

## **DEED OF CONSERVATION EASEMENT IN GROSS**

THIS DEED OF CONSERVATION EASEMENT (“Deed”) is made this \_\_\_\_ day of \_\_\_\_\_ 2018, by the Adams County Board of County Commissioners, a political subdivision of the State of Colorado, having its address at 4430 South Adams County Parkway, Brighton, CO 80601 (“Grantor”), in favor of the City of Brighton, a Colorado home rule municipality having its address at 500 South 4<sup>th</sup> Avenue, Brighton, CO 80601 (“Grantee”).

### RECITALS:

- A. Grantor is the sole owner in fee simple of certain real property in Adams County, Colorado, more particularly described in Exhibit A attached hereto and generally depicted on the map attached hereto as Exhibit B, both of which are incorporated herein by this reference (the “Property”).
- B. The acquisition of the Property was partially 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 natural open space with associated passive recreation uses.
- C. The acquisition of the Property was partially funded by a grant from the Natural Resource Damage Recovery Fund awarded by the State of Colorado Natural Resources Trustees on November 4, 2016. The resolution that approved use of Natural Resource Damage Funds for Adams County to acquire the Property requires that any land acquired with the Funds must be encumbered by a conservation easement.
- D. The Property possesses natural, scenic, open space, and recreational values (collectively, “Conservation Values”) of great importance to Grantor, the people of Adams County and the people of the State of Colorado. In particular, the Property provides the following conservation values:
  - 1) Natural: The Property contains valuable open water, wetlands, riparian, and upland habitats along the South Platte River corridor and supports an abundant diversity of wildlife.
  - 2) Scenic: The Property is visible to the general public from E-470 and Brighton Road, which are open to and actively utilized by residents of Adams County

and the State of Colorado. Preservation of the Property will continue to provide an opportunity for the general public to appreciate the unobstructed scenic views it provides of an open, undeveloped, pastoral landscape.

- 3) Open Space: The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public, will be protected pursuant to a clearly delineated government policy, and will yield a significant public benefit.
  - 4) Recreational: The Property will be developed and managed for passive recreational opportunities, including water-based recreation, fishing, hiking, cycling, picnicking, wildlife viewing, and environmental education opportunities.
- E. 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. The parties acknowledge and agree that the current land use patterns, including, without limitation, improvements located on the Property at the time of this grant, do not significantly impair or interfere with the Property's Conservation Values and are consistent with purposes of the Easement.
- F. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.
- G. Grantee is a publically supported, tax-exempt municipal government, 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 preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations, according to the terms of this Deed.
- I. Pursuant to Treasury Regulation §1.170A-14(g)(5) and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by ERO Resources, Inc. dated May 15, 2017 ("Present Conditions Report"). The Present Conditions Report contains a natural resource inventory and also documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Reports have been provided to the Parties and have been acknowledged by the Parties as an accurate representation of the Property at the time of conveyance. The Present Conditions Report will be used by Grantee to assure that any future changes in the use of the Property by Grantor will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the Parties' use of other evidence to establish the condition of the Property as of the date of this Deed.

NOW, THEREFORE, in consideration of the above Recitals 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 preserve and protect the Conservation Values of the Property in perpetuity. To achieve this Purpose, Grantor intends to convey this Deed of Conservation Easement to Grantee in order to help ensure that the Conservation Values of the Property will be preserved and protected forever. Subject to the purpose of this Easement, Grantor and Grantee intend to permit only uses of the Property which do not substantially diminish or impair the Property’s Conservation Values, and the Parties further intend to prevent any use of the Property that will substantially impair or interfere with protecting the Property’s Conservation Values. It is the intent of the Grantor to preserve the Property in its natural, scenic, and/or open space condition to preserve the open space character, wildlife habitat, and scenic qualities of the Property. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as recreation, other than the preservation and protection of the Property’s Conservation Values.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- a. To preserve and protect the Conservation Values of the Property;
- b. 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 use and quiet enjoyment of the Property;
- c. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement; and
- d. To require the restoration of such areas or features of the Property that may be damaged by any inconsistent use.

