Conservation Easement despite objection by the City provided that the County has negotiated in good faith with the City to resolve the objection. The parties understand and acknowledge that if the County assigns the Conservation Easement to a third-party, the County may not receive any payment for such transfer, and neither the County nor the City would be entitled to recover any portion of its initial contribution to the value of the Conservation Easement.

D. General Provisions.

1. Each party agrees to execute all additional instruments and documents necessary to effectuate the transactions and purposes described herein, subject to any necessary approvals.

2. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

3. Financial obligations of the parties payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating funds sufficient and intended for such purposes.

4. Each party is responsible for its own negligence and that of its officers, employees,

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and volunteers. Nothing in this Agreement waives the immunities, limits of liability, or other terms and conditions of the Colorado Governmental Immunity Act as now in force or hereafter amended.

5. Any notices required or permitted to be given shall be in writing and personally delivered to the office of the parties hereof, or sent by first class mail, postage prepaid, or by overnight commercial courier, addressed as follows:

Katie Donahue	Daylan Figgs
Natural Areas Director	Natural Resources Director
City of Fort Collins - Natural Areas Department	Larimer County Natural Resources Department
PO Box 580, Fort Collins, CO 80522	1800 S County Rd 31, Loveland, CO 80537
kdonahue@fcgov.com	dfiggs@larimer.org

Any such notice shall be effective (i) in the case of personal delivery or by overnight commercial courier, when the notice is actually received, or (ii) in the case of first-class mail, the third day following deposit in the United States mail, postage prepaid, addressed as set forth above. Any party may change these persons or addresses by giving notice as required above.

6. If either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof. If a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

7. Nothing in this Agreement shall imply any partnership, joint venture, or other association between the City and the County. Each party shall have sole responsibility for the content and the conduct of its activities. Neither party shall use the other's name or logo to suggest co- sponsorship or endorsement of any activity without the other's prior written approval.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement concerning the Rocky Ridge Conservation Project, on the day and year first above written.

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A Municipal Corporation

By: _____
Jeni Arndt, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Assistant City Attorney

(print name)

(title)

(print name)

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BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

By: _____
Chair

ATTEST:

APPROVED AS TO FORM:

Deputy Clerk

County Attorney

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EXHIBIT A

Rocky Ridge Property

PARCEL I:

BEGINNING AT THE NE CORNER OF SECTION 10, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO; THENCE ALONG THE EAST LINE, S 0 DEGREES 21' W, 2692.04 FEET TO ROCKY RIDGE RESERVOIR; THENCE ALONG SAID RESERVOIR, S 86 DEGREES 5' W, 133.54 FEET, AND AGAIN S 29 DEGREES 22' W, 343.87 FEET, AND AGAIN S 40 DEGREES 19' E, 240.88 FEET, AND AGAIN S 49 DEGREES 03' E, 188.34 FEET TO A POINT ON SAID EAST LINE OF SECTION 10; THENCE ALONG SAID EAST LINE, S 00 DEGREES 21' W, 538.97 FEET TO THE CENTERLINE OF THE LARIMER COUNTY CANAL; THENCE ALONG SAID CENTERLINE, N 77 DEGREES 08' W, 331.40 FEET; AND AGAIN N 89 DEGREES 31' W, 110.66 FEET; AND AGAIN S 79 DEGREES 17' W, 376.18 FEET; AND AGAIN S 62 DEGREES 18' W, 507.39 FEET; AND AGAIN S 49 DEGREES 03' W, 68.12 FEET; AND AGAIN S 75 DEGREES 02' W, 280.34 FEET, AND AGAIN N 81 DEGREES 33' W, 114.06 FEET; AND AGAIN N 61 DEGREES 44' W, 124.62 FEET; AND AGAIN N 50 DEGREES 45' W, 292.72 FEET; AND AGAIN N 42 DEGREES 12' W, 106.18 FEET; AND AGAIN N 56 DEGREES 02' W, 536.40 FEET; AND AGAIN N 51 DEGREES 31' W, 172.01 FEET; AND AGAIN N 55 DEGREES 26' W, 321.35 FEET; AND AGAIN N 64 DEGREES 28' W, 184.95 FEET; AND AGAIN N 43 DEGREES 36' W, 112.22 FEET; AND AGAIN N 27 DEGREES 17' W, 166.53 FEET; AND AGAIN N 42 DEGREES 25' W, 274.20 FEET; AND AGAIN N 20 DEGREES 85' W, 265.25 FEET; AND AGAIN N 09 DEGREES 32' W, 124.82 FEET; AND AGAIN N 04 DEGREES 09' E, 234.25 FEET; AND AGAIN N 15 DEGREES 00' E 338.49 FEET, AND AGAIN N 06 DEGREES 33' W, 298.29 FEET; AND AGAIN N 01 DEGREES 59' W, 265.99 FEET; AND AGAIN N 13 DEGREES 23' E, 138.90 FEET; AND AGAIN N 39 DEGREES 37' E, 124.48 FEET; AND AGAIN N 76 DEGREES 58' E, 87.88 FEET, AND AGAIN S 80 DEGREES 56' E, 124.70 FEET; AND AGAIN N 83 DEGREES 17' E, 90.65 FEET; AND AGAIN N 41 DEGREES 50' E, 391.61 FEET; AND AGAIN N 21 DEGREES 15' E, 486.27 FEET; AND AGAIN N 00 DEGREES 40' E, 72.04 FEET, AND AGAIN N 27 DEGREES 02' W, 47.83 FEET; AND AGAIN N 43 DEGREES 29' W, 219.45 FEET TO THE NORTH LINE OF SAID SECTION 10; THENCE ALONG SAID NORTH LINE, E 2845.43 FEET OF THE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED IN DEED RECORDED NOVEMBER 10, 1981 IN 2140 AT PAGE 1506

