

CONTRACT FOR SALE OF REAL ESTATE

(Anderson/Hattendorf-TCF Property/City of Brighton – Adams County, CO)

THIS CONTRACT FOR SALE OF REAL ESTATE (the “**Agreement**”) is entered into this ____ day of July, 2017, by and between and **THE CONSERVATION FUND**, a Maryland non-profit corporation with offices at 1655 North Fort Myer Drive, Suite 1300, Arlington, Virginia 22209-3199 Attention: General Counsel (the “**Seller**”) and **THE CITY OF BRIGHTON, COLORADO**, a Colorado home rule municipality, the address of which is 22 South 4th Avenue, Brighton, Colorado 80601, Attention: Director of Parks & Recreation, email:gwardle@brightonco.gov(the “**Purchaser**”). The Seller and the Purchaser are collectively referred to as the “**Parties**”. The following exhibits are attached to and made a part of this Agreement:

- Exhibit A - Description of Property
- Exhibit B - Affidavit of Non-foreign Status

RECITALS:

- A. Seller is the owner of 63.69 acres of land, more or less, located in Adams County, Colorado, described in the attached **Exhibit A** (the “**Property**”).
- B. The Purchaser wishes to acquire the Property for the purpose of maintaining the Property as open and scenic space in agricultural production lying within the Agricultural Heritage District jointly designated by the City of Brighton and Adams County for the purpose of preserving agriculture in the area south of Brighton.
- C. The Parties acknowledge that it is an express condition of this Agreement that immediately upon closing the Purchaser will grant a Deed of Conservation Easement to Adams County to ensure that the Property forever remain in its open and scenic condition and available for agricultural production.

AGREEMENT:

The Parties agree as follows:

1. **PROPERTY.** Seller agrees to sell and Purchaser agrees to buy the Property on the terms and conditions set forth in this Agreement. The Property is being sold in “as is” condition, subject to all covenants, easements, restrictions and reservations of record and any matters that might be revealed by a current, complete and accurate survey and inspection of the Property.

2. **PURCHASE PRICE.** The purchase price for the Property shall be Three Million Four Hundred Seventy Eight Thousand and no/100s Dollars (\$3,478,000.00) (the “**Purchase Price**”). At closing the Purchase Price shall be paid by delivery of funds to the Title Company by wire transfer of funds from the City of Brighton, Adams County, and Great Outdoors Colorado Trust Fund.
3. **CLOSING DATE; TITLE COMPANY.** The title and escrow company for this transaction is Fidelity National Title Company, 4643 South Ulster Street, Suite 500, Denver, Colorado 80237 (the “**Title Company**”). The closing of the transaction contemplated hereunder (the “**Closing**”) shall be held at a location mutually agreed upon by Purchaser, Seller, and the Title Company, on or before August 9, 2017 (the “**Closing Date**”).
4. **SATISFACTORY INSPECTION AND REVIEW.** The Seller and Purchaser expressly covenant and agree that Purchaser’s satisfaction upon the review and inspection provided for herein is a specific condition precedent to the obligation of Purchaser to purchase the Property. Purchaser shall have a period in which to review the documents and to make the inspections described below. The period of inspection (the “**Inspection Period**”), unless extended as provided herein, shall terminate on the earlier of: (i) Receipt by Seller of notice from Purchaser that the Property is suitable for purchase; or (ii) 4:00 p.m. MDT, August 4, 2017.
 - 4.1. **Title Commitment.** Seller has provided to Purchaser Fidelity National Title Insurance Company Commitment No. 100-N0010978-020-PN, effective date March 24, 2017. At the request of Purchaser, Seller will obtain and provide to Purchaser an updated title commitment issued by the Title Company at Purchaser’s expense together with legible copies of the deed or deeds by which the Seller holds title to the Property, legible copies of any instruments listed in the legal description for the Property, and legible copies of all exceptions to title, pursuant to which the Title Company shall issue to Purchaser an ALTA owner’s policy of title insurance, including “gap” and mechanic’s lien coverage, insuring title and access to the Property as of the date of Closing in the amount of the Purchase Price (the “**Title Commitment**”). Pursuant to the Title Commitment and at the Purchaser’s expense, upon Closing the Title Company shall issue to Purchaser a standard coverage owner’s policy of title insurance, insuring title to the Property as of the date of Closing in the amount of the Purchase Price.
 - 4.2. **Due Diligence: Inspection; Right of Entry.** Purchaser shall have the right to enter upon the Property at reasonable times for physical inspection and other reasonable purposes related to the transaction contemplated by this Agreement. Purchaser hereby indemnifies and holds the Seller harmless from and against any and all claims, liens, damages, losses, and causes of action which may be asserted by Purchaser or Purchaser’s employees,