3. Reserved Rights. Grantor reserves to itself, its successors and assigns, all 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. Other agreed upon reserved rights are as follows:

- a. Recreational Uses. Grantor reserves the right to allow non-motorized, passive recreational activities, such as fishing, non-motorized boating, hiking, cycling, picnicking and other similar low-impact recreational uses, to be enjoyed by the public. Notwithstanding the foregoing, the use of motorized wheelchairs or other mobile

devices by disabled persons and other persons as may be required by the Americans with Disabilities Act, on trails and other publicly accessible areas is allowed.

- b. Development of Recreational Improvements. Grantor reserves the right to construct, improve, maintain, repair, replace or remove certain amenities related to passive recreational activities including signage, benches, fencing, and gates without prior Grantee approval. Subject to prior written approval of Grantee, Grantor reserves the right to construct, replace, or remove the following amenities related to passive recreational activities including but not limited to: shelters, hard and soft surfaced trails, restrooms, enclosed structures, paved or unpaved parking lots and roadways, storage, pedestrian underpasses or bridges, boat ramps, piers, and lighting. Without limiting the foregoing, Grantor reserves the right, at its expense, to maintain and repair amenities related to passive recreational activities including but not limited to shelters, hard and soft surfaced trails, restrooms, enclosed structures, paved or unpaved parking lots and roadways, storage, pedestrian underpasses or bridges, boat ramps, piers, and lighting, and such maintenance and repair shall not require prior Grantee approval. Any such use or work shall be performed in such a way as to minimize the negative impact such use or work would have on the Conservation Values of the Property.
- c. Leasing. Grantor reserves the right to lease the Property to a concessionaire to provide for the management and facilitation of the Property's use for passive recreational uses consistent with this Easement.
- d. Noxious Weed Control. Grantor reserves the right to re-vegetate the Property with native plants and grasses, and to conduct noxious weed control efforts as required by the Colorado Noxious Weed Act (C.R.S. §35-5.5-101, *et seq.*).
- e. Regional Trail. Grantor reserves the right to construct the South Platte River Trail along the Property's western side, and internal trails (soft-surface and hard-surface), for purposes of paragraph 3.a. above and subject to the restrictions of paragraph 4 below.
- f. Drainage and Flood Control Improvements. Grantor reserves the right for the construction, installation, operation, maintenance, and replacement of improvements necessary for drainage and flood control, including but not limited to major drainageway facilities, related appurtenances, and maintenance trails. Grantor anticipates that these improvements will include armoring of the west shoreline of the lake and construction of a spillway in order to comply with UDFCD's Technical Review Guidelines for Gravel Mining and Water Storage Activities (January 2013). Grantee hereby acknowledges that at the time of the granting of this Deed, the Property is subject to an existing easement between the previous owner of the Property and the Urban Drainage and Flood Control District (UDFCD), recorded in the official records of the Clerk and Recorder of Adams County, Colorado, on June 15, 1990 at Book 3688, Page 770 (UDFCD Easement). The UDFCD Easement is related to water drainage and flood control in the

floodplain zones on the Property. Pursuant to the UDFCD Easement, Grantor or the UDFCD may conduct activities related to the conveyance of surface runoff and flood waters. In addition, Grantor hereby reserves the right to enter into similar easements with the UDFCD in the future with respect to floodplain zones on the Property not already encumbered by the existing UDFCD Easement, provided that said easements are not inconsistent with the preservation and protection of the Conservation Values.

- g. Existing Improvements. Grantor reserves the right to remove the existing improvements and debris on the Property without further approval of Grantee. Existing improvements include dilapidated greenhouses in the southeast portion of the Property, and amenities on the peninsula including decks, boat ramps, fire pits, and boat docks.
  - h. Soil Stockpile. Grantor reserves the right to remove the soil stockpile in the southern portion of the Property in order to create a more level topography, and to utilize the soil on other portions of the Property for reclamation and construction purposes.
4. Prohibited and Restricted Uses. Except as provided in paragraph 3 above, any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- a. Development Rights. Grantor hereby grants and conveys to Grantee all development rights except as otherwise expressly reserved by Grantor herein, and the Parties agree that such rights are hereby released, terminated and extinguished, and may not be used on or transferred off of the Property to any other property, adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.
  - b. Construction of Buildings and Other Structures. The construction of any parking lots, roadways, restroom facilities, picnic shelters, enclosed structures, boat ramps, piers, or other similar improvements shall not be allowed without the express written approval of the Grantee.
  - c. New Structures and Improvements. Under no circumstances shall any new building, structure or improvement, except as provided in paragraph 3, be built on the Property, including but not limited to, athletic fields, golf courses or ranges, disc golf courses, race tracks, airstrips, helicopter pads, or shooting ranges. No new residential buildings shall be allowed.
  - d. Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.
  - e. Timber Harvesting. No commercial timber harvesting shall be allowed. Trees may

be 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.

