

DEED OF CONSERVATION EASEMENT IN GROSS

(Murata– City of Brighton, Adams County)

THIS DEED OF CONSERVATION EASEMENT IN GROSS is granted ___ day of _____, 2019, by the **BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, COLORADO**, a political subdivision of the state of Colorado, having its address at 4430 South Adams County Parkway, Brighton, CO 80601 (“**Grantor**”), to and for the benefit of the **CITY OF BRIGHTON, COLORADO**, a Colorado home rule municipality, the address of which 500 South 4th Avenue, Brighton, Colorado 80601 (“**Grantee**”). The Grantor and the Grantee are individually referred to as a “**Party**”, and collectively as the “**Parties**”, herein. This “Deed of Conservation Easement in Gross” may be referred to herein as the “Easement” or the “Deed”. The following exhibits are attached hereto and are incorporated by reference:

- Exhibit A - Description of Property
- Exhibit B - Map of Property and Building Area
- Exhibit B-1 - Description of Building Area
- Exhibit C - Description of Water Rights
- Exhibit D - Acknowledgment of Baseline Report

RECITALS:

A. Grantor is the sole owner in fee simple of a 38.3-acre, more or less, tract of land which includes all of the property described in the attached **Exhibit A** and depicted on attached **Exhibit B**, and the water rights, further defined in Section 5.10 and in the attached **Exhibit C**. The property and water rights described in Exhibit A and Exhibit C comprise the “**Property**” encumbered by this Easement.

B. The acquisition of the Property was funded by an Adams County Open Space grant funded by the Adams County Open Space Sales Tax which was passed by the Adams County voters in 1999, and reauthorized in November 2004, to be extended until December 31, 2026. The adopted Adams County Open Space Policies and Procedures require projects receiving passive funds for land acquisition to preserve the Property in perpetuity with a conservation easement. The Parties acknowledge Grantor’s intent to utilize the property as agricultural open space with potential passive recreation uses.

The Property possesses natural, scenic, open space, agricultural and/or recreational values (collectively, “**Conservation Values**”) of great importance to the people of Adams County and the City of Brighton. In particular, the Property is located in a key area of farmland along Potomac Street. These rich farming soils on the Property are very important to the City of Brighton and to Adams County and are threatened by rapid conversion to commercial, residential, and industrial development. In addition, the Property comprises a visual corridor of undeveloped farmland at the south entrance to the

urban setting of the City of Brighton. Residents within the region, and within Adams County and Brighton will benefit from the protection of this property as agricultural open space. Preserving the Property's agricultural heritage allows potential for agritourism and education in the greater Brighton area.

C. The Property provides agricultural production and protects open space, agricultural lands, and floodplain areas as recommended by the District Plan, which was adopted by Adams County and the City of Brighton in 2016.

D. Grantor intends that the Conservation Values of the Property be preserved and protected, and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of this Easement.

E. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the clearly delineated governmental conservation policies listed below which are in effect as of the date of this Easement:

- 1) The Colorado Department of Agriculture statutes, Colorado Revised Statutes Sec. 35-1-101, *et seq.*, which provide in part that “it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.”
- 2) Colorado Revised Statutes Sec. 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land “in a natural, scenic or open condition, or for wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity.”
- 3) The Colorado Department of Transportation statutes, Colorado Revised Statutes §43-1-401, *et seq.*, provide that the preservation and enhancement of the natural and scenic beauty of this state is a matter of substantial state interest.
- 4) The District Plan was jointly developed by Adams County, Colorado and the City of Brighton, Colorado as a community-based regional vision for guiding the development of local food production, agri-tourism, conservation and future land use (the “District Plan”). It is recognized in the District Plan that “lands irrigated by the Burlington and Fulton Ditches are some of the oldest, most productive farms in Colorado. Prime, irrigated agricultural land is a finite and irreplaceable resource”. Based upon the research conducted in forming the District Plan, it was concluded that “preserving farmland and developing a local food system are complementary activities, protecting farmland in the District creates an opportunity for millions of dollars in locally sourced food and wages,

losing direct contact with this heritage would, in turn, threaten Brighton's ability to position itself as a destination for agritourism and supporting agriculture provides multiple economic and cultural benefits, and keeps future opportunities open that have not yet been capitalized on such as agritourism".

