

FARM LEASE
Letterly Property North, 13695 E. 144th Avenue, Brighton, CO 80601
44.3 Acres, 41.8 Farmable Acres

THIS FARM LEASE (“Lease”) is made and entered into as of the ____ day of _____, 2015 (the “effective date”), by and between **THE CITY OF BRIGHTON**, a Colorado home rule municipality having its address at 500 South 4th Avenue, Brighton, Colorado 80601 (“Landlord”), and Petrocco Farms, Inc and Berry Patch Farms, LLC, having a business address of 14110 Brighton Rd, Brighton, Colorado 80601 (Petrocco Farms) and 13735 Potomac St., Brighton, CO 80601 (Berry Patch Farms, LLC) (“Co-Tenants”), as follows:

WITNESSETH, that the Landlord, for and in consideration of the rents, covenants, promises and agreements hereinafter set forth, does hereby lease and convey unto the Co-Tenants for the “Term,” subject to the terms and provisions of this Lease and all attached Exhibits, the following described real property, to wit (the “Premises”):

A PARCEL OF LAND OWNED BY THE LANDLORD AND LOCATED IN THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED IN EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE, CONTAINING APPROXIMATELY FOURTY FOUR AND 3/100 (44.3) ACRES.

Located in the County of Adams, State of Colorado, for five (5) years, commencing on the effective date hereof, and ending on the last day of December, 2019 (the “Term”); for the Co-Tenants’ use in raising certain vegetables or other crops, as provided herein. At the expiration of the Term, Landlord and Co-Tenants may renew this Lease for an additional five (5) year Term by executing a new Lease instrument, which right of renewal shall be at the sole discretion of the Landlord.

The Co-Tenants do hereby hire and let said Premises from the Landlord, and covenant and agree with the Landlord and Landlord’s agents or assigns, that as payment to the Landlord for the use and benefit accruing to the Co-Tenants from the use and occupancy of the Premises as provided herein, the Co-Tenants shall and hereby do bind themselves, their heirs and personal representatives, jointly and severally, as follows:

First. Cash Rent. The Co-Tenants shall pay to the Landlord cash rent for each year of the Term, in the base amount of Six Thousand Six Hundred Eighty-Eight Dollars (\$6,688.00) per 41.8 farmable acres, payable in one (1) installment per year, made in good funds made payable and delivered to Landlord on or before December 31st. Recognizing that it may take up to 2 years for the land to be productive, Landlord hereby waives the cash rent due for the first year of the Term and one half the rent in year two of the Term. Co-Tenants shall pay the following cash rent yearly installment for the remaining years in the Term: \$3,344 Year 2, \$6,688 Year 3, \$6,688 Year 4, and \$6,688 Year 5.

Upon the renewal of the initial Term for an additional five (5) year term, the Landlord and Co-Tenants shall agree upon the cash rent yearly installment for said additional term, and execute an addendum to this Lease setting forth said cash rental amounts.

Second. Crops. The Co-Tenants shall farm the Premises in a good and workmanlike manner; shall haul out all debris on the Premises and properly dispose of same or place it where the Landlord desires or instructs, and shall plant on the Premises the following crops: farmable acres, more or less, of crops at the Co-Tenants' discretion. Co-Tenants acknowledge and agree that the number of acres to be farmed by each and the kind of crop(s) to be farmed shall be as mutually agreed upon by the Co-Tenants, and reported to Landlord in a timely manner.

Third. Duty of Care. The Co-Tenants especially covenant and agree that the Co-Tenants shall care for the Premises as the Co-Tenants' own, and shall diligently and properly care for and cultivate all of the crops to be grown on the Premises, whenever and as often as said crops shall reasonably require; and Co-Tenants hereby expressly consent that the Co-Tenants shall procure such help or assistance as is reasonably necessary to properly care for and cultivate said crops, and that all expenses thereof shall be paid for by the Co-Tenants. The Co-Tenants shall not allow any furrows to be run so as to cause ditches to wash said Premises, unless first having written consent of the Landlord. That they shall clean out and maintain in good repair, during the term of this Lease, all ditches belonging or appertaining to the Premises.

Fourth. Duty to Cut and Control Weeds. It is further agreed to and understood Co-Tenants shall keep all foul and noxious weeds cut and controlled on said Premises, including in all ditches, canals and laterals if any; and also, upon any strip of land lying outside the fences, if any, as far as the center of the roadway, if necessary.