EXCEPT 30 FOOT RIGHT OF WAY FOR LARIMER COUNTY CANAL ALONG THE SOUTHERLY AND WESTERLY LINES THEREOF.

PARCEL II:

A PARCEL OF LAND IN SECTION 11, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO, WITH ALL BEARINGS RELATIVE TO THE NORTH LINE, AS EAST-WEST; AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT A POINT ON THE NORTH LINE OF SECTION 11, 762.00 FEET WEST OF NE CORNER OF SECTION 11, SAID POINT BEING THE POINT OF BEGINNING; THENCE WEST ALONG THE NORTH LINE OF SECTION 11, 1872.74 FEET TO THE N 1/4 CORNER OF SECTION 11; THENCE CONTINUING WEST ALONG THE NORTH LINE OF SAID SECTION 11, 1090.00 FEET, THENCE SOUTH 1570.00 FEET; THENCE S 86 DEGREES 30' 00" E, 900.00 FEET; THENCE S 66 DEGREES 30' 00" E, 1677.00 FEET; THENCE N 25 DEGREES 17' 20" E, 1087.76 FEET; THENCE N 02 DEGREES 42' 08" E, 1311.59 FEET TO THE POINT OF BEGINNING.

PARCEL III:

BEGINNING AT THE NW CORNER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO; THENCE EAST 1550 FEET; THENCE SOUTH 2126 FEET; THENCE S 69 DEGREES 45' W, 1648 FEET; THENCE NORTH 2700 FEET TO BEGINNING;

EXCEPTING FROM PARCEL III ANY PORTION OF PARCEL II INCLUDED IN THE CONVEYANCE RECORDED IN [BOOK 395 AT PAGE 353](#).

ALSO EXCEPTING FROM ABOVE PARCELS, RIGHT OF WAY FOR COUNTY ROAD AS ESTABLISHED AND/OR USED.

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EXHIBIT B

Rocky Ridge Conservation Project

Draft IGA Cost Data

Costs are Estimates and are subject to change

Property	Acres	Fort Collins	Larimer County	Total
Rocky Ridge Fee Purchase				
Land Acquisition	484	\$3,600,000	\$1,500,000	\$5,100,000
Closing Costs		\$4,600		\$4,600
Environmental Assessment		\$2,500		\$2,500
Subtotal				\$5,107,100
Conservation Easement on Rocky Ridge				
Easement Acquisition			\$1,500,000	
Baseline Report		\$3,500	\$3,500	\$7,000
Mineral Remoteness Report		\$1,250	\$1,250	\$2,500
Closing Costs		\$500	\$500	\$1,000
Subtotal				\$10,500
Grand TOTALS	484	\$3,612,350	\$1,505,250	\$5,117,600