F. Grantor further intends, as owner of the Property, to convey to Grantee certain rights to preserve and protect the Conservation Values of the Property in perpetuity, jointly with the Grantor.

G. Grantee is a governmental entity qualified under Sections 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, and is a qualified holder of a conservation easement in gross under Colorado law.

H. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to jointly with Grantor preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations;

NOW, THEREFORE, in consideration of the above recitals which are a substantive part of this agreement, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. § 38-30.5-101 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a perpetual conservation easement in gross over the Property of the nature and character and to the extent hereinafter set forth ("**Easement**").

1. Purpose. The purpose of this Easement is to ensure that the Conservation Values are preserved and protected in perpetuity ("**Purpose**"). To effectuate the Purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property that do not substantially diminish or impair the Conservation Values, and to prevent any use of the Property that will substantially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.
2. Baseline Documentation Report. The parties acknowledge that a written report dated _____ has been prepared by Cole Conservation Consulting and has been reviewed and approved by the parties, which documents the Property's condition as of the conveyance date of this Easement (the "**Baseline Report**"). A copy of the Baseline Report shall be kept on file with both parties and by this reference made a part hereof. The parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Easement, and both parties have acknowledged the same in a signed statement, a copy of which is attached hereto as **Exhibit D**. The parties further agree that the existence of the Baseline Report shall in no way limit

the parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Easement.

3. Rights of Grantee. To accomplish the Purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - 3.1. To preserve and protect the Conservation Values of the Property;
 - 3.2. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's or any tenant's or licensee's use and quiet enjoyment of the Property;
 - 3.3. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement; and
 - 3.4. To require the restoration of such areas or features of the Property that is damaged by any inconsistent use.

4. Reserved Rights. Except as expressly provided herein, Grantor reserves to itself, its successors and assigns, all other rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted herein and that do not substantially diminish or impair the Property's Conservation Values. As examples and without limiting the generality of the foregoing, the Grantor reserves the right to:
 - 4.1. permit members of the public to engage in non-commercial, non-motorized passive recreational activities, such as horseback riding, hiking, cross-country skiing, or other similar low-impact recreational uses, subject to the rules and regulations established by Grantor for the operation and use of the Property;
 - 4.2. lease and/or sell the Property for agricultural use consistent with this Easement (the Grantor may enter into an agricultural lease for all or a portion of the Property and may enter into multiple agricultural leases at one time); provided that any sale shall be subject to Paragraph 20;
 - 4.3. alter, excavate, maintain and improve the existing ditches, ponds, wells and irrigation facilities as needed for delivery of water and irrigation on the Property, for road or property maintenance, or to reduce erosion, provided that any such activities shall not significantly impair the Conservation Values of the Property, shall be conducted with the prior approval of Grantee based upon Grantee's review of Grantor's plans and in accordance with all applicable laws and regulations.

- 4.4. Any rights reserved in **Section 5**, below.
5. Prohibited and Restricted Uses. Any activity on or use of the Property that is inconsistent with the Purpose of this Easement, and which materially damages or diminishes the Conservation Values of the Property, is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or are permitted subject to the restrictions described in this **Section 5**:
- 5.1. Development Rights. To fulfill the Purpose of this Easement, Grantor hereby conveys to Grantee all development rights deriving from, based upon or attributable to the Property in any way (“**Grantee’s Development Rights**”), except those expressly reserved by Grantor herein, and the parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose of this Easement, and to ensure that such rights are forever released, terminated and extinguished, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.
- 5.2. Construction of Buildings and Other Structures.
- 5.2.1. Building Area. The Parties have identified an approximate 1.5-acre building area described in **Exhibit B-1** and depicted in **Exhibit B** (the “**Building Area**”) within which the following existing inhabited/in use structures are located: the primary residence and shop building (the “**Existing Structures**”). Also existing within the Building Area are an abandoned residence and three abandoned and/or collapsed outbuildings (the “**Abandoned Structures**”). The Existing Structures may be maintained, repaired, renovated, reasonably enlarged or replaced within the Building Area with the prior written approval of Grantee based upon Grantee’s review of Grantor’s plans and in accordance with all applicable laws and regulations. Additional outbuildings may be constructed within the Building Area with the prior written approval of Grantee based upon Grantee’s review of Grantor’s plans and in accordance with all applicable laws and regulations, but only after the Abandoned Structures have been removed, cleaned up, and unless permitted new outbuildings will occupy the same location, the site of the Abandoned Structures restored to a natural condition. Only one primary residence shall be permitted within the Building Area.
- 5.2.2. Minor Agricultural Structures. Grantor may construct, maintain, repair or replace minor improvements and appurtenances used for agricultural purposes anywhere on the Property when said structures do not require a building permit, including fencing, irrigation structures, temporary storage sheds, portable toilets,