Fifth. Maintenance and Return of Premises. Co-Tenants have received said demised Premises in good order and condition, and at the expiration of the Term of this Lease, or upon a breach by the Co-Tenants, or either of them, of any of the covenants herein contained, Co-Tenants agree to peaceably and faithfully yield up and deliver said Premises to the Landlord, inclusive of all ditches, wells, pumps, pipelines, equipment and fixtures thereon, if any, in as good order and condition as when the same were entered upon, loss by inevitable accident, act of God, or ordinary wear and tear excepted; and the Tenant shall also keep said Premises, inclusive of said ditches, fixtures and equipment, if any, and all fences and gates, in good order and repair during this Lease, at the Co-Tenants' own expense. Co-Tenants agree not to sublet all or any portion of said Premises to any other party, nor shall Co-Tenants assign this Lease or any interest herein without prior written consent of the Landlord, which consent may be withheld in the Landlord's sole discretion. Co-Tenants shall not use or permit the said Premises to be used for any purpose prohibited by the laws or regulations of the United States, the State of Colorado, Adams County, the City of Brighton, or other governmental entity or agency having jurisdiction or regulatory authority over the Premises or its appurtenances, nor shall the Co-Tenants use or permit the Premises or its appurtenances to be used contrary to the terms of this Lease, or to the detriment or disadvantage of the Landlord in any respect.

Sixth. Irrigation Water B Surface Water Rights & Well Pumping Conditions and Restrictions. That said Landlord hereby grants to Co-Tenants permission to use thirty (50) shares of the Fulton Irrigation Ditch Company located on the Premises, provided, however, that the Landlord may terminate said use by the Co-Tenants in the event Landlord determines, in its sole discretion, that it needs said water. Furthermore, it is expressly understood and agreed between the parties hereto, that said Landlord shall not be liable to Co-Tenants, either jointly or severally, for any shortage of water for the irrigation of the aforesaid Premises.

Co-Tenants shall pay to the City the annual Fulton Irrigating Ditch Company assessments for the subject water, the amount of the assessment to be determined annually. Co-Tenants shall pay all other expenses incident to the use of the water during the Term of the Lease, including, but not limited to, any fees assessed by the Ditch Company to use the water at the location specified by Co-Tenants. Landlord hereby agrees to allow Co-Tenants to use the subject water subject to approval by the Ditch Company. Tenant agrees that water will be used only in connection with the operation of the Property, and will not be used on other property without prior written approval of the Landlord and the Ditch Company. Co-Tenants shall keep records of all water used on the property during the term of the Lease, and shall deliver copies of those records to Landlord. Landlord makes no warranty or agreement of any kind concerning the amount of water or water rights available on or to the Property and Co-Tenants shall in no way hold Landlord responsible for any shortage or excess of water for any purpose. Co-Tenants agree not to assign the water rights pursuant to this Lease to any other person, nor to sublease all or any part of the water.

Co-Tenants further covenant and agree with the Landlord that they shall not waste, or cause to be wasted, water on any adjacent or surrounding lands, or any public highways or railroads, and agree to indemnify and hold harmless the City from any and all damages or claims by waste water as aforesaid. Co-Tenants agree to pay for all said damages or claims and to reserve at the time of gathering and marketing sufficient crops, to use the proceeds of the sale thereof to satisfy said damages or claims, and to pay any unpaid repairs on said main lateral with which the Co-Tenants are properly chargeable.

Eighth. Co-Tenants' Share of Ditch Maintenance. Co-Tenants, in consideration of the Premises, and as otherwise provided herein, agree to pay Co-Tenants' pro rata proportion and share of the necessary expenses of keeping any ditch or lateral on the premises in good repair. Co-Tenants shall also keep all other fixtures and equipment, if any, in good repair at Co-Tenants' expense. Said expenses are to be paid in money or work on said facilities at the option of the Co-Tenant; but if paid in work, the work must be done at such times as the same is needed and required.

Ninth. Entry by Landlord During Term. The Landlord hereby reserves the right to re-enter the Premises at any reasonable time during the Term of this Lease, upon providing reasonable advance notice to the Co-Tenants. Co-Tenants agree to reasonably cooperate with the Landlord regarding same, and shall allow all reasonable entry and inspections of the Premises such as may occur during reasonable business hours. It is understood between the parties that if, during the term of this Lease, the Landlord determines in its sole discretion that it is necessary to occupy and use all or part of the Lease Premises for its own purpose, then this Lease may be cancelled or modified by Landlord to provide for said use by the Landlord as

the Landlord may determine. All adjustments, if any, as a result of the cancellation or modification shall be as of the date of change of use. If cancelled or modified, the Landlord shall not be liable for any loss or damage to Co-Tenants as a result thereof.

