

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

NOTICE: A GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND HAS BEEN UTILIZED TO ASSIST IN THE ACQUISITION OF THIS PROPERTY. THIS DECLARATION CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS CONSERVATION VALUES. THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND HAS FOUND THAT THE ADOPTION OF THESE RESTRICTIONS IS IN THE PUBLIC INTEREST.

RECITALS

A. The County of Boulder, a body corporate and politic ("Declarant" or "County") is the fee simple title holder of a parcel of real property totaling approximately 586 acres of land located in Boulder County, Colorado, legally described on **Exhibit A** and generally depicted in **Exhibit B**, both of which are attached hereto and incorporated by reference (hereafter, the "Property").

B. Declarant intends to subject the Property to this Declaration of Covenants, Conditions and Restrictions (the "Declaration") to preserve and protect in perpetuity the natural, scenic, open space, environmental and wildlife habitat values (collectively the "Conservation Values") of the Property. Declarant further intends to prohibit any uses that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of this Declaration. Declarant further intends, as owner of the Property, to convey to the City of Boulder, a Colorado home rule city ("City") the right to preserve and protect the Conservation Values of the Property in perpetuity.

C. Declarant intends to subject the Property to this Declaration of Covenants, Conditions and Restrictions (the "Declaration") to preserve and protect in perpetuity the natural, scenic, open space, wildlife habitat, historic and cultural resources, and passive recreational values (collectively the "Conservation Values") of the Property.

D. Declarant further intends, as owner of the Property, to convey to the City the right to preserve and protect the Conservation Values of the Property in perpetuity.

E. Declarant will hereinafter convey the Property subject to this Declaration.

F. The State Board of the Great Outdoors Colorado Trust Fund (referred to herein as "GOCO" or the "Board") is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November, 1992 General Election (the "GOCO Constitutional Amendment"), which article appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the State's parks, wildlife, open space and recreational resources.

G. The Declarant, GOCO, and the City are individually and collectively referred to herein as the “Party” or the “Parties.”

H. Funding for the Property’s acquisition has been provided in part by the Board under that Grant Agreement dated September 5, 2023, with contract number 23107 (the “Grant Agreement”). The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grant programs and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state’s wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held and (if all or any part is sold in the future) conveyed subject to the following covenants, conditions, restrictions, uses, and obligations, all of which are declared and agreed to be burdens running with the land for the protection of the Conservation Values of the Property.

1. **Purpose.** The purpose of this Declaration is to preserve and protect in perpetuity the Conservation Values of the Property. It is acknowledged and agreed that active recreational uses of the Property, including but not limited to playgrounds, ball fields, golf courses, and motorized vehicular uses other than those necessary to protect or maintain the land, or recreational uses of Other Power Drive Mobility Devices (OPDMD) authorized by the Americans with Disabilities Act of 1990, are inconsistent with the Conservation Values. Notwithstanding anything to the contrary herein, this Declaration does not create or convey an interest in real property in favor of any party or entity, including but not limited to the Board but the Board and Declarant intend to expressly limit the use and development of the Property as more particularly set forth herein.

2. **Prohibited Acts.** Declarant shall not perform, nor allow others over whom they have reasonable means of control to perform, any act on or affecting the Property that is inconsistent with the covenants below. In consideration of the Board providing a grant to assist Declarant in its acquisition of the Property and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, Declarant hereby authorizes the Board and the City to enforce this Declaration in the manner described below. Declarant, the City, and the Board understand and agree that nothing in this Declaration relieves or replaces any obligation or restriction on the use of the Property imposed by applicable law.

3. **Approval Process.** Declarant is not required to notify or obtain the Board's permission before taking actions permitted under this Declaration except where this Declaration specifies that Declarant must obtain the Board’s permission. In those circumstances where this Declaration specifies that the Board’s permission is required,

Declarant shall notify the Board (with copy to the City) in writing to seek such permission. The Board, in consultation with the City, shall have 45 days to review and comment on any submittal made by Declarant under this Declaration (or to request additional information prior to issuing a more formal response). If the Board fails to respond to such submittal within the 45-day period (or requests additional information and time to review the additional requested information), Declarant shall notify the City and the Board that it has not received any response on the submittal (or that it has received the request for additional information and time) and the Board shall thereafter have an additional 30 days to respond to the submittal. If the Board fails to respond within the additional 30-day period, the submittal shall be deemed approved.

