

DEED OF CONSERVATION EASEMENT IN GROSS

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH GRANT #20105 (“GRANT”) FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (“BOARD”). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY, WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

NOTICE: THIS PROPERTY INTEREST ALSO HAS BEEN ACQUIRED IN PART WITH FUNDS FROM AN ADAMS COUNTY (“COUNTY”) OPEN SPACE GRANT (“COUNTY GRANT”) AS DESCRIBED IN RECITAL B, BELOW.

(Morimitsu Farm/Historic Splendid Valley – City of Brighton, Adams County)

THIS DEED OF CONSERVATION EASEMENT IN GROSS is granted this ____ day of _____, 2020, by **THE CONSERVATION FUND**, a Maryland non-profit corporation with an office at 1655 N. Fort Myer Drive, Suite 1300, Arlington, Virginia 22209 (“**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 (the “**City**” or “**Grantee**”) and 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 (the “**County**” or “**Grantee**”) (the City and the County are collectively referred to herein as the “**Grantees**” and individually as “**Grantee**”). The Grantor and the Grantees 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 Parties acknowledge that The Conservation Fund intends to convey the Property described herein, subject to this Deed of Conservation Easement, to the Petrocco Family Limited Partnership, a Colorado limited liability limited partnership (“**Petrocco**”) and that upon such conveyance Petrocco will be the Grantor hereunder. 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 78.927 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 Exhibits A and C comprise the “**Property**” encumbered by this Easement.

B. The acquisition of the Conservation Easement was funded in part 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 limited to future trails that may be developed to connect with regional trail systems identified in the City of Brighton’s Greenways and Trails Master Plan.

The Property possesses natural, scenic, open space, agricultural and/or recreational values (collectively, “**Conservation Values**”) of great importance to the people of the City of Brighton and Adams County. In particular, the Property is located in a key area of farmland along Sable Boulevard, East 144th Avenue and Potomac Street known as the Historic Splendid Valley. 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 continued local food production, agritourism and education in the greater Brighton area.

C. The residence on the Property was constructed in 1909 and has historical significance as part of the agricultural operations on the Property that span more than a century. 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, C.R.S. §§ 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) C.R.S. §§ 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, C.R.S. §§ 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) Funding for this project has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board, by adopting and administering competitive grants programs and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state’s wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.
- 5) 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 Grantees certain rights to preserve and protect the Conservation Values of the Property in perpetuity, jointly with the Grantor.

G. Grantees are each 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 each is a qualified holder of a conservation easement in gross under Colorado law.

H. Grantees agree 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 Grantees 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 Grantees 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 September 3, 2020 has been prepared by Cole Conservation Consulting LLC 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 Grantees. To accomplish the Purpose of this Easement the following rights are conveyed to Grantees 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 Grantees 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), including on future trails that may be developed to connect with regional trail systems identified in the City of Brighton's Greenways and Trails Master Plan, subject to the limitations, rules and regulations established by Grantor for the operation and use of the Property;
 - 4.2. occupy, use, 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, 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 Grantees based upon Grantees' 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 Grantees all development rights deriving from, based upon or attributable to the Property in any way (“**Grantees’ Development Rights**”), except those expressly reserved by Grantor herein, and the parties agree that Grantees’ Development Rights shall be held by Grantees 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 approximately 2.0-acre building area described in **Exhibit B-1** and depicted in **Exhibit B** (the “**Building Area**”) within which the following existing structures are located: residence, garage/equipment barn, a bunkhouse, a grain bin, and various minor outbuildings (the “**Existing Structures**”). The Existing Structures may be maintained, repaired, renovated, reasonably enlarged or replaced within the Building Area with the prior written approval of Grantees based upon Grantees’ review of Grantor’s plans and in accordance with all applicable laws and regulations, which approval shall not be unreasonably withheld. Additional outbuildings may be constructed within the Building Area with the prior written approval of Grantees based upon Grantees’ review of Grantor’s plans and in accordance with all applicable laws and regulations, which approval shall not be unreasonably withheld. Allowed structures within the Building Area may be used for residential and agricultural purposes including housing for farm labor. Grantor is allowed, but not required, to seek local, state or federal historical designation or landmarking of the Existing Structures, subject to applicable laws and regulations.