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Exhibit C
TEMPLATE DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the “**Deed**”) is granted on this ____ day of _____ 2024 (“**Effective Date**”), by **THE CITY OF FORT COLLINS, COLORADO**, a Colorado municipal corporation (“**Grantor**”) whose address for the purposes of this Deed is 300 LaPorte Avenue, P.O. Box 580, Fort Collins, Colorado 80522 to the **INSERT NAME**, (“**Grantee**”), having its address at _____. (Grantor and Grantee may be individually referred to as a “**Party**” and collectively referred to as “**Parties.**”) The following exhibits are attached and incorporated:

- Exhibit A - Legal Description of Property
- Exhibit B - Map of Property
- Exhibit C - Descriptions and Maps of Building Envelope Areas (Approximate Building Envelope area and surveyed addendums)

RECITALS

A. Grantor is the sole owner in fee simple of approximately _____ acres of real property located in Larimer County, Colorado, more particularly described in **Exhibit A** and generally depicted on **Exhibit B** (the “**Property**”).

B. The Property possesses relatively natural habitat, scenic, open space, educational, and recreational values (collectively, “**Conservation Values**”) of great importance to Grantor, the people of the City of Fort Collins and the surrounding Larimer County region, and the people of the State of Colorado. In particular, the Property contains the following characteristics, as described in the baseline report, which are also included within the definition of Conservation Values.

- i. Scenic and open space values, including views of grassy plains, the foothills and mountains, hogback ridges, rock outcroppings and cliffs.
- ii. Natural Vegetation communities include, cottonwood galleries, foothills grasslands, and a wildlife corridor for resident and migrant birds and mammals. Wildlife values include habitat for deer, elk, bighorn sheep, mountain lion, bobcat, coyote, fox, various smaller mammals, various snake and amphibian species, raptors, and other resident and migratory bird species.
- iii. Ecological values, representing a native biotic community of grasslands, and shrublands.
- iv. Agricultural values for limited livestock grazing and hay production.
- v. 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.

Conservation of this property is consistent with the following state and local governmental policies:

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- 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. 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."
- iv. 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.
- v. 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.
- vi. 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."
- vii. 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" and establishes conservation focus areas including the Foothills: Buckhorn, Redstone and Rist Canyon focus area which encompass the Property.
- viii. The City of Fort Collins City Plan (2019) includes the following Principle ENV1: "Conserve, create and enhance ecosystems and natural spaces with Fort Collins, the GMA and the region."

C. Grantor intends that the Conservation Values be preserved and protected in perpetuity, and that the Deed prohibits 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 current land

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use patterns on the Property, including without limitation those relating to grazing livestock, hay production, maintaining shrubland and grassland health and public open space and recreation purposes existing on the Effective Date (as defined in **Section 27**, below), do not materially adversely affect the Conservation Values and are consistent with the Purpose

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

E. Grantee is a _____, 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.

F. Grantee is qualified to hold conservation easements as a _____ under C.R.S. § 38-30.5-104, *et seq.*

G. Grantee is certified as license number _____ by the State of Colorado’s Division of Real Estate pursuant to C.R.S. § 12-61-724 and 4 C.C.R. 725-4, Chapter 2, to hold conservation easements for which a tax credit is claimed.

H. 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, 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 ensure that Grantor preserves and protects 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 will be prepared by _____ to be reviewed and approved by the Parties, which will document the Property’s condition as of the Effective Date (the “Baseline Report”). The Baseline Report shall contain a natural resources inventory of the Property at the time of the Baseline Report and also document 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 shall be made part of this Deed. The Parties acknowledge that the Baseline Report is intended to establish and accurately represent the condition of the Property as of the Effective Date. 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

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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, this 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. Such entry shall be conducted without damage to natural resources and may involve reasonable vehicle access restrictions imposed by Grantor. 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 such 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 include activities inconsistent with the purpose of the Easement, such as, 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 and recreational operations of the Property), and to have the right to approve any such agreement prior to such agreement being executed, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request and sufficient supporting details as described above, or explain to Grantor why Grantee reasonably requires no more than an additional thirty (30) days to reach a decision. 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 the Deed, Grantor reserves to Grantor, and to Grantor's personal representatives, 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, 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)

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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 Stewardship. 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, in the natural progression of ecosystems, 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 and brush, 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, realignment, rebuilding, or restoration of existing croplands, springs, ditches and pastureland, are permitted. Wetland pond, riparian, and grassland restoration and creation 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 agricultural or 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.

(iv) Wildlife Management. In coordination with Colorado Parks and Wildlife, management of wildlife including hunting and native species reintroductions shall be allowed on the Property.

(2) Agriculture. Grantor reserves the right to use the Property for grazing livestock. Grantor shall conduct all agricultural activities using stewardship and management methods that preserve the natural resources on the property. 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 vegetation. Non-native hay production is limited to areas historically used for such production. A map of non-native historic hayed areas can be found in the Baseline Report. Sodbusting, the removal of native vegetation for purposes of establishing additional croplands, is expressly prohibited.

(i) Grazing. Livestock grazing is permitted in accordance with sound stewardship and management practices, and shall be managed so that the overall

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condition of the Property is preserved at no less than its baseline condition and in no event in less than “fair” condition (as defined by the most current *applicable U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) Technical Guide*) and managed to improve the ecological health of the property, as outlined in the Land Management Plan. For the purposes of this Deed “livestock” shall mean cattle, sheep, goats, llamas, alpaca, yaks, 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. 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 timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by Grantor or on Grantor’s behalf by a 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 prior to any large-scale fire mitigation activities or timber harvesting.

c. Recreational Activities. Grantor reserves the right to provide non-motorized passive recreational activities, such as horseback riding, mountain biking, hiking, cross-country skiing, snowshoeing, and other similar on-trail, low-impact recreational uses, and to make the Property available to the public for such uses. Limited off-trail access is allowed for pedestrian uses and non-vehicular activities, including hiking, photography, seed collection, vegetation and wildlife studies, and wildlife viewing. Additionally, Grantor reserves the right to allow motorized recreational activities for persons with a disability under the Americans with Disabilities Act (ADA). Fishing and hunting are also permitted, so long as they are undertaken in compliance with applicable state and federal laws and regulations and pursued in a manner that is consistent with the Purpose. All Recreational Activities listed in this section will be in accordance with the Land Management Plan, referenced in **Section 12** of this Deed. Recreational trail activities for public use in the future are permitted in accordance with **Section 4.e(2)** of this Deed.

d. Residential and Non-Residential Improvements. Improvements existing as of the Effective Date are permitted, and Grantor may maintain, repair and replace such improvements in their current locations without Grantee’s approval. Grantor reserves the right to construct or place Residential Improvements and Non-Residential Improvements, as defined below, subject to **Sections 4.d(1), 4.d(2), 4.d(3)** and **4.d(4)** below, with 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, without Grantee’s approval. Once constructed, Grantor may maintain, repair and replace such new improvements in their initially constructed locations without Grantee’s approval.

“**Residential Improvements**” shall mean covered improvements containing habitable space intended for full or part-time human habitation, including homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch.

“**Non-Residential Improvements**” shall mean all other covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, including

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barns, hay storage areas, machine shops, sheds, free-standing garages, well houses, outhouses, gazebos, picnic areas, pools, outdoor kitchens, indoor and outdoor riding arenas, wildlife viewing platforms, shade structures, parking areas and trailhead areas (including vault toilets, shelters and trailhead kiosks).

“Minor Non-Residential Improvements” shall mean minor agricultural or non-residential improvements including fences (subject to the terms of **Section 4.f** of this Deed), corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced haystacks, livestock feeding stations, hunting blinds, sprinklers, water lines, water wells, ditches, diversion structures, bridges, information kiosks, trail markers and trash receptacles and benches.

In no case shall any Improvements be built on the Property within three hundred (300) feet of any naturally occurring stream surface spring water, or wetland, as identified in the Baseline Report or as may subsequently develop or be determined to exist on the Property, with the following exceptions: Water Facilities. Maintenance, development and construction of water facilities such as water wells, livestock watering wells, windmills, springs, water storage tanks, hydrants, pumps, water conveyance structures, and access bridges and or similar minor agricultural infrastructure that are solely for use on the Property in conjunction with those activities on the Property permitted by this Easement, including providing drinking water for users and livestock on the Property, for use by the Grantor, Grantor’s lessees and/or invitees, are permitted. Any Improvements pursuant to this paragraph shall be sited and constructed or placed so as not to substantially diminish or impair the Conservation Values of the Property and may be considered exempt from the setback requirement described in **Section 4d**. The Grantor shall report and describe development, construction, or modifications to water facilities on the Property as part of the Land Management Plan. All development and construction must comply with local, state, and federal requirements.

(1) Reserved Building Envelopes. Grantor may designate _____ building envelope(s) (the “Reserved Building Envelope”) of no more than _____ total acres.