agents, or any third party who enters upon the Property or conducts tests related to the Property at the request of or on behalf of Purchaser or its agents, provided that such indemnification and hold harmless shall not apply to claims arising out of the negligent, willful or wanton conduct of Seller.

5. **ELECTION AT THE END OF THE INSPECTION PERIOD.** During the Inspection Period, Purchaser may make physical and other inspections, and/or other evaluations required to satisfy itself as to the acceptability and suitability of the Property for purchase. Should, Purchaser not be satisfied that the Property is acceptable or suitable, Purchaser shall notify Seller in writing on or before the expiration of the Inspection Period of its dissatisfaction, at which time this Agreement shall be considered null and void and of no further force and effect; provided, however, if the objections of Purchaser are to title or other defects which Seller can reasonably cure within a reasonable time following the receipt of notice from Purchaser, Seller shall have such period to cure such defects to the reasonable satisfaction of Purchaser. Purchaser shall, at any time, have the right to waive the conditions precedent to its performance under this Agreement before the end of the Inspection Period and if Purchaser elects to waive the conditions precedent to its performance and to terminate the Inspection Period, this Agreement will remain in full force and effect. Failure of Purchaser to notify Seller of its dissatisfaction prior to the expiration of the Inspection Period shall be deemed a waiver of this condition precedent and acceptance of the Property as suitable for purchase, as required above.
6. **DOCUMENTS.** In addition to execution of customary closing documents required by the Title Company, the following documents shall be executed and delivered to Closing:
 - 6.1. Special Warranty Deed with Reservation of Subsurface Minerals and Covenant Not to Disturb Surface from Seller to Purchaser, subject to all matters of record and matters which an accurate survey would disclose, and subject to the Residential Lease between Seller and Anne E. and Jerry D. Anderson, dated effective March 15, 2017, and the Agricultural Lease between Seller and David A. Petrocco, d/b/a Petrocco Farms, Inc., dated April 10, 2017.
 - 6.2. Bargain and Sale Water Rights Deed from Seller to Purchaser conveying the water rights acquired by Seller on March 15, 2017.
 - 6.3. Assignment of Right to Prohibit Surface Use acquired by Seller on March 15, 2017.
 - 6.4. Assignment of Sub-District Contract 323 acquired by Seller on March 15, 2017.

- 6.5. Assignment of Sub-District Contract 324 acquired by Seller on March 15, 2017.
- 6.6. Original Fulton Ditch Stock Certificate to be issued to Seller (which will replace Certificate Nos. 2996, 2997, 3185, 3186, 3871 and 3872 acquired by Seller on March 15, 2017).
- 6.7. Assignment of Fulton Ditch Stock Certificate referenced in Paragraph 6.6, above.
- 6.8. Special Warranty Deed Bill of Sale conveying items acquired by Seller on March 15, 2017.
- 6.9. Deed of Conservation Easement from the City of Brighton to Adams County (in the form approved by the parties and Great Outdoors Colorado Trust Fund) to be conveyed by Purchaser to Adams County immediately following Purchaser's acquisition of the Property.
7. **TAXES.** All taxes and assessments for the Property, if any, shall be prorated as of the date of Closing based on the most recent ascertainable tax bill. Taxes for all years prior to the Closing shall be paid prior to Closing.
8. **COSTS AND FEES.** Closing fees, escrow fees, per page recording costs, and documentary fees (if any), shall be paid by the Purchaser. The premium for the title insurance policy and any endorsements described above shall be paid by the Purchaser. All other Closing costs shall be paid by the Purchaser.
9. **DAMAGES; DEFAULT.**
 - 9.1. **Seller's Remedies.** In the event that all of the conditions to this Agreement for the benefit of Purchaser shall have been satisfied, or waived by Purchaser and: (a) Seller shall have fully performed or tendered performance of its obligations under this Agreement, and (b) Purchaser shall be unable or shall fail to perform its obligations under this Agreement, then Seller may elect, at Seller's sole option, to terminate this Agreement and be released from its obligations hereunder.
 - 9.2. **Purchaser's Remedies.** If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Purchaser, Purchaser may elect, at Purchaser's sole option: (i) To terminate this Agreement and be released from its obligations hereunder.
10. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered upon sending of such notice. All notices required or permitted hereunder shall be given by hand delivery, or sent by telecopier or email, or sent