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 outside of the Building Area.

- 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 as permitted in **Section 4.1**, 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 Grantees 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; provided however, that Grantor may subdivide the Property, but only for providing and dedicating to Adams County or Grantees, as appropriate, necessary public right of way for Sable Boulevard, East 144th Avenue or 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 Sable Boulevard, East 144th Avenue, or Potomac Street from the description of the Property encumbered by this Easement, and the Board and the Grantees 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 is owned by Sable Boulevard Minerals LLC. Upon conveyance of the Property to The Conservation Fund, a Maryland nonprofit corporation, Sable Boulevard Minerals LLC granted to the Grantor a Covenant Not to

Disturb the Surface for the benefit of the Property and its owner, which runs with the Property. 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. The parties acknowledge that the Covenant Not to Disturb the Surface is enforceable against the holder of an existing oil and gas lease only in so far as surface disturbance is not granted under the lease. Any future oil and gas leases entered into by Sable Boulevard, Minerals LLC or its successor and assigns may not grant any rights to a lessee to disturb the surface of the Property. In addition, Grantor acknowledges that Grantees, as holder of this Easement are each 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 Sable Boulevard, East 144th Avenue, or Potomac Street public rights of way abutting the Property allowed in **Section 5.5**, no portion of the Property shall be paved nor shall any new road be constructed without the prior written approval of Grantees, except within the Building Area, and excepting recreational trails including recreational trails allowed in **Section 4.1** which may be developed to connect to the regional trail system identified in the City of Brighton's Greenways and Trails Master Plan, so long as the Property's Conservation Values are not substantially impaired. Grantees shall give such permission within a reasonable time, unless Grantees determine in their 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, Grantees' 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 agricultural and 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**, 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 Grantees and the Board, 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, and wells).

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, (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) Grantees and the Board have given prior written approval each in their sole discretion based upon a standard that the 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; 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 and Section 5.10.2**, 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 Grantees 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 Grantees, 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, 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 Grantees' and the Board's express written consent, which can be granted, withheld, or conditioned in its sole discretion. If any or all of the Water Rights are released from the provisions of this Deed, such separation may be considered a termination or extinguishment of the Easement with regard to those Water Rights and subject to (a) an Additional Board Refund under Section 17.1 below in addition to any payment that the Board may be entitled to receive under Section 18; and (b) an Additional County Refund under Section 17.2 below in addition to any payment that the County may be entitled to receive under Section 18.
- 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 Grantees 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 Grantees copies of any reports Grantor submitted to the State or Division Engineer or Water Commissioner. Grantor shall provide Grantees 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. 624) recorded November 13, 2018 under Reception No. 2018000091540 of the records of the Adams County Clerk and Recorder or any assignments or reissuance thereof (the “**Water Contract**”) to ensure that the Water Rights subject to the Water Contract 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 Grantees determines that any of the Water Rights are otherwise subject to a threat of abandonment, Grantees 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 Grantees, Grantees shall, in addition to any other remedies available to Grantees 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 Grantees; and (2) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, Grantees 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 Grantees in filing for and obtaining any administrative or judicial approvals required to effectuate such changes. Grantor shall reimburse Grantees for any and all reasonable costs associated with Grantees’ efforts to cure or commence to cure the threat of abandonment, including exercising Grantees’ 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 Conservation Fund to the City of Brighton recorded in the Real Property Records of Adams County, Colorado, on _____, 2020 at Reception No. _____.” Grantor shall promptly provide a copy of the reissued stock certificate(s) to Grantees and the Board.