4. **Restrictions.** If the construction or reconstruction of a building or structure is expressly authorized herein, no prior written consent of the Board shall be required provided that both the City and the Board are notified in writing at least 30 days in advance of Declarant's intent to exercise the pre-approved use or development right which notice refers to the specific provision in this Declaration where the consent was previously given. Except as expressly authorized in this Declaration, the following restrictions apply to all portions of the Property:

- a. **Construction of Buildings and Other Structures.** The construction or reconstruction of any building or other structure is prohibited, except: (i) those existing on the date of this Declaration as referenced in the Resource Inventory Report (as hereafter defined), so long as there is no material change to the use, location, appearance or size of such, building, or structure; and (ii) those approved by the Board.
- b. **Fences.** Declarant may repair or replace existing fences (as reflected in the Resource Inventory Report, provided there is no material change to the use, location, appearance, or size of such fence). New fences may be built for purposes of reasonable and customary management of the Property, livestock, and wildlife, and for separation of ownership and uses.
- c. **Subdivision.** Any division or subdivision of the fee title to the Property, whether by physical or legal process, is prohibited.
- d. **Timber Harvesting.** Trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for approved development on the Property. Dead trees may be cut for firewood and other uses on the Property. Commercial timber harvesting on the Property is prohibited.

Notwithstanding any provision(s) contained herein to the contrary, Grantor shall be permitted to use prescribed burns on the Property, including, but not limited to, electing to allow naturally occurring wildfires to burn. Any prescribed burn utilized by Grantor pursuant to this section shall not substantially diminish, materially impair, or adversely impact the Conservation Values of the Property.

- e. **Mining.** Mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance by Declarant is prohibited.
- f. **Paving and Roads.** No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material, unless approved by the Board.
- g. **Trash.** The dumping or uncontained accumulation of any kind of trash or refuse on the Property by Declarant is prohibited.
- h. **Commercial or Industrial Activity.** No commercial or industrial uses shall be allowed on the Property.
- i. **Water Rights.** Declarant shall not transfer, encumber, lease, sell or otherwise separate water rights that it acquired in conjunction with the purchase of the Property.
- j. **Signage or Billboards.** Prior to Declarant opening the Property to the general public, or an alternative time period approved in advance by the Board's Executive Director or designee, the Declarant shall erect visible signs from the nearest public roadway, or from an alternative location approved by the Executive Director or designee, noting the Board's Grant and investment in this Property to the public. This signage requirement notwithstanding, 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, "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 use of the Property by the public and signs informing the public of the status of ownership. No signs shall materially adversely affect the Conservation Values of the Property.

5. **Enforcement.**

- a. Notwithstanding anything set forth below, when, in the Board's or the City's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, either the Board or the City may, in its sole and absolute discretion, take appropriate legal action. Upon prior telephonic or other reasonable notice to County's Director of Parks & Open Space (or their respective designee), the Board and the City, either individually or collectively, shall have the right to enter the Property for the purpose of inspecting for violations. The Board and the City, either individually or collectively, shall have the right to prevent, correct or require correction of violations of the terms and provisions of this Declaration. If the Board and/or the City find what it believes is a violation, all Parties shall immediately be notified in writing of the nature of the alleged violation.

- b. Upon receipt of this written notice, Declarant shall either: (1) restore the Property to its condition prior to the violation; or (2) provide a written explanation to the Board and the City of the reason why the alleged violation should be permitted. The Board and/or the City and Declarant agree to meet as soon as possible to resolve any difference. If a resolution of this difference cannot be achieved at the meeting, the Board, the City, and Declarant shall meet with a mutually acceptable mediator to attempt to resolve the dispute. Declarant shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, either party may, in its sole and absolute discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, the Board and/or the City may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Declarant to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Declarant shall reimburse the Board and/or the City for all fees and expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees, subject to appropriation by Declarant's legislative body. In any case where a court fails to find that a violation has occurred, the Board and the City shall reimburse Declarant for all fees and expenses incurred in litigating such dispute including, but not limited to, reasonable attorneys' fees subject to appropriation by their respective legislative bodies.
- c. Declarant shall remain liable for actions of its employees, agents, contractors, invitees or other third parties over whom Declarant has direct supervision or control ("Declarant's Agents"), or when Declarant has reasonable prior knowledge of and the ability to prevent potential violations by Declarant's Agents or any other third parties. Declarant shall not be liable for acts of the public, including trespassers or other third parties (the "Public") over whom Declarant has no direct supervision or control, except that following any violation, regardless of the cause of such violation, should Declarant desire not to restore the Property to its prior condition, Declarant must follow the guidelines set forth in this Paragraph 5. Declarant may pursue legal action and any other remedies available to Declarant at law and in equity to recover damages from the Public or other third parties who caused the violation.