(i) Reserved Building Envelope #1 will be for the purposes of XXXX. Prior to the construction or placement of any improvements, Grantor shall inform Grantee in writing of Grantor’s choice of location for the Reserved Building Envelope. Grantor shall, at its expense, describe and depict the boundaries of both the Reserved Building Envelope using a survey and provide a copy of such description to Grantee. Grantor and Grantee shall execute and record a supplement to this Deed that describes and depicts the exact boundaries of the Reserved Building Envelope.

(2) Outside of the Building Envelope. No construction or placement of Residential Improvements is allowed outside any Building Envelope. Following Grantor’s notice to Grantee pursuant to **Section 7** of this Deed and confirmation that all construction and placement will meet the following limitations, Grantor may construct or place Non-Residential Improvements and Minor Non-Residential Improvements in the portion of the Property outside of the Building Envelopes subject to the following limitations:

(i) Grantor may maintain, repair, or remove Non-Residential Improvements existing as of the Effective Date of this Deed and documented in the Baseline Documentation Report in their current locations without Grantee’s approval.

(ii) Subject to the terms outlined below, Grantor may construct new Non-Residential Improvements with the prior written approval of Grantee, and shall

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provide notice of such construction to Grantee in accordance with **Section 7** of this Deed.

- a. The maximum number of new Non-Residential Improvements shall not exceed _____ ().
 - b. The maximum Footprint for each structure shall not exceed _____ square feet.
 - c. The maximum height of each structure shall not exceed twenty (20) feet.
 - d. Once constructed, Grantor may maintain, repair and replace such new improvements in their initially constructed locations without Grantee's approval.
- (iii) Grantor reserves the right to maintain, construct or place Minor Non-Residential Improvements, as defined above, without Grantee's approval.

(3) Definition of Footprint. For the purposes of this Deed, "Footprint" is defined as the total ground area occupied by a Residential Improvement or Non-Residential Improvement, calculated on the basis of exterior dimensions (whether at or above ground level) including carports or breezeways, but does not include eaves, uncovered decks or patios.

(4) Measurement of Height. For the purposes of this Deed, "Height" is defined as the vertical distance from the low point of the grade at the structure perimeter to the high point of the structure. For the purposes of this Deed, "Grade at the structure perimeter" means either the natural grade or the finished grade, whichever is lower in elevation.

e. Roads and Trails. Maintenance of existing Roads and Trails 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 used by wildlife only.

(1) Grantor shall not construct or establish any Road that substantially impacts the conservation values nor that is 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 shall not pave or otherwise surface a Road with any impervious surface, except as may be required by local, state, or federal regulations to accommodate access to the Property or to meet ADA standards, as outlined in the Land Management Plan.

(2) Trails. Grantor may construct Trails for public recreation of such number, type and nature as are normally associated with a natural area that is opened to the public for limited use. The Grantor will work with the Grantee on the location of any potential future Trail alignments by providing notice and accepting input on the extent and location of such Trails.

f. Fences. Existing fences may be maintained, repaired, and replaced, and new fences may be built anywhere on the Property. The location and design of any new fencing shall facilitate and be compatible with the movement of wildlife across the Property and otherwise consistent with the Purpose.

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g. Utility Improvements. Unless otherwise permitted in an instrument recorded as of the Effective Date or approved by Grantee after notice to Grantee in accordance with **Section 7** of this Deed, new Utility Improvements shall not be established on the Property, unless establishment is to provide onsite service. 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 : (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 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. No commercial or large -scale utility improvements are allowed.

(1) Additional Requirements. Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to 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.

(2) Alternative Energy.

(i) Wind, solar, and hydroelectric generation facilities that are 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.g(2)**. Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this **Section 4.g(2)** are installed in conjunction with the operation of an agricultural improvement as described in **Section 4.d** above. Any other Alternative Energy Generation Facilities 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 that Grantee may consider in determining whether to grant such approval shall include (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 in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this **Section 4.g(2)** shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this **Section 4.g(2)** 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.g(2)(iii)**, the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by **Sections 4.g(2)(i) and 4.g(2)(ii)**.

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5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

a. Development Rights. To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including 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. Residential, Non-Residential and Minor Non-Residential Improvements. Grantor shall not construct or place any Residential Improvements, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with **Section 4.d** of this Deed.

c. Recreational and Commercial Improvements. Grantor shall not construct or place any new recreational improvement on the Property, including athletic fields, golf courses or ranges, racetracks, airstrips, helicopter pads, or shooting ranges, except as described in **Section 4** of this Deed. Grantor shall not construct or place any new commercial improvement on the Property.

d. Subdivision. Division or subdivision of the Property, physically or by legal process, including partition, is strictly prohibited.

e. Removal of Vegetation and Timber Harvesting. Except as otherwise set forth in this Deed, or outlined in the Land Management Plan, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with **Section 4.b(2)** and **Section 4.b(3)**. Sodbusting or removal of native vegetation for purposes of establishing additional croplands, is expressly prohibited.