5.10.7. Transfer of Excess Water. Grantor may demonstrate to Grantees 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 Grantees and the Board, which will be given if Grantees and the Board each in their sole discretion determine 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 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. Grantees shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board’s Grant and investment in this Property to the public.
- 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 Grantees 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 Grantees within one year of the Effective Date. The Parties shall review the Management Plan at least every five (5) years and update it if either Party determines an update is necessary. Grantees will provide the Management Plan and updates to the Board.
7. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantees prior to undertaking certain permitted activities is to afford Grantees 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 Grantees 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 Grantees to make an informed judgment as to its consistency with

the purpose of this Easement.

8. Grantees' Approval. Where Grantees' approval is required, Grantees shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantees' approval may be withheld only upon a written determination being issued by Grantees 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. Grantees' determination may contain written recommendations or reasonable conditions pursuant to which Grantees' approval may be granted.

9. Responsibilities of City and County.

9.1 Monitoring. The City shall have the primary responsibility for interacting with Grantor and for monitoring the terms of this Easement. Except in case of emergency, the City shall notify the County at least seven days in advance of undertaking any monitoring required or permitted hereunder. The City shall file a written report of any monitoring activity with the County within 30 days of such activity and provide a copy to Grantor, and shall immediately notify the County in writing of any matter which the City believes requires enforcement.

9.2 Approval. Where Grantees' notice or approval is required, the City shall have responsibility for responding to Grantor on any notification or request for action or approval from Grantor, and the City shall notify the County of any action taken or response given to such a request by Grantor.

9.3 Enforcement. The City shall have the primary responsibility for enforcing the terms of this Easement. Prior to taking any enforcement action the City shall give written notification to the County, and shall discuss the proposed action with the County. Unless otherwise agreed between the City and the County, the City shall be responsible for directing any efforts to enforce the Easement and shall be responsible for all expenses, including, without limitation, all attorney's fees, incurred in connection with such enforcement. The County will cooperate in any such enforcement action to the extent reasonably necessary to properly prosecute such action.

9.4 Independent Action. The County shall have the right to conduct such independent monitoring and investigations under the terms of the Easement as it deems appropriate. The County shall notify the City at least seven (7) days in advance of undertaking any monitoring or investigation required or permitted hereunder.

10. Enforcement. If Grantees claim a violation of this Easement, then Grantees shall immediately notify Grantor and the Board 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 Grantees 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. The Board shall in no event be required to

participate in any mediation. 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 Grantees' opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantees may, at their 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 Grantees 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.

11. Costs of Enforcement. Any costs incurred by Grantees 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 Grantees.
12. Grantees' Discretion. Enforcement of the terms of this Easement imposed for Grantees' benefit shall be at the discretion of Grantees, and any forbearance by Grantees 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 Grantees of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees 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.
13. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantees 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.
14. Access. As provided in **Section 4**, above, the Grantor may permit the public to have limited access to the Property, including on future trails that may be developed to connect with regional trail systems identified in the City of Brighton's Greenways and Trails Master Plan, and 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.

15. 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.
16. 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 Grantees with satisfactory evidence of payment upon request. Grantees are 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.
17. Hold Harmless. To the extent permitted by Colorado law, Grantor shall hold harmless, indemnify, and defend Grantees and the Board 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 10 and 11** 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 Grantees or the Board nor shall Grantees or the Board 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.
18. Real Property Interest. This Easement constitutes a real property interest immediately vested in Grantees, the value of which is sixty-three and 8/10s (63.8%) of the value of the Property unencumbered by this Easement (“**Easement Value Ratio**”) as determined by an appraisal of the Easement. The Board and

Adams County Open Space provided funds on behalf of the Grantees for the Grantees' purchase of the Easement. Should the Easement be taken for the public use or otherwise terminated according to **Section 19** below, the Board and Adams County Open Space shall be entitled to compensation for their proportionate contribution to the purchase of the Easement, as provided in Section 19. The Easement Value Ratio shall be used to determine the compensation due to the Board and Adams County Open Space according to the following **Section 18**.

