DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS is entered into by and between Barney C. Barnett, Jr. and Cheryn H. Barnett, hereinafter referred to as the "Grantor", and the County of Boulder, a body corporate and politic, hereinafter referred to as the "Grantee".

RECITALS

WHEREAS, Grantor is the sole owner of certain real property within the County of Boulder, State of Colorado, and more particularly described in Exhibit 1 attached hereto and incorporated herein by this reference and hereinafter referred to as the "Property"; and

WHEREAS, the Property is comprised of approximately 40 acres of prime agricultural land, as determined by the Soil Conservation Service Soils Capability Classes, and certain water rights necessary to the continuation of agricultural production; and

WHEREAS, the current use of the Property is for commercial nursery purposes; and

WHEREAS, the Property's significant agricultural attributes, its present and continued agricultural use and its open space values are of great importance to the Grantor, the Grantee and the people of the County of Boulder and are worthy of preservation; and

WHEREAS, the Grantor desires to continue responsible agricultural practices and the use of the Property in such a manner that protects the Property's agricultural and water resources; and

WHEREAS, it is the policy of Boulder County to encourage preservation and utilization of prime agricultural lands for agricultural uses as such policy is declared in the Boulder County Comprehensive Plan; and

WHEREAS, the Boulder County Zoning Resolution, adopted by the Boulder County Board of Commissioners pursuant to the county comprehensive plan, designates the Property as "Agricultural" and provides that permissible uses of the Property are limited to agricultural production and certain other compatible or agricultural-related uses; and

WHEREAS, the State of Colorado has recognized the importance of private efforts to preserve land in a natural, scenic, historical or open condition, and for wildlife habitat and agricultural uses consistent with the protection of open land having undisturbed or restored environmental quality, by the enactment of Section 38-30.5-101, et seq., Colorado Revised Statutes 1973 (1982 Repl. Vol.); and
WHEREAS, the Grantor desires to sell an interest in the Property to the Grantee in order to assure its preservation in perpetuity; and

WHEREAS, the Grantee recognizes the public benefit to be served by such preservation as described in the Boulder County Comprehensive Plan, Environmental Resources and/or Open Space Sections; and

WHEREAS, the Grantee desires to purchase an interest in the Property from the Grantor in order to assure its preservation in perpetuity for agricultural uses and for the open space function which it serves.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of ONE HUNDRED SIXTY-NINE THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS ($169,625.00) and of the mutual covenants contained herein, and further pursuant to Section 38-30.5-101, et seq., Colorado Revised Statutes 1973 (1982 Repl. Vol.), Grantor does hereby convey to Grantee a Conservation Easement in Gross (hereinafter, the "Easement") consisting of the rights hereinafter enumerated, over and across the real property described in Exhibit I.

1. Purpose. It is the purpose of this Easement to preserve and protect in perpetuity the significant agricultural attributes of the Property, its continued agricultural use and its open space values.

2. Affirmative Rights Conveyed. The affirmative rights conveyed to Grantee by this Easement are the following:

(a) To preserve and protect in perpetuity the open space values and the agricultural and water resources of the Property.

(b) To require that the Property be managed consistent with a Soil and Water Conservation Plan as prepared and approved by the Boulder Valley Soil Conservation District or its successor, which plan shall be updated at least every ten (10) years.

(c) To enter upon the Property to inspect and enforce the rights herein granted upon prior notice to Grantor, Grantor's successors and assigns, in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry.

(d) To be considered an owner of an interest in the Property, and therefore a co-applicant, for the purpose of any application for zoning change, annexation to a municipality, variance to or exemption from the land use regulations of the controlling jurisdiction, right-of-way vacation, building
permit, grading permit or other permit pertaining to a use of the Property which is regulated by a governmental authority and not otherwise provided for in the Easement. The County's status of owner of an interest in the Property shall be limited to the right to sign or refuse to sign the aforementioned applications and shall carry no further obligation, financial or otherwise.

(e) To review and approve or deny applications from the Grantor for uses neither expressly granted nor specifically prohibited by the Easement described herein but which may be conducted in a manner consistent with agriculture as the primary use of the Property and which do not compromise the value of the land as a commercial nursery. Approval, if granted, shall be by resolution of the Board of County Commissioners of Boulder County and recorded in the office of the County Clerk and Recorder.

(f) The first right to purchase the Property or any portion thereof, along with any or all of the water and mineral rights described in Exhibit 1. In the event the Grantor desires to sell such parcel or any portion thereof and receives a bona fide offer for such sale, the Property or any portion thereof shall be offered to the Grantee who shall have a first right to purchase such offered fee interest for the same terms and conditions as the bona fide offer or for an amount and terms equally acceptable to the Grantor. Written notice of such bona fide offer shall be given to the Grantee who shall have forty-five (45) days from the date of receipt of the written notice to accept such offer, and if not accepted, the sale may be made to such third party purchaser.

Except as expressly provided herein Grantor retains exclusive access to and use of the Property.

3. Permitted Uses and Practices. Grantor intends that this Easement shall confine the future use of the Property to agricultural uses and related structures and the other related or compatible uses which are described herein. The following uses and practices are permitted under this Easement, and these practices are not to be precluded, prevented, or limited by this Easement:

(a) Continuation of agricultural uses, including the open growing and wholesale and retail sales on the Property of commercial nursery stock at a level consistent with the Boulder County Zoning Resolution and with the Soil and Conservation Plan for the Property as prepared and approved by the Boulder Valley Soil Conservation District or its successor. The agricultural activities shall not result in the pollution or degradation of any surface or subsurface waters.
(b) Maintenance, repair, replacement and use of all roads and structures legally existing on the Property as of the date of the Easement, substantially in their present condition or as reasonably necessary for the uses permitted on the Property.

(c) Subject to the requirements for issuance of a building permit, the right to build one single-family residence on the Property, not to exceed 3,500 square feet, in a location which shall not diminish the agricultural and open space values of the Property, which location shall require the written consent of the Grantee.

(d) The right to place a mobile home, greenhouses, storage facilities and/or buildings related to the wholesale or retail sale of nursery stock and supplies on the Property which are accessory to the agricultural (commercial nursery and related sales) use, provided that (i) such structures shall only be placed in the northern 21 acres of the Property, (ii) the total area of all existing structures and any new structures on the Property shall not exceed 20,000 square feet, (iii) the Seller complies with all Boulder County Land Use Regulations in effect at the time the Seller desires to place additional structures on the Property, including any requirements to apply to the Board of County Commissioners for approval of such structures, and (iv) all such structures are permitted by the Boulder County Land Use Regulations in effect at the time the Seller desires to place additional structures on the Property. Low profile fences used by the Seller as wind breaks and screens shall not be considered structures subject to the provisions of this paragraph.

(e) Installation, maintenance, repair, removal and relocation, and replacement of utility mains, lines and underground facilities for the purpose of providing utility services to the Property.

(f) Development and maintenance of such water resources on the Property as are necessary or convenient for irrigation and the agricultural uses conducted thereon pursuant to the terms hereof; provided, however, that the development and use of such water resources shall be compatible with the purposes of this Easement to protect and preserve the agricultural and open space values of the Property. Permitted activities shall include installation, maintenance, repair, removal and relocation, and replacement of agricultural irrigation facilities, including ditches, pipes and water diversion structures.
(g) Use of agrochemicals, including but not limited to, fertilizers and biocides, but only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes. Such use shall not contaminate surface and ground water. Grantor shall control all noxious weeds according to the provisions of Title 35 of Colorado Revised Statutes and/or the administrative rules and regulations promulgated by the Commissioner of Agriculture of the State of Colorado or by the Board of County Commissioners of Boulder County.

(h) Control of predatory and problem animals by the use of selected control techniques whose effect will be upon only specific animals or species which have caused or are likely to cause damage to crops, livestock or other property. Such control techniques shall not have detrimental impacts upon water quality and the continued agricultural use of the Property and shall exclude the use of leghold traps.