Tenth. Landlord's Reversion and Estate. It is further expressly agreed and understood by and between the Parties, that the Landlord does not by this Lease part with Landlord's entire possession of said Premises, but only so far and so much as is necessary to enable the Co-Tenants to properly farm said Premises temporarily, and to carry out the terms and provisions of this Lease. All crops are and shall be held by the Co-Tenants except as otherwise provided herein, and the Landlord hereby reserves the right to at all reasonable times enter in and upon said Premises and every part thereof and to do such acts and things as may be deemed necessary for the protection of the Landlord's interest and estate therein.

Eleventh. Hold Harmless. Co-Tenants shall, jointly and severally, indemnify, defend, and hold Landlord harmless from and against any and all claims or demands arising from or out of Co-Tenants' use and occupancy of the Premises, or from the conduct of Co-Tenants' business or from any activity, work or other acts or undertakings that may be undertaken, permitted or suffered by Co-Tenants in or about the Premises, and the Co-Tenants shall, jointly and severally, further indemnify, defend and hold the Landlord harmless in all respects from and against any and all claims or demands arising from or out of any breach or default in the performance of the terms and provisions of this Lease by Co-Tenants, including any attachments, Exhibits, documents or instruments referenced herein; or arising from any negligent or intentional act or omission by Co-Tenants or its agents, employees, hands, contractors, guests, or invitees on the Premises, and from and against any and all costs, attorneys fees, expenses or liabilities incurred by Landlord in the defense of any such claim or demand, or any action or proceeding brought thereon. Co-Tenants hereby assume all risk of bodily injury or damage to property or persons in or about the Premises from any cause during the term of this Lease or otherwise during Co-Tenants' occupancy of the Premises, and Co-Tenants hereby expressly waive all claims or demands in respect thereof against Landlord, except where such damage or loss, if any, is proximately caused by the Landlord.

Twelfth. Entire Agreement. It is understood that this instrument embodies the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein and this Lease shall supersede all previous communications, representations, or agreements either verbal or written between the parties hereto.

Thirteenth. Notice. All notice provided under this Lease shall be effective when mailed, postage prepaid and sent to the following addresses:

If Tenant (1):

Petrocco Farms, Inc.
Dave Petrocco
14110 Brighton Rd
Brighton, CO 80601
Phone Number: 303-748-6691

Tenant (2):

Berry Patch Farms, LLC
Timothy Ferrell
13735 Potomac St
Brighton, CO 80601
Phone Number: 303-596-1073

If City:

With Copy To:

Director of Parks
and Recreation
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2049

City Manager

City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2001

Procurement & Contracts
Manager
City of Brighton
500 South 4th Avenue
Brighton, CO 80601

Fourteenth. Miscellaneous. The Co-Tenants shall not cause, allow, or suffer or permit to be caused or allowed, any undue waste or destruction of Landlord’s Property. In case of any breach of this Lease by a Party, then the non-breaching Party shall be entitled to claim and recover its actual damages and reasonable attorney fees and costs from the other Party, in any civil action to remedy or cure such breach. This Lease may be recorded in the real property records of Adams County, Colorado.

Fifteenth. Additional Provisions: (1) Co-Tenants shall keep all fences in good repair and all ditch banks and fence lines shall be kept free from weeds; (2) United Power or other utility bills, if any, associated with Co-Tenants’ farming activities shall be promptly paid by Co-Tenants, in full, when due; (3) No trash, debris, vegetable packing boxes, or other refuse or material shall be deposited or left upon the Premises, and the Co-Tenants agree to keep the Premises free and clear of such trash, debris and other such material during this Lease and upon re-delivery of the Premises to Landlord at the end of this Lease; (4) Petrocco Farms will have use of farm house / Out buildings; (5) Petrocco Farms will restore existing house for use; (6) The farming activities under this Lease are intended to be a cooperative and joint undertaking between Petrocco Farms, Inc. and Berry Patch Farms, LLC.; (7) In the event that the Premises, or any portion thereof, become subject to a condemnation or other proceeding or taking through eminent domain or other process, then all proceeds shall be payable to the Landlord except for any compensation attributable to Co-Tenants’ crops, which shall be Co-Tenants’ obligation, not Landlord’s, to pursue and recover from the condemning authority directly. Co-Tenants shall have no claim to any portion of the just compensation or proceeds attributable to the real property and Premises; (8) By entering into this Lease, the Landlord does not in any way waive its rights, remedies, limitations, or exclusions under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.; (9) To the extent that any of these Additional Provisions conflict with any other provision in this Lease, then these Additional Provisions shall control, such that the Lease is construed, in all respects, in a commercially reasonable manner and not unfairly as against the Landlord.

WHEREFORE, THIS LEASE IS EXECUTED by the Parties, as of the date first written above.

THE CITY OF BRIGHTON, LANDLORD:

Petrocco Farms Inc., CO-TENANT:

By: _____
Manuel Esquibel, City Manager

By: _____
Dave Petrocco _____