18.1. Additional Board Refund. The Board's Grant assisted in Grantor's ability to acquire the fee title interest in the Property along with the associated Water Rights through the establishment of this Deed; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the associated Water Rights ("**Sale**"), excluding any lease of the Water Rights to a third party for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "**Additional Board Refund**"), in addition to any payment that the Board may be entitled to receive under Section 19.

18.1.1. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale of the Water Rights (which shall be defined as the fair market value of the Water Rights being sold, minus direct transaction costs) ("**Net Proceeds**"). The Board shall be entitled to receive an amount equal to thirty percent (30%) of any Net Proceeds received as compensation from the sale of any and/or all of the Water Rights. The Additional Board Refund shall be paid to the Board in cash, certified funds or wire transfer of immediately available funds, on or before the effective date of the Sale of any associated Water Rights.

18.2. Additional County Refund. The County Grant assisted in Grantor's ability to acquire the fee title interest in the Property along with the associated Water Rights through the establishment of this Deed; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the associated Water Rights ("**Sale**"), excluding any lease of the Water Rights to a third party for permitted purposes, shall constitute a material change to the County Grant that shall require prior written County approval and may require a separate refund to the County of an amount to compensate the County for use of the County Grant, plus administrative costs (the "**Additional County Refund**"), in addition to any payment that the Board may be entitled to receive under Section 19.

18.2.1. Amount. The amount of the Additional County Refund shall be based upon a percentage of Grantor's net proceeds from

the Sale of the Water Rights (which shall be defined as the fair market value of the Water Rights being sold, minus direct transaction costs) (“Net Proceeds”). The County shall be entitled to receive an amount equal to seventy percent (70%) of any Net Proceeds received as compensation from the sale of any and/or all of the Water Rights. The Additional County Refund shall be paid to the County in cash, certified funds or wire transfer of immediately available funds on or before the effective date of the Sale of any associated Water Rights.

19. 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 and the Board in writing when it first learns of such circumstances. Compensation for 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 Sable Boulevard, East 144th Avenue or Potomac Street, 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. The Board shall be entitled to receive an amount equal to thirty percent (30%) of any proceeds received as compensation from Condemnation or termination of the Easement and Adams County Open Space shall be entitled to receive an amount equal to seventy percent (70%) of any proceeds received as compensation from Condemnation or termination of the Easement. 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 the Board and Adams County Open Space. Adams County Open Space 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. The Board and the County’s remedies described in this **Section 19** 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.

20. Assignment.

20.1. Grantees’ interest in this Easement is transferable, but a Grantee may assign its rights and obligations under this Easement only with advance written notice to the other Grantee, Grantor and the Board and then only to an organization that:

- 20.1.1. 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;
 - 20.1.2. is authorized to acquire and hold conservation easements under Colorado law;
 - 20.1.3. agrees in writing to assume the responsibilities imposed on such Grantee by this Deed; and
 - 20.1.4. is approved in writing as a transferee by the Board in its sole and absolute discretion. Such Grantee shall provide the other Grantee and the Board (with a copy to the Grantor) with a written request to assign the Deed at least 45 days prior to the date proposed for the assignment transaction.
- 20.2. The Board shall have the right to require a Grantee to assign its rights and obligations under this Deed to a different organization if such Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Deed; or is unwilling or unable to effectively monitor the Property for compliance with this Deed at least once every calendar year. Prior to any assignment under this **Section 20.2**, the Board shall consult with Grantees and provide Grantees an opportunity to address the Board's concerns. If the Board's concerns are not addressed to the satisfaction, the Board may require that such Grantee assign this Deed to an organization designated by the Board that complies with **Section 20.1.1, 20.1.2 and 20.1.3** above.
- 20.3. If a Grantee desires to transfer this Deed to a qualified organization having similar purposes as such Grantee, but the other Grantee, Grantor or the Board has refused to approve the transfer, such 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 such Grantee by this Deed, provided that the other Grantee, Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.
- 20.4. Upon compliance with the applicable portions of this **Section 20**, the Parties shall record an instrument completing the assignment in the property records of the county or counties in which the Property is located and provide a copy of the recorded assignment to the Board. 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.

