

**DEED OF CONSERVATION EASEMENT**  
(Name of Easement)

This Deed of Conservation Easement is made this \_\_\_\_ day of \_\_\_\_\_, 2002 by \_\_\_\_\_, hereinafter referred to as “Grantors”, and COUNTY OF LARIMER, STATE OF COLORADO, hereinafter referred to as “Grantee”.

RECITALS:

- A. Grantors are the owners in fee simple of certain real property in Larimer County, Colorado, more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”).
- B. The property possesses natural, scenic, open space, wildlife, aesthetic, ecological, agricultural, and environmental values (collectively, the “Conservation Values”) of great importance to Grantors, the Grantee, the people of Larimer County and the people of the State of Colorado which are worthy of protection in perpetuity. Grantors and Grantee recognize that economic development of the Property would have an adverse impact on and greatly impair these conservation values.
- C. The Property provides a strategic scenic, open space and wildlife habitat connection to other conservation areas.
- D. The specific Conservation Values of the Property are to be documented in an inventory of relevant features of the Property, and incorporated by this reference (“Baseline Documentation”), which will consist of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Said “Baseline Documentation” shall be created within 180 days from the date of this Deed.
- E. Grantors intend that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this grant, that do not significantly impair or interfere with those values.
- F. Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.
- G. Grantee is a county government in the State of Colorado, and as such qualifies under Sections 170(b)(1)(A)(v) and 170(h) of the Internal Revenue Code.
- H. Grantee agrees by accepting this grant to honor the purposes stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular CRS 38-30.5-101 et seq., Grantors hereby voluntarily grant and convey to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its agricultural, natural, scenic and open space condition, to preserve and protect in perpetuity the wildlife, aesthetic, ecological, historic, agricultural, and environmental values and characteristics of the Property, and except as specifically set forth herein, to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property to that which exists on the date of this grant.
2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
  - a. To preserve and protect the Conservation Values of the Property;
  - b. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this easement; provided that such entry shall be upon prior reasonable notice to the Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
  - c. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
3. Prohibited Uses. The following activities and uses are expressly prohibited within the Conservation Easement area:
  - a. No structures of any kind may be built on the Property.
  - b. Any disturbance of natural features by means of grading, excavation, or filling, except as necessitated for flood control by prior consent of grantee.
  - c. Surface and subsurface mining, quarrying, extraction and/or removal of rock, oil, natural gas, fuel or any mineral substance. For the purposes hereunder, this prohibition shall include but is not limited to removal of soil, sand, gravel and rock (including moss rock).
  - d. Removal or destruction of any native trees or shrubs, except as necessary for control of insects or disease, and where determined to be necessary as a part of a fire control or fire mitigation effort by a fire protection agency. Dead trees may also be cut for firewood, fencing, and repairs on the Property. Trees may also be cut as part of a forest health management effort which is consistent with a forest management plan (an element of the "Management Plan") approved by Grantors

and Grantee.

- e. Storage of vehicles, boats, farm equipment or machinery.
  - f. Dumping of soil, trash, refuse, waste or other materials.
  - g. Construction of new roads.
  - h. Lighting, billboards, advertising, or other signage, except “No Trespassing” or “Private Property” signs along the Property boundaries.
  - i. No commercial or industrial uses shall be permitted on the Property.
  - j. Without prior written consent of grantee, no new easements for the purposes of access and/or utilities shall be granted by Grantors.
  - k. Any division or subdivision of title to the Property, whether by physical or legal process.
4. **Reserved Rights of Grantors.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, grantees and assigns all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Grantors further retain the right to sell or otherwise transfer the Property to a party or parties of Grantors’ choice, and the right to honor existing access and utility easements across the Property. Without limiting the generality of the foregoing, the following rights are expressly reserved:
- a. Grantors may repair or replace existing fences for purposes of reasonable and customary management of livestock and wildlife, and for separation of ownership and uses.
  - b. Grantors may utilize the Property for the raising of livestock, but not including feed yards, poultry farms or fur farms, as defined by the Larimer County Land Use Code. Grazing shall occur in accordance with sound stewardship and management practices, adjusting grazing so that the overall condition of the Property is preserved at its baseline condition or “fair” condition (as defined by *the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) National Range Handbook, July 13, 1976 or most current version*), whichever is better.
  - c. The Property shall be maintained and managed in accordance with a Land Stewardship Plan (the “ Management Plan”), to be prepared and accepted with the mutual consent of Grantors and Grantee
5. **Water Rights.** To the extent that such water rights exist, Grantors shall retain and reserve the water rights sufficient to maintain the conservation values of the Property.
6. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Grantee may enter the Property for the purpose of inspection for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantors in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantors shall restore the Property to its condition prior to the violation. Grantee may, at its discretion, take appropriate legal

action if, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantors to restore the Property to its condition prior to the violation.

In the event that there are any violations of this grant by persons other than Grantors, Grantee may, but is not obligated to take appropriate legal action against any such violators without necessity of Grantors joining in or consenting to such enforcement procedures. This provision is merely a recognition that the Grantee has legal standing to take such action as a benefited party to the covenants contained herein, but the same shall not relieve Grantors from any duties hereunder to comply with the terms and covenants herein contained.

7. Costs of Enforcement. In the event that either party to this grant shall commence proceedings against the other party to enforce the terms and covenants herein contained, the prevailing party in any such enforcement procedures shall be awarded its costs incurred therein, including but not limited to costs of suit, reasonable attorney's fees, expert witness fees and costs of restoration.
8. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
9. Waiver of Certain Defenses. Grantors hereby waive any defenses of laches, estoppel, or prescription.
10. Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
11. Access. No right of access by the general public to any portion of the property is conveyed by this Easement. If mutually agreed upon by Grantors and Grantee, access on and through the Property may be established for non-motorized public use.
12. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including maintenance of adequate comprehensive general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.
13. Taxes. Grantors 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 Easement, and shall furnish grantee with satisfactory evidence of payment upon request.

14. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and The County Commissioners, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively called “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act or omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state or local law.
15. Development Rights. Grantor hereby grants to the Grantee all the development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.
16. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other when it first learns of such circumstances.
17. Proceeds. This Easement constitutes a real property interest, which the Grantor has donated to Grantee. In the event of Extinguishment or Condemnation, Grantee shall not be entitled to any compensation for loss of its real property interest.
18. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall not be entitled to compensation
19. Assignment. Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) authorized to acquire and hold conservation easements under Colorado law, and (c) that such assignment is within the statutory powers granted to the Grantee.
20. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

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

To Grantors:

\_\_\_\_\_

To Grantee:  
Director  
Larimer County Parks and Open Lands  
1800 S. CR 31  
Loveland, CO 80537

Or to such other as either party from time to time shall designate by written notice to the other.

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

23. General Provisions.

- a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.
- b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of CRS 38-30.5-101 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

- f. Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, grantees, and assigns and shall continue as a servitude running in perpetuity with the Property.
- h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.
- i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- j. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantors and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws; and provided, further, that the prior written approval of the Board of County Commissioners of Larimer County, Colorado shall be required. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and the Board, and recorded in the records of the Clerk and Recorder of the County in which the Property is located.

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

IN WITNESS WHEREOF Grantors and Grantee have executed this Deed of Conservation Easement on the day and year first above written.

GRANTORS:

\_\_\_\_\_

STATE OF COLORADO )  
 )ss.  
 COUNTY OF LARIMER )

The foregoing document was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_.

Witness my hand and seal.  
 My commission expires:

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

GRANTEE:

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF LARIMER

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

ATTEST:

\_\_\_\_\_  
Deputy Clerk of the Board

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney