

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT is made this 17th day of January 2019, by the City of Westminster, having its address at 4800 West 92nd Avenue, Westminster, CO 80031 ("Grantor"), in favor of 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 ("Grantee").

RECITALS:

- A. Grantor is the sole owner in fee simple of certain real property in Adams County, Colorado, also known as the Egging property, 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 open space with associated passive recreation uses.
- C. The Property possesses natural, scenic, open space, and/or 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 is approximately 3.57 acres located along Big Dry Creek southeast of West 128th Avenue and Zuni Street. The Property provides a buffer to Big Dry Creek where habitat exists for a variety of species including coyotes, fox, raccoons, rabbits, prairie dogs, field mice, birds, and raptors.
 - 2) Scenic: The Property provides panoramic views of the Continental Divide and overlooks the Big Dry Creek riparian corridor.
 - 3) Open Space: The Property provides open space that is available to the general public including residents of Westminster.
 - 4) Recreational: The Property enhances existing passive recreational opportunities for users utilizing the Big Dry Creek Trail.
- D. Grantor intends that the Conservation Values of the Property be preserved

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. Agreed upon reserved rights are as follows:

- a. The right to allow non-commercial, non-motorized, passive recreational activities, such as horseback riding, hiking, cross-country skiing, mountain biking, 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. The right to construct internal and connecting trails on the Property. All internal trails will be unpaved except the Big Dry Creek regional trail which will be paved.
- c. The right to construct or place unenclosed improvements that have minimal or no floor area on the Property, including but not limited to, pedestrian bridges, benches, picnic tables, regulatory and interpretive signage, educational kiosks or wildlife or scenic viewing platforms and other similar structures and improvements necessary to provide public access and enjoyment of the Property provided that the locations of such unenclosed improvements are along trails and are consistent with the preservation of the Conservation Values.
- d. The right to revegetate the Property with native grass.

4. Prohibited and Restricted Uses. Except as provided in paragraph 3 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. Additionally, nothing herein shall be construed so as to cause the Grantor to be in violation of the Americans with Disabilities Act.

- j. 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 strictly prohibited.
- k. Water Rights. No water rights are included with this Easement.
- l. Motorized Vehicles. Motorized vehicles shall be prohibited, except as allowed under subparagraph 3.a. above and except for public maintenance, management, and safety vehicles.
- m. Commercial or Industrial Activity. No industrial or commercial uses shall be allowed on the Property.
- n. 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. Grantor also reserves the right to erect trail and interpretive signs. No signs shall substantially 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 Grantee's investment in this Property to the public.

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, Grantors 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. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

times and in such manner as Grantor may reasonably prescribe by regulation, so that the Conservation Values of the Property are not impaired.

13. 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.

14. 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.

15. 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.

16. 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 sixty-five percent (65 %) 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

4430 South Adams County Parkway
Brighton, CO 80601

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

21. 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.

22. 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 would be subordinated to this Easement.

23. 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.

24. 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

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

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

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Chair

Date

ATTEST:

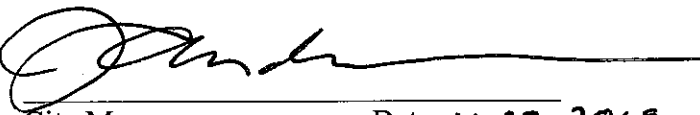
JOSH ZYGIELBAUM,
CLERK AND RECORDER

Approved as to form:

Deputy Clerk

Adams County Attorney's Office

CITY OF WESTMINSTER, COLORADO


for City Manager Date 01.22.2019

ATTEST:

Approved as to form:


City Clerk


City Attorney's Office

Exhibit B