21. 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 Grantees and the Board 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.

22. 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: The Conservation Fund
1655 N. Fort Myer Drive, Suite 1300
Arlington, Virginia 22209

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

Adams County
4430 South Adams County Parkway
Brighton, CO 80601

To the Board: Executive Director
State Board of the Great Outdoors Colorado Trust Fund
1900 Grant Street, Suite 725
Denver, CO 80203

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

Or to such other address as any such party from time to time shall designate by written notice to the other parties.

23. 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.

24. 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.

25. Recording. Grantees 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.
26. General Provisions.
- 26.1. 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.
- 26.2. 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.
- 26.3. 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.
- 26.4. 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.
- 26.5. No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's title in any respect.
- 26.6. 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.
- 26.7. Non-Merger. A merger of this Deed and the fee title to the Property cannot occur by operation of law because, in addition to Grantees' rights and interest under this Deed, the Board has rights under this Deed. Under Colorado law, the existence of these rights precludes unity of title. If a Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), such Grantee must first obtain the written approval of the other Grantee and the Board. As a condition of such approval, the Board may require that such Grantee first transfer its interest in the Deed to another qualified organization consistent

with **Section 20** above. In the event a Grantee acquires fee title interest or any other interest in the Property without such Grantee's prior knowledge (e.g. receiving real property by will), such Grantee must immediately provide notice of its acquisition to the other Grantee and the Board, and the Board may require that such Grantee transfer its interest in this Deed to another qualified organization consistent with **Section 20** above.

- 26.8. 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.
- 26.9. 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.
- 26.10. 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.
- 26.11. No Third-Party Enforcement. This Easement is entered into by and between Grantor and Grantees, and is solely for the benefit of Grantor, Grantees and the Board 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, Grantees and the Board.
- 26.12. Amendment. If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantees 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, (iv) complies with Grantees' and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time), and (v) receives the Board's prior written approval. Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of the county or counties in which the Property is located. A copy of the recorded amendment shall be provided to the Board. In order to preserve the Deed's priority, the Board may require that Grantees obtain subordinations of any liens, mortgages, easements, or other encumbrances, and the Board may require a new title policy. For the purposes of the Board's approval under item (v) above, the term "amendment" means any

instrument that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this paragraph shall be construed as requiring Grantees or the Board to agree to any particular proposed amendment.

- 26.13. 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, Grantees and the Board 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.
- 26.14. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the Board, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board under this Deed shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.
- 26.15. 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.
- 26.16. 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 Grantees, its successors, and assigns forever.

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

[Signature

Pages

Follow]

Grantees:

CITY OF BRIGHTON, COLORADO, a Colorado home rule municipality

Greg Mills, Mayor

Date: _____

ATTEST:

Approved as to form:

Natalie Hoel, City Clerk

Jack Bajorek, City Attorney

Grantees:

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

Chair Date

ATTEST:

CLERK AND RECORDER (name),

Approved as to form:

Adams County Attorney's Office

EXHIBIT A
DESCRIPTION OF PROPERTY

The following described property located in Adams County, Colorado:

A TRACT OF LAND LOCATED IN THE NW1/4 OF SECTION 19, T1S. R66W OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19, FROM WHICH THE N1/4 CORNER OF SAID SECTION 19 BEARS S89°58'40"E, 2664.99 FEET (BASIS OF BEARING), THENCE S00°18'27"E, 30.00 FEET ALONG THE WEST LINE OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE SOUTHERLY RIGHT-OF-WAY LINE OF E. 144TH AVENUE AND THE TRUE POINT OF BEGINNING.