6. **Written Updates.** Upon request by the City or the Board, the Declarant shall provide to the City or the Board a written update on the condition of the Property, signed by an appropriate official of their respective agencies, verifying that the Property is being managed and maintained consistent with the purposes of the terms of this Declaration.

7. **Resource Inventory Report.** Within three (3) years of the date of this Declaration, the Declarant shall develop an inventory of baseline data (the "Resource Inventory Report," also referred to as a Baseline Report) relating to the Property and furnish it to the City and the Board. The parties acknowledge that this collection of base-

line data will contain an accurate representation of the condition of the Property (including but not limited to the improvements located thereon) and the natural resources associated with the Property. Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

8. **Permitted Exceptions.** This Declaration is subject to the items that may encumber the Property that are listed in **Exhibit C** attached hereto and incorporated by reference.

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

if to the Board:

Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1900 Grant St. Ste. 725
Denver, CO 80203

if to Declarant Boulder County:

County of Boulder
Director, Parks & Open Space
5201 St. Vrain Road
Longmont, CO 80501

if to City of Boulder:

City of Boulder
Director of Open Space and Mountain Parks
2520 55th Street
Boulder, CO 80301

or to such other address as a party from time to time shall designate by written notice to the other.

10. **Acts Beyond Declarant's Control.** Nothing contained in this Declaration shall be construed to entitle the Board or the City to bring any action against Declarant for any injury to or change in the Property resulting from causes beyond Declarant's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent

action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

11. **Access.** The general public shall have access to the Property.

12. **Costs and Liabilities.** Declarant shall 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 weed control and eradication, and including the maintenance of adequate comprehensive general liability insurance coverage, if applicable. Declarant shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Declarant.

13. **Condemnation or Other Extinguishment.** The Parties agree that extinguishment of this Declaration is to be considered if and only if (i) the Property is taken in whole or in part by exercise of eminent domain or other legal proceedings, or (ii) it becomes impossible and impractical to protect any of the Conservation Values of the Property as determined in a manner consistent with Colorado law. The Parties further agree that extinguishment of this Declaration shall not be justified by, and they shall not raise or support a claim for extinguishment based on the theories that (i) it has become more expensive to enforce this Declaration or (ii) there are or may be more profitable uses for the Property. Each party shall promptly notify the other when it first learns of the circumstances that make it impossible and impractical to protect any of the Conservation Values of the Property.

14. **Proceeds from Termination or Extinguishment.** If this Declaration is extinguished or terminated all or in part as described in Paragraph 13 above, the Board shall be entitled to compensation for its interest in the portion of this Declaration that is terminated. The Board shall be entitled to receive Declarant's entire \$1,500,000 grant for the total extinguishment or termination of this Declaration. For a partial extinguishment or termination of this Declaration, the reimbursement to the Board shall be proportionately reduced from \$1,500,000 based on the ratio of the acreage of the Property on which the Declaration was extinguished or terminated to the total acreage of the Property. By way of example only, if the Declaration were extinguished on 30% of the Property, Declarant would reimburse the Board 30% of the grant award, i.e., \$450,000.

15. **Assignment.** The Board's rights and obligations under this Agreement are freely assignable. The City shall have the right, in its sole discretion, to remove itself as the third-party steward under this Declaration upon 120 days prior written notice to the Declarant of its intention to terminate its responsibilities under this Declaration. In the event that the City removes itself as the third-party steward under this Declaration, the Declarant shall have the obligation to arrange for a qualified third party, acceptable to the Board, to assume the responsibilities of the City under this Declaration ("Transferee"). The Transferee must agree in writing to assume the responsibilities held by the City in this Declaration and the Board must approve in writing the Transferee. The City will cooperate in executing documents necessary to effect the assignment of the City's rights and obligations under this Declaration to the City's replacement under this Declaration.