by Federal Express or other courier for delivery at the soonest possible time offered by such courier, directed as follows:

If to Purchaser:

at the address shown above

If to Seller:

THE CONSERVATION FUND
1655 North Fort Myer Drive, Suite 1300
Arlington, Virginia 22209-3199
Attn: General Counsel
Facsimile: 703-525-4610

with a copy to:

The Conservation Fund
Attention: Ms. Christine Quinlan
1942 Broadway, Suite 323
Boulder, CO 80302
cquinlan@conservationfund.org

11. MISCELLANEOUS.

- 11.1. Broker's Commission. Seller and Purchaser each represent to the other that they have not contracted with any broker or finder with regard to this transaction. Each party agrees to indemnify, defend and hold harmless the other from and against any and all liability, claims, demands, damages and costs of any kind arising out of or in connection with any broker's or finder's fee, commission or charges claimed to be due any person in connection with such person's conduct respecting this transaction except as set forth herein.
- 11.2. Certificate. At or prior to Closing, Seller shall furnish to Purchaser a duly executed Certificate of Non-Foreign Status in the form attached to this Agreement as Exhibit "B". Seller hereby declares and represents to Purchaser that it is not a "foreign person" for purposes of withholding of federal tax as described in such Certificate.
- 11.3. Assigns. Purchaser may not assign this contract and its rights as Purchaser hereunder without the written consent of Seller, which may be withheld in Seller's absolute discretion. Such assignment shall not relieve Purchaser of its obligations under this Agreement in the absence of express release from Seller.

- 11.4. **Binding Effect.** The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of Seller and its successors and assigns.
- 11.5. **Exhibits.** The exhibits hereto constitute an integral part of this Agreement and are hereby incorporated herein.
- 11.6. **Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts, all of which shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Signatures may be evidenced by facsimile transmission and at the request of any party documents with original signatures shall be provided to the other party.
- 11.7. **Severability.** If any provision of this Agreement shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 11.8. **Entire Agreement.** This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.
- 11.9. **Authority.** Each party to this Agreement warrants to the other that the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.
- 11.10. **Merger.** The obligations, covenants, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall survive the closing.
- 11.11. **Further Actions.** Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Property to Purchaser and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.
- 11.12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- 11.13. **Offer.** When signed and delivered by the Seller to the Purchaser, this Agreement will constitute an offer to the Purchaser that can be accepted only by the Purchaser signing and delivering to Seller an executed original of this Agreement on or before (but not after) July 21, 2017. Seller may withdraw such offer in writing at any time prior to its acceptance.
- 11.14. **Labor and Material.** Seller shall deliver to Purchaser at settlement an affidavit, in a form acceptable to the Title Company, signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person or persons furnishing the labor or materials that the costs

thereof have been paid.