- f. Mining. (1) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance of any kind or description, using any surface mining method is prohibited. Mining utilizing methods other than surface mining may be permitted if the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values. No extraction permitted pursuant to this paragraph shall occur without prior written notice to and approval of Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof. Any lease, surface use agreement, or other conveyance by Grantor to a third party of mineral rights subsequent to the date of recording of this Easement shall be subject to the restrictions of this Easement and shall expressly so state, shall contain terms consistent with the provisions of this Easement, and a copy of the same shall be provided to Grantee for review and approval, prior to its execution by Grantor and prior to any extraction activity.

(2) Grantor agrees that by granting this Easement to Grantee, it has granted to Grantee a portion of its rights as owner of the surface of the Property on which the exploration, development, operations and reclamation of any minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane) may be conducted ("Surface Owner"). Grantor intends that Grantee, in addition to its interest as a holder of this Easement, shall have the rights of a Surface Owner to receive notices of proposed mineral activities and to take appropriate action to protect the Purpose of this Easement. Accordingly, Grantor agrees: (i) to provide Grantee with any notices Grantor receives related to the exploration, development, operations and reclamation of any minerals; and (ii) that Grantee must approve in advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for the exploration, development, operations and reclamation of any minerals, including any agreement permitted or required of a Surface Owner under C.R.S. §34-60-101 et seq., as amended from time to time, and rules and regulations promulgated thereunder ("Surface Use Agreement"), between Grantor and owners or lessees of minerals (including but not limited to oil and gas, helium, carbon dioxide and coalbed methane), which approval Grantee may withhold in its reasonable discretion if it determines that the proposed surface use would substantially diminish or impair the Conservation Values, is inconsistent with the preservation of the Conservation Values, is inconsistent with the terms of this Easement, or is not permitted under the terms of the mineral reservation or severance, or the mineral lease.

(3) With respect to any mineral rights not currently owned by Grantor, whether or not mineral development is currently occurring, Grantor irrevocably assigns and grants to Grantee the same legal rights as Grantor would have, if any, to influence and control impacts to the surface of the Property from mineral

development. Such rights may include, but are not be limited to, the right to take whatever legal action Grantee deems necessary in order to respond to proposals regarding mineral development affecting the surface of the Property, including bringing judicial or administrative actions, or requiring any operator conducting extraction activity to execute a written Memorandum of Understanding (MOU) prior to undertaking any extraction activity affecting the Property.

- g. Paving and Road Construction. Except for the normal and regular maintenance, repair, planned widening and/or improvement of established public rights of way abutting the Property boundary (i.e. Brighton Road), no other portion of the Property shall be paved nor shall any road be constructed without the prior written approval of Grantee, except as allowed under subparagraphs 3.b. & 3.e. and 4.c above. Grantee shall give such permission within a reasonable time, unless Grantee determines 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 or is otherwise inconsistent with this Easement, and such permission shall not be unreasonably withheld.
- h. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited.
- i. Water Rights. No water rights are included with this Easement.
- j. Motorized Vehicles. Motorized vehicles are prohibited, except for vehicles utilizing established and approved roadways and parking lot areas, and for public maintenance, management, and safety vehicles.
- k. Commercial or Industrial Activity. No industrial uses are allowed on the Property. No commercial uses are allowed on the property with following exception: Grantor may elect to allow a concessionaire to operate a commercial concession for the general operation of the Willow Bay property [\*is this defined?], which may include such things as boat rentals and food and beverage sales, which shall be a permitted use.
- l. 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, signs informing the public of the status of ownership, and signs that pertain to a potential concessionaire. Grantor also reserves the right to erect trail and interpretive signs. No signs shall significantly diminish or impair the Conservation Values of the Property. Grantor shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Grantee, identifying the Grantor’s investment in this Property to the public as well as other funding partners including the Adams County Open Space Sales Tax, State of Colorado Natural Resource Trustees, [\*Grantee?] and Great Outdoors Colorado.