(i) Use of the Property for hunting by Grantor, Grantor's heirs, licensees, and assigns, to the extent that harvesting of game from the Property is not inconsistent with game management objectives. For the purpose of this provision, Grantor and Grantee agree that Grantor may request and rely upon an opinion from the Colorado Division of Wildlife defining the quantity of game which can be harvested from the land in any year consistent with generally accepted principles of game management.

(j) Use of the Property for recreational, scientific and/or educational activities which are occasional in nature, are limited to Grantor and Grantor's invited guests and in no way interfere with or are detrimental to the agricultural resources and uses of the Property.

(k) Except as such interest is otherwise conveyed to Grantee by deed or certificates of ownership, Grantor specifically retains (1) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the land; and (2) all right, title, and interest to subsurface oil, gas, and other minerals; provided, however, that exploration for, and extraction of any minerals shall be undertaken in a manner consistent with the Boulder County Zoning Resolution and other applicable regulations and designed to ensure the protection of the agricultural resources of the Property. Surface and open mining are expressly prohibited by this Easement. The water rights referred to in this paragraph are those described in Exhibit I attached hereto and made a part hereof by reference. A restriction preventing the historic Water Rights from being severed from the Property shall be effective as of the date of purchase of the conservation easement on the Property.
(1) Grantor retains the right to apply to the Grantee for permission to conduct other uses and activities on the Property which are neither expressly granted nor specifically prohibited by the Easement but which may be conducted in a manner consistent with agriculture as the primary use of the Property and which do not compromise the value of the land as prime cropland. Approval, if granted, shall be by resolution of the Board of County Commissioners of Boulder County and recorded in the office of the County Clerk and Recorder.

4. Prohibited Uses and Practices. The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Property:

(a) The change, disturbance, alteration, or impairment of the open space values and the agricultural resources of the Property except as otherwise provided herein.

(b) Those uses which are consistent with the Boulder County Zoning Resolution as it applies to the Property but which may be detrimental to preservation and protection of the agricultural resources of the Property. Such prohibited uses shall include, but are not limited to:

1. Additional residences, including mobile homes, except as provided in Paragraph 3 of this Easement;
2. Kennel
3. Veterinary hospital
4. Public or private school
5. Parks, playgrounds and playfields
6. Church
7. Group care home, receiving home or child care center
8. Community swimming pool or neighborhood recreation center
9. Non-profit community theater
10. Public or private campground
11. Airport or heliport
12. Cemetery, including accessory mortuary
13. Golf course, including accessory eating and drinking place
14. Resort lodge or guest ranch not accommodated by existing structures
15. Archery range, rifle range, or golf driving range
16. Water reservoir, water tank, water treatment facility, utility substation or regulator station not directly related to agricultural use of the Property
17. Sewage treatment facility, exclusive of an individual sewage disposal system
18. Solid waste transfer facility or disposal site
19. Communication facility
20. Fire station
21. Open or subsurface mining
22. Public or quasi-public uses and facilities, except
rights-of-way which may be required for
construction of public streets and roads and then
only when such public streets and roads are
consistent with the Boulder County Comprehensive
Plan.

23. Temporary asphalt, concrete or other batch plant

24. Wind-powered electric generators to produce
electricity for off-site use

(c) Any use not expressly permitted by the Boulder
County Zoning Resolution as it applies to the Property.

(d) The construction, placing, or erection of any signs
or billboards except those needed for the nursery uses
permitted herein, which are consistent with Boulder County
Land Use Regulations.

(e) The dumping or accumulation of trash, ashes,
garbage, waste or other unsightly or offensive material on the
Property, provided, however, that agricultural products and
by-products may be placed or stored on the land, so long as
such placement or storage is consistent with the public health
and with sound agricultural practices.

(f) The construction, reconstruction, or replacement of
any structures except as provided in Paragraph 3 hereof. For
purposes of this Easement, fencing shall not be deemed a
structure.