plant screens, shade structures, hoop houses, and plant supports, so long as such improvements and appurtenances are sited so as to protect the Conservation Values on the Property. Any structure other than fencing that requires a building permit shall be prohibited.

- 5.3. New Structures and Improvements. Except as provided in **Section 5.2**, above, and **Section 5.8**, below, no new or additional building, residential building, structure or improvement, except recreational trails and appurtenances, shall be built on the Property, including but not limited to, athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges.
- 5.4. Fences. New fences may be constructed on the Property and existing fences may be repaired or replaced for purpose of reasonable and customary management of the Property or for separation of ownership and/or uses. Fencing shall be constructed in a manner that is compatible with the movement of wildlife across the Property and to adjoining properties.
- 5.5. Subdivision. Grantor and Grantee agree that the division, subdivision, de facto subdivision or partition in kind of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited; except that Grantor may subdivide the Property, but only for providing and dedicating to Grantor or Grantee, as appropriate, necessary public right of way for Potomac Street. In such event, this Easement shall be amended, as provided herein, to release any portion of the Property that becomes public right of way for Potomac Street from the description of the Property encumbered by this Easement, and the Board and the Grantee shall be entitled to compensation, as provided in **Section 18**, below. Except as so permitted, Grantor shall own and convey the Property as a single parcel under a single ownership which shall be subject to the terms and conditions of this Easement.
- 5.6. Timber Harvesting. Trees may be harvested in connection with farming or nursery operations, or cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead trees may also be cut for firewood and other uses on the Property. No commercial lumber or timber harvesting shall be allowed.
- 5.7. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance using any surface mining method or in any manner which disturbs, damages or occupies any portion of the surface of the Property is prohibited.

- 5.7.1. Covenant Not to Disturb Surface. The Parties acknowledge that the subsurface mineral estate was severed from the surface estate in the General Warranty Deed with Reservation of Subsurface Minerals and Covenant Not to Disturb Surface, from Steven T. Murata (“**Murata**”) to The Conservation Fund, a Maryland nonprofit corporation, recorded February 28, 2019 as Reception No. 2019000014778, Adams County, Colorado (“**General Warranty Deed**”). The General Warranty Deed includes a “**Covenant Not to Disturb Surface**” given by Murata for the benefit of the Property and its owner. Subsurface mining that does not violate the Covenant Not to Disturb Surface is permitted; Grantor shall fully enforce the Covenant Not to Disturb the Surface. In addition, Grantor acknowledges that Grantee, as holder of this Easement is an intended third-party beneficiary of the Covenant Not to Disturb Surface and may enforce the terms of the Covenant Not to Disturb Surface.
- 5.8. Paving and Road Construction. Except for the potential future widening and improvement of the Potomac Street public right of way abutting the Property, no portion of the Property shall be paved nor shall any new road be constructed without the prior written approval of Grantee, except within the Building Area and excepting recreational trails including recreational trails needed in order to connect to other recreational trails in the vicinity so long as the Property’s Conservation Values are not substantially impaired. Grantee shall give such permission within a reasonable time, unless Grantee determines in its sole discretion that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the Conservation Values of the Property and is inconsistent with this Easement; otherwise, Grantee’s permission shall not be unreasonably withheld, conditioned or delayed. Additionally, nothing herein shall be construed so as to cause the Property to be in violation of the Americans with Disabilities Act.
- 5.9. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, including but not limited to household trash, construction materials, and hazardous chemicals, is strictly prohibited.
- 5.10. Water Rights. The Parties agree that it is appropriate to encumber certain water rights beneficially used on the Property with this Deed pursuant to C.R.S. § 38-30.5-102, including all of Grantor’s right, title, and interest in and to the water and water rights described in **Exhibit C** and such substitute sources of water permitted under **Section 5.10.7** herein, together with Grantor’s interest, if any, in all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and

rights of way, and irrigation equipment appurtenant and affixed to the Property (collectively, the “**Water Rights**”).