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. 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

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with the preservation and protection of the Conservation Values; (iv) does not involve disturbing by such extraction more than one half-acre 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; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. 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. 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 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 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 and pipelines 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 along or under existing roadways to the maximum extent possible.

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

(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.

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(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) Grantee shall be released, indemnified and held harmless by the oil and gas operator 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 other 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) contain provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irretrievably 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 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. 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. Water. Water features on the Property, as of the Effective Date, are depicted and described in the Baseline Report. Parties agree any water uses and rights, do not significantly contribute to the Conservation Values of the Property. Water Infrastructure is allowed to be constructed, repaired, replaced, and maintained as described in **Section 4d**.

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i. 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. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

j. 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 4b.(2)** above.

(ii) Haying;

(iii) Hunting and fishing;

(iv) Additional Commercial uses permitted in City of Fort Collins Natural Areas such as photography, seed collection, filming and guided programs (including hikes, bike rides, horseback rides and environmental or cultural education programs).

(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.

k. Signage or 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, building identification signs for the Event Center in Building Envelope "A", 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 City of Fort Collins Natural Areas, "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. Any such signs shall be located and designed in a manner consistent with the Purpose.

6. Land Management / Management Plan.

Grantor and Grantee acknowledge that the preservation and protection of the Conservation Values as contemplated under this Deed requires careful and thoughtful stewardship of the Property. Between Management Plan updates, adaptive management tactics based on best practices in natural resource management may be identified and carried out, as long as they are consistent with upholding the Conservation Values of the Property. In the event Grantee believes at any time that the resource management practices used on the Property are not consistent with the Purpose, Grantor and Grantee shall jointly prepare an update to the _____ Natural Area Management Plan ("**Land Management Plan**") detailing requirements for the preservation and protection of the Conservation Values regarding of the Property: 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 Land Management Plan.

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The Parties will cooperate in an effort to update the Management Plan if either Party determines an update is necessary.

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 no less than thirty (30) days 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 twenty-one (21) days of receipt of Grantor's written request and 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 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 practicable 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 seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition.

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.*

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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, natural ecosystem progression, 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 be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Deed.

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 public health and safety, and subject to the requirements of this Deed.

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. Grantor and Grantee are each 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 or regulation.

16. Real Property Interest. 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 for this reason, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each Party shall promptly notify the other Party 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

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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 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. 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. § 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.

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 of the transfer of any interest at least 45 days prior to the date of such transfer. 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. Notices. Any notice, demand, request, consent, approval, or communication that either Party 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 Grantor:
City of Fort Collins
Natural Areas Director
Natural Areas Department
P.O. Box 580
Fort Collins, CO 80522

To Grantee:

or to such other address as either Party from time to time shall designate by written notice to the

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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 impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this Deed, including without limitation its perpetual nature, the payment of proceeds as described in **Section 17** above, and the limitation of **Section 5.d**.

23. Recording. Grantee shall record this Deed in a timely fashion in the official records of Larimer County 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 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. Tax Benefits [This **Section 25** intentionally omitted.]

26. 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.

27. Effective Date. The Effective Date of this Deed shall be the date and year first written above.

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 affect the Purpose and the policy and purpose of C.R.S. § 3830.5101, *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. 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,

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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 Appropriation. 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. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.

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 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 and Grantee

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 procedures and standards for amendments (as such procedures and standards may be amended from time to time). Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. Nothing in this **Section 28.I** shall be construed as requiring Grantee 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

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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 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.

n. 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.

GRANTOR:

CITY OF FORT COLLINS
a Colorado municipal corporation

By: _____
Jeni Arndt, Mayor

Date: _____

ATTEST:

City Clerk

(Printed Name)

APPROVED AS TO FORM:

Assistant City Attorney

(Printed Name)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Jeni Arndt as Mayor of the City of Fort Collins.

Witness my hand and official seal

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My commission expires:

Notary Public

GRANTEE:

[name]

By: _____

ATTEST:

APPROVED AS TO FORM:

Date: _____