(g) The division, subdivision, or de facto subdivision
of the Property without the express consent of the Grantee.
The conditions of this Easement shall attach to the land and
shall survive any division of the Property.

(h) The conveyance of right-of-way or the construction
of any new roadways without the consent of the Grantee, which
consent shall not be unreasonably withheld, provided that such
roadways are constructed so as to minimize the impact on
agricultural resources of the Property.

(i) The sale, conveyance or conversion of the water
rights described in Exhibit 1 to non-agricultural uses, or the
severing of the water rights described in Exhibit 1 from the
Property.

5. Baseline Data. It is acknowledged by the Grantee and the
Grantor that the Property contains significant agricultural
resources and open space values and that the Property will be
managed consistent with the Soil and Water Conservation Plan as
stated in Paragraph 2(b) herein. In order to establish a complete
inventory of the present conditions of the Property and its
agricultural resources and open space values so as to be able to
properly monitor future uses of the Property and assure compliance
with the terms hereof, Grantee shall prepare or cause to be prepared an inventory of the Property's relevant features and conditions (the "Baseline Data"). Grantor shall allow Grantee, or Grantee's designated agent, access to Property to conduct necessary studies in developing the Baseline Data, provided, however, that such access does not unreasonably restrict or interfere with normal agricultural operations as permitted under this Easement. The Baseline Data may include, but need not be limited to, aerial photographs, topographical maps, maps indicating the extent of agricultural uses, and botanical and wildlife photographs and reports. The parties acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's use or the physical condition of the property subject to this Easement as of the date hereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

6. **Enforcement Rights of Grantee.** In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, after thirty (30) days notice of violation to the Grantor, the Grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants and purposes of this Easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future.

7. **Restoration.** Grantor further intends that should any prohibited activity be undertaken on the Property, the Grantee shall have the right to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by Grantor, its successors, or assigns, against whom a judgment is entered. Nothing contained herein shall be construed to preclude Grantor from exhausting all legal remedies that may be available in determining whether the proposed activity to which the Grantee has objected is consistent with this Easement.

8. **Costs and Taxes.** Grantor agrees to bear all costs of operation, upkeep, and maintenance of the Property and does hereby indemnify the Grantee therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property or on this Easement.

9. **Access.** Nothing contained herein shall be construed as affording the public access to any portion of the land subject to this Easement. Nothing in this Easement shall be construed to preclude Grantor's right to grant limited public access to third
parties across its land. All access, whether by third parties or the Grantor, shall be performed in a reasonable manner that does not result in degradation of the agricultural attributes of the Property.

10. Grant in Perpetuity. The Easement herein granted shall be a burden upon and shall run with the Property in perpetuity, and shall bind the Grantor, Grantor’s successors and assigns forever.

11. Miscellaneous.

(a) The terms "Grantor" and "Grantee", whenever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor’s heirs, personal representatives, executors, successors and assigns and the above named-Grantee and its successors and assigns, respectively.

(b) 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 Deed of Conservation Easement in Gross and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

(c) The Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the Property (including a leasehold interest) and that Grantor will attach a copy of this Deed of Conservation Easement in Gross thereto.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, Grantor has executed this Deed of Conservation Easement this 12 day of Dec., 1994.

GRANTOR:

[Signature]

Barney C. Barnett, Jr.

[Signature]

Cheryl H. Barnett
ACKNOWLEDGED and ACCEPTED this 6th day of December, 1994.

GRANTEE:

COUNTY OF BOULDER, a body corporate and politic

By: Ronald K. Stewart
   Ronald K. Stewart, Chair

By: Homer Page, Vice-Chair

By: Sandy Hume, Commissioner

STATE OF COLORADO

County of Boulder ss.

The foregoing Deed of Conservation Easement in Gross was acknowledged before me this 6th day of December, 1994 by Barney C. Barnett, Jr. and Cheryl H. Barnett.