5.10.1. Permitted Water Uses. The Parties agree that the Water Rights will be used in accordance with their decrees, contracts, and/or permits. Except as otherwise set forth in this Deed, the Parties further agree that Grantor will use the Water Rights for conservation purposes, including but not limited to the Conservation Values of the Property, irrigation, agricultural, wildlife habitat, horticultural, wetlands, recreational, or other uses consistent with the protection and restoration of open land, environmental quality, or life-sustaining ecological diversity (the “**Permitted Water Uses**”). The Permitted Water Uses include: (a) *Historical Use.* The Parties agree that Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with historical decreed uses and purposes, including maintaining the agricultural nature and preservation of the Property through continued agricultural practices, irrigation, and/or such other historical uses of the Water Rights. In the event that Grantor can no longer use the Water Rights in accordance with the historical uses, the Water Rights may be used for other Permitted Water Uses, in accordance with this **Section 5.10.1.** (b) *Restoration/Enhancement Use.* Grantor may propose projects on the Property that prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property. Such Permitted Water Uses or restoration/enhancement use may require a change of Water Rights pursuant to C.R.S. § 37-92-302 or any successor statute (a “**Change**”) or water infrastructure construction. Such Change or construction shall be undertaken only after creation of a site-specific plan for the other Permitted Uses and/or Restoration/Enhancement, which has been submitted to and approved by Grantee, which such approval shall not be unreasonably denied. Grantor shall have the right to install, construct, maintain, repair, and, if destroyed, reconstruct any facilities related to the Water Rights (such as gauges, ditches, wells, reservoirs, recharge ponds, etc.).

5.10.2. Temporary Water Agreements. Notwithstanding **Section 5.10.7**, Grantor may enter into temporary legally enforceable water leases, contracts, emergency water loans, or similar agreements (collectively “**temporary water agreements**”), that permit (a) the Water Rights to be used on other farmland located within the agricultural preservation area identified in the District Plan adopted by the City of Brighton and Adams County, dated April 2016, so long as a substitute source is provided pursuant to **Section 5.10.7**, if necessary, (b) use of the Water Rights as part of an alternative

transfer method project (“**ATM Project**”) or similar project, or (c) such other temporary uses mutually agreed to by the Parties, provided that in each case: (1) Grantee has given its prior written approval in its reasonable discretion based upon a standard that the long-term Conservation Values of the Property would not be unreasonably jeopardized by allowing water to be used pursuant to such temporary water agreements; (2) such arrangements do not permanently separate the Water Rights from the Property, unless otherwise agreed to under **Section 5.10.7**; and (3) such temporary water agreements comply with then-current Colorado law.

5.10.3. Restrictions on Water Rights. Except as permitted by **Section 5.10.1, Section 5.10.2, and Section 5.10.7**, the Parties agree that Grantor may not: (i) Change the Water Rights to or use the Water Rights for municipal, industrial, commercial, or any other new uses; (ii) Change the Water Rights for use other than on the Property; (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property; or (iv) have the points of diversion, or the type or the place of use within or without the Property, changed except after Grantor’s receipt of written determination by Grantee that such changes are consistent with the Permitted Uses or will not materially impair the Conservation Values of the Property. Grantor shall not, without the prior written approval from Grantee, which approval shall not be unreasonably withheld, construct, or permit others to construct, any new diversion, storage, or other water structures upon the Property; develop any conditional water rights for use on the Property; or otherwise undertake any new development of water resources for use on the Property.

5.10.4. Change of Conditions. Grantor expressly waives any claim to use, change or transfer all or any part of the Water Rights, except as set forth in **Section 5.10.7** or otherwise provided for in this Deed, regardless of any future change in circumstances, change in values, or other reasons, based on any theory of reasonable accommodation or other theory that would release any or all of the Water Rights from the provisions of this Deed without Grantee’s express written consent, which can be granted, withheld, or conditioned in its sole discretion.