- 11.15. **1099 Reporting.** The Title Company is designated as the party responsible for filing a Form 1099 with the Internal Revenue Service promptly after Closing, to the extent required by the Internal Revenue Code and Treasury Regulations.
- 11.16. **Certificate.** The Conservation Fund is an organization described in Section 501(c)(3) of the Internal Revenue Code and as such it is required to file certain reports pertaining to the purchase or sale of the Property with the Internal Revenue Service. Seller represents that its federal tax identification number is 52-1388917, and authorizes the Title Company to release to Purchaser any tax identification or transaction information as is requested by Purchaser for such reporting.
12. **SATURDAYS, SUNDAYS, HOLIDAYS.** If the final date of any time period of limitation set out in any provision of this agreement falls on a Saturday, Sunday or a legal holiday under the laws of the State of Colorado, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.
13. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the last date signed by either party.
14. **AS-IS, WHERE-IS.**
 - 14.1. Purchaser acknowledges and agrees that it has been given the full opportunity to inspect the Property and accordingly that it is relying solely on its own investigation of the Property (including without limitation the status of water and minerals, and the environmental condition of the Property and improvements). Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person, except to the extent, if any, specially included in this Agreement.
 - 14.2. Except for standard warranties of Seller's title to the Property, Seller has not made, does not make, and has not authorized anyone else to make, and specifically disclaims any representations, warranties, promises, agreements or guaranties of any kind, as to: (a) the value, nature, quality, condition or environmental condition of the Property, which includes, without limitation the water, soil and geology of the Property; the existence or non-existence of access to or from the Property or any portion thereof; (b) the location of the Property or any portion thereof within any flood plain, flood prone area or watershed; (c) the availability of water, sewer, electrical, gas, telephone, cable or other utility services; (d) the number of acres in the Property; (e) rights or claims of easements not shown in the public records and rights or claims of third-parties in possession; (f) acreage, boundary discrepancies, conflicts in boundary areas, shortage in

area, location of fences and whether they are on boundaries or not, encroachments and rights or claims which an accurate survey would disclose; (g) the existence or applicability of or compliance with any land use, zoning, subdivision or building codes, laws and regulations; (h) the present or future physical condition or suitability of the Property, including without limitation, the environmental condition or status of the Property; (i) any other matter or thing relating to the Property or this Agreement. Purchaser expressly acknowledges that (a) no such representations have been made by Seller (or on Seller's behalf), and in entering into this Agreement, Purchaser does not rely on any representations other than those set forth herein; (b) Purchaser has inspected the Property, or caused an inspection of the same to be made on Purchaser's behalf, and is thoroughly familiar and fully satisfied therewith, and is relying solely on Purchaser's investigation of the Property. Purchaser shall take title to and possession of the Property in "as is" condition, as of the date thereof, subject to wear and tear until Closing. **EXCEPT FOR WARRANTIES OF TITLE, SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES RELATING TO THE PROPERTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER SHALL BE SOLELY RESPONSIBLE FOR OBTAINING ANY AND ALL APPROVALS, PERMITS OR LICENSES REQUIRED BY PURCHASER TO CARRY ON ITS INTENDED OPERATIONS ON THE PROPERTY.**

15. **PURCHASER'S CONTINGENCIES.** Specific contingencies to Purchaser's obligation to perform hereunder are: (a) Purchaser being satisfied, in its sole discretion, prior to the end of the Inspection Period that the Property is acceptable and suitable for purchase; and (b) the approval by the City Council of the City of Brighton of the transaction contemplated prior to the end of the Inspection Period. If either contingency is not met or is not waived by the Purchaser, then this Contract shall be null and void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PURCHASER

CITY OF BRIGHTON, COLORADO, a home rule municipal corporation

By: _____

Clint Blackhurst, Acting City Manager

Date: _____

ATTEST:

By: _____

Natalie Hoel, City Clerk

Approved as to Form:

By: _____

Margaret R. Brubaker, City Attorney

SELLER

THE CONSERVATION FUND,
a Maryland non-profit corporation

By: AMT

Date: 6/30/17

Its: Ass't Sec.

EXHIBIT “A”

Description of Property

Parcel 1, Anderson/Hattendorf – Exemption from Subdivision, according to the plat thereof recorded on February 24, 2017 at Reception No. 2017000017238, County of Adams, State of Colorado.

EXHIBIT "B"
AFFIDAVIT OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by The Conservation Fund, "**Transferor**", the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is 52-1388917;
4. Transferor's office address is 1655 North Fort Myer Drive, Suite 1300, Arlington, Virginia 22209-3199;
5. The gross sales price of this transfer is: \$3,478,000.00

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

TRANSFEROR:

The Conservation Fund, a Maryland non-profit corporation

By: _____ Date: _____

Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

SUBSCRIBED, sworn to and acknowledged before me by _____ as
SELLER and TRANSFEROR, who acknowledged the foregoing AFFIDAVIT OF NON-FOREIGN
STATUS on this _____ day of _____, 2017.

Notary Public
My commission expires: _____