My commission expires: JANUARY 23, 1997

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BETTY L. MARICK
Notary Public

STATE OF COLORADO

County of Boulder ss.

The foregoing Deed of Conservation Easement in Gross was acknowledged before me this 6th day of December, 1994 by Ronald K. Stewart, Chair, Homer Page, Vice-Chair, and Sandy Hume, Commissioner of the Board of County Commissioners of Boulder County.

Witness my hand and official seal.

My commission expires: 7-8-97

__________________________
Jan M. Messier
Notary Public
Parcel 1: That portion of the Southeast Quarter of Section 3, Township 1 North, Range 69 West of the 6th P.M., more particularly described as follows:

Considering the North line of the Southeast Quarter of said Section 3 as bearing North 88° 33' 25" West and with all bearings contained herein relative thereto: Commencing at the East Quarter Corner of said Section 3; thence along the North line of the Southeast Quarter of said Section 3, North 88° 33' 25" West 205.60 feet to the True Point of Beginning; thence continuing along said North line, North 88° 33' 25" West, 2448.41 feet; thence along the approximate center of U.S. Highway #287, South 00° 13' West 556.32 feet; thence North 90° 00' East 1605.04 feet; thence along the approximate center of the Leggett Ditch the following 6 courses and distances: North 6° 28' East, 28.77 feet; North 36° 58' East 469 feet; North 86° 32' East 145.80 feet; South 82° 19' East 205 feet; North 68° 40' East 103.20 feet; North 54° 17' 40" East 141.17 feet to the True Point of Beginning; EXCEPT that portion as conveyed to the Department of Highways in deed recorded August 30, 1990 as Reception No. 1061409.

Parcel 2: That portion of the Southeast Quarter of Section 3, Township 1 North, Range 69 West of the 6th P.M., more particularly described as follows: Considering the North line of the Southeast Quarter of said Section 3 as bearing North 88° 33' 25" West and with all bearings contained herein relative thereto: Commencing at the East 1/4 corner of said Section 3, North 88° 33' 25" West 2654.01 feet; thence along the approximate center of U.S. Highway No. 287 South 00° 13' West 566.32 feet to the True Point of Beginning; thence continuing along said approximate center South 00° 13' West 269.68 feet; thence North 90° 00' East 1647.02 feet; thence North 56° 47' East 23.56 feet; thence North 90° 00' East 10 feet; thence along the approximate center of the Leggett Ditch the following courses and distances: North 37° 14' West 143.50 feet; North 6° 28' East 143.43 feet; thence North 90° 00' West 1605.04 feet to the True Point of Beginning, EXCEPT that portion as conveyed to the Department of Highways by deed recorded August 30, 1990 as Reception No. 1061409, all in the County of Boulder, State of Colorado.

Parcel 3: A parcel of land located within the Southeast 1/4 of Section 3, Township 1 North, Range 69 West of the 6th P.M., more particularly described as follows: Considering the North line of the Southeast 1/4 of said Section 3 as bearing North 88° 33' 25" West and with all bearings contained herein relative thereto: Commencing at the East Quarter Corner of said Section 3; thence along the North line of the Southeast 1/4 of said Section 3, North 88° 33' 25" West 2654.01 feet; thence along the approximate center of U.S. Highway #287, South 00° 13' West 836 feet to the True Point of Beginning; thence continuing along said approximate center South 00° 13' West 304.06 feet; thence along the approximate center of a waste ditch the following 3 courses and distances: South 89° 26' East 1143.70 feet; North 59° 25' East 273 feet; North 56° 47' East 322.14 feet; thence North 90° 00' West 1647.02 feet, to the True Point of Beginning, EXCEPT that portion lying within U.S. Highway #287 and also Except that tract of land conveyed to the State Department of Highways by deed recorded August 3, 1990 as Reception No. 1056253, County of Boulder, State of Colorado.

TOGETHER WITH: 27 shares of the Boulder and White Rock Ditch and Reservoir Company and 8 units of the Northern Colorado Water Conservancy District.