5.10.5. Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, Grantor shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, and shall provide to Grantee copies of any reports Grantor submitted to the State or Division Engineer or Water Commissioner. Grantor shall provide Grantee a

copy of any written notice received by Grantor from any state water official concerning the use, or possible abandonment, of the Water Rights. Grantor shall comply with the terms of the Petition for Class D Irrigation Water Allotment Contract (Contract No. 635) recorded February 11, 2019 under Reception No. 2019000009994 of the records of the Adams County Clerk and Recorder or any assignments or reissuance thereof (the “**Water Contracts**”) to ensure that the Water Rights subject to the Water Contracts are maintained for use on the Property. If such Water Rights appear on the decennial abandonment list as provided by C.R.S. § 37-92-401 or any successor statute, or Grantee determines that any of the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such abandonment or threat of abandonment and shall meet with Grantor to discuss the matter. If, and only if, Grantor fails to cure or commence to cure the threat of abandonment within 90 days of receiving such notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or law, have the right to (1) enter the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights, if desired by Grantee; and (2) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, Grantee may, after consultation with Grantor, seek to Change the Water Rights to another Permitted Water Use. Grantor agrees to reasonably cooperate in good faith to assist Grantee in filing for and obtaining any administrative or judicial approvals required to effectuate such changes. Grantor shall reimburse Grantee for any and all reasonable costs associated with Grantee’s efforts to cure or commence to cure the threat of abandonment, including exercising Grantee’s rights specified in this Section 5.10.5.

5.10.6. Recording Encumbrance on Stock Certificates. The Water Rights include shares in a ditch company. Grantor shall promptly submit the related stock certificate(s) to the ditch company for inclusion of the following notation thereon: “These shares are subject to the terms and restrictions set forth in the Deed of Conservation Easement from the Board of County Commissioners of Adams County, Colorado, to the City of Brighton, Colorado recorded in the Real Property Records of Adams County, Colorado, on _____, 2019 at Reception No. _____.” Grantor shall promptly provide a copy of the reissued stock certificate(s) to Grantee. In the event that a substitute source of water pursuant to **Section 5.10.7** replaces all or any portion of the Water Rights made up of shares of stock, or any portion of the Water Rights made up of shares of stock is permanently transferred from the Property in accordance with **Section 5.10.7**, Grantor shall

provide notice of the substitute source or removal to the ditch company, the encumbrance on all or a portion of the shares shall be removed from the stock certificate(s), and new stock certificates shall be reissued to Grantor accordingly; Grantor shall promptly provide copies of any new certificates to Grantee. Grantor shall pay any fees imposed by the ditch company to reissue stock certificates to the Grantor in order to accommodate the use of a substitute source of water under Section 5.10.7 and remove any encumbrance on the stock certificate for the Water Rights.

5.10.7. Substitute Source of Water/Transfer of Excess Water. Nothing in this Deed shall prohibit Grantor from temporarily replacing all or any portion of the Water Rights with a substitute source (“**Substitute Source**”), so long as: (a) the amount, timing, quality, and Permitted Uses of the Substitute Source are the same or better than the Water Right being replaced, (b) such use of the Substitute Source on the Property is permitted under Colorado law, and (c) such Substitute Source does not unreasonably diminish or impair the Conservation Values of the Property. Additionally, Grantor may demonstrate to Grantee at any time, through a report prepared and certified by an engineer or other qualified expert, that portions of the Water Rights on the Property are no longer necessary to maintain the historically decreed uses and purposes on the Property, including the agricultural nature of the Property, or to maintain the Conservation Values, and, as a result, excess water exists from the Water Rights (“**Excess Water**”). Upon such determination, and with the prior written consent of Grantee, which shall be given if Grantee determines that the Conservation Values will not be unreasonably diminished or impaired, Grantor may lease or temporarily transfer such Excess Water from the Property. So long as Grantor provides a Substitute Source for use on the Property or transfers any Excess Water in accordance with this **Section 5.10.7**, Grantor shall not be in violation and/or breach of any of the aforementioned terms and conditions set forth in **Section 5.10**.