THENCE S89°58'40"E, 2635.06 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID E. 144TH AVENUE TO THE WESTERLY RIGHT-OF-WAY LINE OF SABLE BOULEVARD;

THENCE S00°26'35"E, 1286.03 FEET ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID SABLE BOULEVARD TO THE SOUTH LINE OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19;

THENCE CONTINUING S00°25'35"E 208.71 FEET ALONG THE WESTERLY RIGHT-OF- WAY LINE SAID SABLE BOULEVARD TO THE SOUTHERLY LINE OF THE NORTHEASTERLY 1.00 ACRES OF THE S1/2 OF THE NW1/4 OF SAID SECTION 19;

THENCE S89°51'18"W, 178.71 FEET ALONG THE SOUTHERLY LINE OF THE NORTHEASTERLY 1.00 ACRES OF THE S1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE SOUTHWEST CORNER THEREOF.

THENCE N00°26'35"W, 208.71 FEET ALONG THE WESTERLY LINE OF THE NORTHEASTERLY 1.00 ACRES OF THE S1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE SOUTH LINE OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19;

THENCE S89°51'18"W, 2459.36 FEET ALONG THE SOUTH LINE OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE W-N1/16 CORNER OF SAID SECTION 19;

THENCE N00°18'27"W, 1293.71 FEET ALONG THE WEST LINE OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE TRUE POINT OF BEGINNING.

Exhibit B

Map of Property and Building Area



Exhibit B-1
Description of Building Area

A BUILDING ENVELOPE LOCATED IN THE NW1/4 OF SECTION 19, T1S, R66W OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NE1/4 NW1/4 SECTION 19 T1S, R66W, THENCE N89°51'18"E 30.00 FEET, THENCE S00°26'35"E 208.71 FEET ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID SABLE BOULEVARD TO THE POINT OF BEGINNING.

THENCE S89°51'18"W, 178.71 FEET ALONG THE SOUTHERLY LINE OF THE NORTHEASTERLY 1.00 ACRES OF THE S1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE SOUTHWEST CORNER THEREOF;

THENCE N00°26'35"W, 208.71 FEET ALONG THE WESTERLY LINE OF THE NORTHEASTERLY 1.00 ACRES OF THE S1/2 OF THE NW1/4 OF SAID SECTION 19;

THENCE N00°26'35"W, 278.78 FEET ALONG THE WESTERLY LINE OF THE SOUTHEASTERLY 1.00 ACRES OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19;

THENCE N89°30'00"E, 178.76 FEET ALONG THE NORTHERLY LINE OF THE SOUTHEASTERLY 1.00 ACRES OF THE N1/2 OF THE NW1/4 OF SAID SECTION 19 TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SABLE BOULEVARD;

THENCE CONTINUING S00°26'35"E, 488.65 FEET ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID SABLE BOULEVARD TO THE POINT OF BEGINNING.

AREA OF BUILDING ENVELOPE = 2.00 ACRES, MORE OR LESS.

Exhibit C
Description of Water Rights

1. 54 shares in Fulton Irrigation Ditch Company;
2. Well Permit No. 7374 Case No. W-957 located in NW1/4NW1/4 Section 19, T1S, R66W 6th P.M., Adams County, Colorado
3. Well Permit No. 7375 Case No. W-957 located in NW1/4NW1/4 Section 19, T1S, R66W 6th P.M., Adams County, Colorado

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 Grantees acknowledge that each has read the Baseline Documentation Report for the 78.927 acre, more or less, Morimitsu Property dated September 3, 2020, 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:

By: _____
Name: _____
Title: _____
Date: _____

GRANTEES:

City _____

By: _____
Name: _____
Title: _____
Date: _____

County _____

By: _____
Name: _____
Title: _____
Date: _____