16. **Subsequent transfers.** Declarant shall incorporate in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including without limitation, a leasehold interest, a statement that the Property is subject to the Declaration with a reference to the Declaration's reception number in the records of the clerk and recorder of Boulder County, Colorado. Declarant shall provide the Board and the City with written notice of any proposed transfer of any interest in the Property at least forty-five (45) days prior to the date of such transfer. The failure of Declarant to perform any act required by this paragraph shall not impair the validity of this Declaration or limit its enforceability in any way.

17. **Recording.** Declarant shall record this Declaration in timely fashion in the official records of each 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 Declaration. A copy of the recorded Declaration shall be provided to the Board and the City.

18. **General Provisions.**

- a. **Controlling Law.** The interpretation and performance of this Declaration shall be governed by the laws of the State of Colorado.
- b. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Declaration and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Declaration, all of which are merged herein.
- c. **Non-Merger.** No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Declaration, unless the parties expressly state that they intend a merger of estates or interests to occur and the parties have also obtained the prior written consent of the Board approving such merger of estates or interests. If the City wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), the City must first obtain the written approval of the Board. As a condition of such approval, the Board may require the City to first transfer its responsibilities under this Declaration to another organization consistent with **Section 16** above.
- d. **Termination of Rights and Obligations.** A party's rights and obligations under this Declaration terminate upon transfer of the party's interest in the Declaration or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- e. **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.
- f. **Amendment.** If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Declarant, the Board,

and the City 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. 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 Declarant, the Board, and the City, and recorded in the records of the Clerk and Recorder of the counties in which the Property is located. A copy of the recorded amendment shall be provided by Declarant to the Board and the City.

- g. **Termination of the Board.** In the event that Article XXVII of the Colorado Constitution, which established the State Board of the Great Outdoor Colorado Trust Fund, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.
- h. **Successors.** The terms of this Declaration shall be binding upon and inure to the benefit of the parties hereto and their representatives, successors, and assigns, and shall run with the land in perpetuity. The Board shall have the right, in its sole, absolute discretion, to assign all or any part of its enforcement rights under the Declaration to enforce this Declaration in the name of the Board.
- i. **Severability.** Any provision of this Declaration invalidated in any manner whatsoever shall not be deemed to impair or affect in any manner the validity, enforcement, or effect of the remainder of this Declaration and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.
- j. **Prevailing Party.** In the event of any litigation (or other form of alternative dispute resolution) arising out of this Declaration, the prevailing party in such dispute shall be entitled to seek recovery, as part of the resolution of such dispute, its reasonable costs, fees, and expenses incurred in such dispute including, but not limited to, reasonable attorneys' fees.
- k. **Limitations on Liability.** Notwithstanding any provision of this Declaration to the contrary, the Declarant, the City, and Board expressly reserve the right to assert all defenses and limitations on liability provided by law including, without limitation, the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., and the Owners of Recreational Areas Act, §33-41-101, *et seq.*, C.R.S., or any successor acts or provisions.

IN WITNESS WHEREOF, Declarant, the City, and the Board have executed this Declaration as of the Effective Date.

DECLARANT:

COUNTY OF BOULDER,
a body corporate and politic

By: _____

Claire Levy, Chair
Board of County Commissioners

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____,
2023 by Claire Levy, Chair, of the Board of County Commissioners of Boulder
County, Colorado.

(Notary official signature)

(Commission expiration)

NOTARY
SEAL

CITY OF BOULDER,
a Colorado home rule City

By: YPR
Nuria Rivera-Vandermyde City Manager

Attest:

Eleska M. Jones
City Clerk

Approved as to form:

Janet Michels
City Attorney

EXHIBIT A

Legal Description of the Property

All of Section 36, less and except the West ½ of the Northwest ¼, Township 3 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado.

EXHIBIT C

Permitted Exceptions

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

1. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Water rights, claims of title to water, whether or not shown by the Public Records.
6. All taxes and assessments for the year 2022 and subsequent years, a lien but not yet due or payable.
7. All rights to any and all minerals, ore and metals of any kind and character, and all coal, asphaltum, oil, gas and other like substances in or under the Land, the rights of ingress and egress for the purpose of mining, together with enough of the surface of the same as may be necessary for the proper and convenient working of such minerals and substances, as reserved in the Patent

From: State of Colorado
Recording Date: March 14, 2022
Recording No.: Reception No. 3992742

8. Terms, conditions, provisions, agreements and obligations contained in the Non-Development Agreement as set forth below:

Recording Date: December 21, 2022
Recording No: Reception No. 3992743