5.11. Motorized Vehicles. Motorized vehicles may be used on the Property only in conjunction with activities permitted by this Easement (including access to permitted structures on designated roads and driveways, property maintenance, farming activities, management and public safety), and only in a manner that does not substantially diminish or impair the Conservation Values. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

5.12. Commercial or Industrial Activity. No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are incidental

and/or related to agricultural uses and conducted in a manner that is consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, are consistent with the Purpose of the Easement, and do not substantially diminish or impair the Conservation Values. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

- 5.12.1. Producing, processing or selling plants, animals, or other farm or ranch products that are predominantly grown or raised outdoors on the Property, including forages, sod crops, grains, feed crops, field crops, berries, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, trees, and other similar uses and activities; and,
 - 5.12.2. Breeding and grazing livestock, such as cattle, horses, sheep, swine, and similar animals.
 - 5.12.3. The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose of this Easement and are prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.
- 5.13. Signs or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary "no trespassing" signs and signs informing the public of the status of ownership and the farming and/or nursery operations on the Property. No signs shall significantly diminish or impair the Conservation Values of the Property.
- 5.14. Utilities. Grantor shall have the right to repair, maintain, replace, and improve telephone, cable, electric, gas, water, sewer, and non-commercial satellite dishes and other utilities and the right to bring any such utilities to existing or permitted structures. Such utilities shall be installed underground to the extent practicable.
- 5.15. Minimize Impact on Conservation Values. Any work permitted by this **Section 5** shall be performed in such a way as to minimize any negative impact such work may have on the Conservation Values of the Property.

6. Land Management / Management Plan. To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a “**Management Plan**” jointly prepared and agreed upon by Grantor and Grantee within one year of the Effective Date. The Parties shall review the Management Plan at least every five years and update it if either Party determines an update is necessary.
7. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing at least thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
8. Grantee’s Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor’s written request therefor. Grantee's approval may be withheld only upon a written determination being issued by Grantee and delivered to Grantor that the action as proposed would substantially diminish or impair the Conservation Values or would be inconsistent with the Purpose or the express terms of this Easement. Grantee’s determination may contain written recommendations or reasonable conditions pursuant to which Grantee’s approval may be granted.
9. Enforcement. If Grantee claims a violation of this Easement, then Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both Parties agree to meet as soon as possible to resolve any dispute. If a resolution of any dispute cannot be achieved at the meeting, both Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee’s opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, either Party may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred Grantee may get an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation.

10. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce or defend the terms of this Easement, then Grantor's costs of suit or defense, including, without limitation, reasonable attorneys' fees, shall be borne by Grantee.
11. Grantee's Discretion. Enforcement of the terms of this Easement imposed for Grantee's benefit shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
12. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, or earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Easement.
13. Access. As provided in **Section 4**, above, the Grantor may permit the public to have limited access to the Property, at such times and in such manner as Grantor may reasonably prescribe by regulation, provided that the Conservation Values of the Property are not impaired by such limited public access.
14. Costs and Liabilities. Grantor retains 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. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor that would have priority over the terms of this Easement.
15. Taxes. Grantor shall pay before delinquency any taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated

to make or advance any payment of taxes, upon thirty (30) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate.

16. Hold Harmless. To the extent permitted by Colorado law, Grantor shall hold harmless, indemnify, and defend Grantee and the directors, officers, members, employees, agents, and contractors and the successors, heirs, representatives, and assigns of each of them (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties; (2) the obligations specified in **Sections 9 and 10** herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
17. Real Property Interest. This Easement constitutes a real property interest immediately vested in Grantee, the value of which is forty-one (41%) of the value of the Property unencumbered by this Easement (“**Easement Value Ratio**”) as determined by an appraisal of the Easement. Should the Easement be taken for the public use or otherwise terminated according to **Section 18** below, Grantee shall be entitled to compensation for its interest, which is the Easement Value Ratio. The Easement Value Ratio shall be used to determine the Grantee’s compensation according to the following **Section 18**.
18. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain (“**Condemnation**”), or if circumstances arise in the future that render the Purpose impossible to accomplish, this Easement can only be terminated, whether in whole or in part, by judicial proceedings in Adams County, Colorado. Each Party shall promptly notify the other Party in writing when it first learns of such circumstances. Grantee shall be entitled to full compensation for its interest in any portion of this Easement that is terminated as a result of Condemnation or other proceedings, or as a result of inclusion of a portion of the Property in the right of way for Potomac Street. Grantee’s proceeds shall be an amount at least equal to the Easement Value Ratio multiplied by the value of the unencumbered fee simple interest in

the portion of the Property that will no longer be encumbered by this Deed as a result of Condemnation or termination. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected Property unrestricted by this Deed without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Deed or in accordance with the passive uses described in Adams County Commissioner's Resolution 99-1 which can be found on file with the Adams County Clerk and Recorder's Office at Reception No. C0590506. Grantee's remedies described in this **Section 18** shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