5. 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 not less than sixty (60) 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.

6. Land Management Plan. Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the Property shall be operated and managed in accordance with a written land management plan prepared by Grantor and accepted with the mutual consent of the Parties, which plan is expected to be prepared and approved within one year of the date of this Easement, and shall be updated at least every five years thereafter, or sooner in the case of significant land use change ("Management Plan"). If the Grantor fails to update the Management Plan, the most recent version shall remain in full force and effect unless Grantee determines that such Management Plan requires revision in order to meet and fulfill the Conservation Values.

7. 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 therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

8. Enforcement. If Grantee finds what it believes is a violation of this Easement, 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, the Parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, the Parties shall engage a mutually acceptable mediator to attempt to resolve the dispute, and shall share the costs of such mediator equally. 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, Grantee 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.

9. Costs of Enforcement. All reasonable 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 an action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by

Grantee.

10. Grantee's Discretion. Enforcement of the terms of this Easement 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.

11. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. § 38-41-119, et seq.

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, and 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. The public shall generally have access to the Property, at such times and in such manner as Grantor may reasonably prescribe by regulation, so that the Conservation Values of the Property are not impaired.

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.

15. Taxes. Grantor shall pay before delinquency all 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 three (3) 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 allowed by Law, Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, 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, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraph 7 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 Deed 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 Parties stipulate that this Easement has a fair market value equal to twenty-five and seven-tenths percent (25.7%) of the full fair market value of the Property, as unencumbered by this Easement. Full fair market value of the property shall be determined with a qualified appraisal commissioned by the Grantor. A qualified appraisal is one that is prepared by an independent appraiser in accordance with the IRS definitions of a qualified appraisal, specific about the full fair market value of the property, and effective within one year of the full fair market valuation of the property. For the purposes of this Easement, the ratio of the value of the Easement to the value of the Property as unencumbered by this Easement shall remain constant, notwithstanding anything in the Grantor's appraisal to the contrary.

18. Condemnation or Other Extinguishment. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party in writing when it first learns of such circumstances. Grantee shall be entitled to compensation in accordance with applicable law, after the satisfaction of prior claims, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Grantee's compensation shall be twenty-five and seven-tenths percent (25.7%), an amount equal to the Grantee's real property interest in the property, multiplied by the value of the unencumbered fee simple interest in the portion of the Property that will no longer be encumbered by this Easement as a result of condemnation or termination. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this Easement 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 Number C0590506.

19. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (a) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) is authorized to acquire and hold conservation easements under Colorado law, and (c) agrees to assume the responsibility imposed on Grantee by this Easement. Grantee agrees to give written notice to Grantor of the transfer of this Easement at least forty-five (45) days prior to the date of

such transfer.

20. Subsequent transfers. Grantor shall incorporate the terms and conditions of this Easement in any deed or other legal instrument by which the Grantor divests itself or conveys 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: Parks Director  
Adams County Parks & Open Space  
9755 Henderson Road  
Brighton, CO 80601

With copy to: Adams County Attorney  
4430 S. Adams County Parkway  
Brighton, CO 80601

To Grantee: City Manager  
City of Brighton  
500 S. 4<sup>th</sup> Ave.  
Brighton, CO 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 good and sufficient 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 must be expressly subordinated to this Easement and must not interfere with or impair Grantee's obligations.

24. Recording. Grantee shall record this instrument in 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.

a. 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.

b. 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.

c. 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.

d. 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.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

g. 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.

h. 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.

i. Termination of Rights and Obligations. 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.

j. 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.



CITY OF BRIGHTON, COLORADO

\_\_\_\_\_  
Richard N. McLean                      Mayor

\_\_\_\_\_  
Date

ATTEST:

Approved as to form:

\_\_\_\_\_  
Natalie Hoel  
City Clerk

\_\_\_\_\_  
Margaret Brubaker  
City Attorney's Office