19. Assignment.

19.1. Grantee's interest in this Easement is transferable, but Grantee may assign its rights and obligations under this Easement only with advance written notice to Grantor and then only to an organization that:

19.1.1. is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;

19.1.2. is authorized to acquire and hold conservation easements under Colorado law;

19.1.3. agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

19.2. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee, but Grantor has refused to approve the transfer, Grantee may seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed, provided that Grantor shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

19.3. Upon compliance with the applicable portions of this **Section 19**, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located. Assignment of the Deed shall not be construed as affecting the Deed's perpetual duration and shall not affect the Deed's priority against any intervening liens, mortgages, easements, or other encumbrances.

20. Subsequent transfers. Grantor shall incorporate by reference the terms and conditions of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
21. Notices. Any notice, demand, request, consent, approval, or communication that either Party is required to give to the other in writing shall be either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Adams County
Director of Parks and Open Space
9755 Henderson Road
Brighton, CO 80601

To Grantee: City of Brighton
500 South 4th Avenue
Brighton, Colorado 80601

or to such other address as either Party from time to time shall designate by written notice to the other.

22. Grantor's Title Warranty. Grantor warrants that Grantor has insurable title to the Property and hereby promises to defend the same against all claims from persons claiming by, through, or under Grantor.
23. Subsequent Liens on the Property. No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subject to and subordinate to this Easement.
24. Recording. Grantee shall record this instrument in a 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 Easement.
25. General Provisions.
- 25.1. Controlling Law. The interpretation and performance of this Easement

shall be governed by the laws of the State of Colorado, and venue for any dispute shall be in Adams County, Colorado.

- 25.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of C.R.S. §38-30.5-101, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 25.3. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 25.4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 25.5. No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's title in any respect.
- 25.6. Joint Obligation. If more than one owner owns a Parcel at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners of such Parcel.
- 25.7. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the Parties expressly state that they intend a merger of estates or interests to occur.
- 25.8. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- 25.9. Termination of Rights and Obligations. Provided a transfer is permitted by this Easement, a Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

- 25.10. 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.
- 25.11. No Third-Party Enforcement. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth herein, and does not create rights or responsibilities in any third parties beyond Grantor and Grantee.
- 25.12. Amendment. If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed (ii) does not affect the perpetual duration of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, and (iv) complies with Grantee's procedures and standards for amendments (as such procedures and standards may be amended from time to time). Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of Adams County. Nothing in this paragraph shall be construed as requiring Grantee to agree to any particular proposed amendment.
- 25.13. Change of Conditions or Circumstances. A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.
- 25.14. Authority to Execute. Each party represents to the other that such party has full power and authority to execute, deliver, and perform this Easement, that the individual executing this Easement on behalf of said party is fully empowered and authorized to do so, and that this Easement

constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

25.15. Grantor Waiver of Defenses. To the extent permitted by Colorado law Grantor, for itself and its successors and assigns, hereby waives any defense of laches, estoppel, or prescription, including the one year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.* In the event of any subsequent transfer or conveyance of the Property, or any part, to a third-party grantee(s), Grantor covenants that it shall place in any such conveyance instrument, a written covenant that the grantee(s) of such conveyance shall waive any defense of laches, estoppel, or prescription in enforcing this Easement.

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

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

Grantor:

BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, COLORADO a
political subdivision of the state of Colorado

Chair

Date

ATTEST:

JOSH ZYGIELBAUM,
CLERK AND RECORDER

Approved as to form:

Adams County Attorney's Office

Grantee:

CITY OF BRIGHTON, COLORADO, a Colorado home rule municipality

Kenneth J. Kreuzer, Mayor

Date: _____

ATTEST:

Approved as to form:

Natalie Hoel, City Clerk

Jack Bajorek, City Attorney

EXHIBIT A
DESCRIPTION OF PPROPERTY

The following described property located in Adams County, Colorado:

The Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section 24, Township 1 South of Range 67 West of the 6th P.M., except a strip 292 feet in width across the entire north end thereof;

Also, that part of the Southwest (SW1/4) of the Northeast Quarter (NE1/4) of Section 24, Township 1 South of Range 67 West of the 6th P.M. lying southeasterly of the Union Pacific Railroad Right-of-Way, except that part north of the south line of said 292 foot strip extended west to the east line of said Right-of-Way.

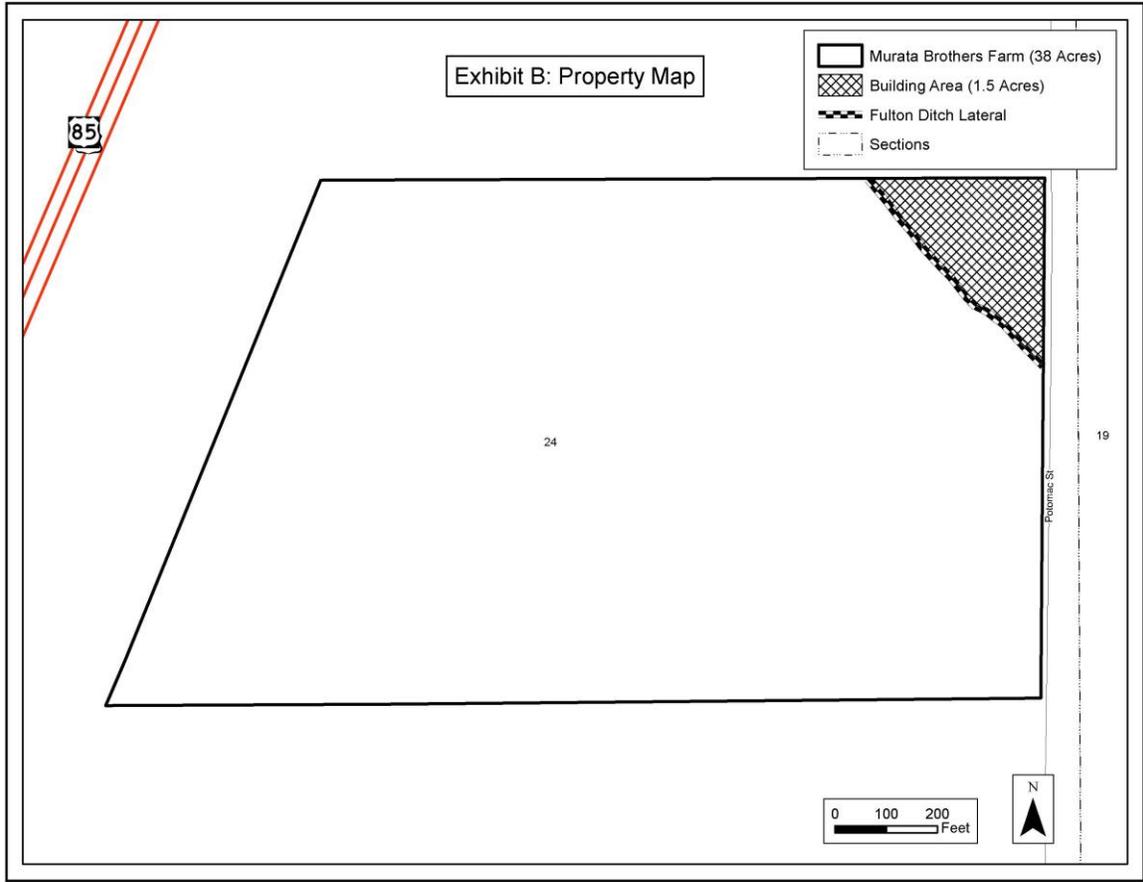


Exhibit B-1
Description of Building Area

Approximately 1.5 acres lying north and east of a lateral ditch in the northeast corner of the Property, said ditch commonly known as the Fulton Ditch Lateral.

Exhibit C
Description of Water Rights

1. 30 shares in Fulton Irrigation Ditch Company;
2. Irrigation Well Permit Registration No. 1365, Case No. W-1207; and
3. Domestic Well Permit No. 36704.

TOGETHER with any and all other appurtenant or associated water and ditch rights, including any and all irrigation and pumping equipment and facilities.

Exhibit D
Acknowledgment of Baseline Report

Grantor and Grantee acknowledge that each has read the Baseline Documentation Report for the 38.3-acre, more or less, Murata Property dated _____, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTOR

GRANTEE

By: _____

By: _____

Name: _____

Name: Kenneth J. Kreutzer

Title: _____

Title: Mayor

Date: _____

Date: _____