

GRANT OF CONSERVATION EASEMENT

This Conservation Easement is made this 27th day of January, 1999 by Frank H. Walsh whose address is Post Office Box 30, 20478 Highway 6, Sterling, Colorado 80751, and Patrick J. Stratton and Doris M. Stratton whose address is 9631 North County Road 15, Fort Collins, Colorado 80524, and Windsor Reservoir and Canal Company, a Colorado Corporation, whose address is Box 206, Eaton, Colorado 80165, hereinafter collectively referred to as "Grantors", and Larimer Land Trust, a Colorado Nonprofit Corporation, having an address of 2629 Redwing Road, Suite 300, Fort Collins, Colorado, 80526, hereinafter referred to as "Grantee".

RECITALS:

A. Grantor, Frank Walsh, is the owner of certain real property described as follows:

Tracts B through F inclusive as shown on the Plat of Grayhawk Knolls P.U.D., filed in the office of the Larimer County Clerk and Recorder under Reception Number 98046466, being a portion of Sections 25 and 26, all in Township 9 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado.

B. Grantors, Patrick J. Stratton and Doris M. Stratton, are the owners of certain real property described as follows:

Tract G as shown on the Plat of Grayhawk Knolls P.U.D., filed in the office of the Larimer County Clerk and Recorder under Reception Number 98046466, being a portion of Sections 25 and 26, all in Township 9 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado.

C. Grantor, Windsor Reservoir and Canal Company, is the owner of certain real property described as follows:

Tract A as shown on the Plat of Grayhawk Knolls P.U.D., filed in the office of the Larimer County Clerk and Recorder under Reception Number 98046466, being a portion of Sections 25 and 26, all in Township 9 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado.

This Conservation Easement shall apply to Tracts A through G inclusive (hereinafter referred to as the "Protected Property") as shown on the Plat, except that this Easement shall not apply to the residential lots depicted on the Plat, or to the street rights-of-way or any power line easement that is depicted on the Plat and which may be shown as a part of said Tracts A through G, inclusive.

C. The Protected Property possesses natural, scenic, open space, agricultural, aesthetic and ecological value in its present state as a natural area, the foregoing being

✓ Please return to: Harden, Hass, Haag & Hallberg, P.C.

collectively referred to as "Conservation Values". Those Conservation Values are of great importance to the Grantors and to the future owners of the residential lots in Grayhawk Knolls, P.U.D.

D. In particular, the reservoir area as shown on said Plat is a specific Conservation Value which will be of great importance to the Grantors and to the future owners of the residential lots in Grayhawk Knolls, P.U.D.

E. Grantors intend that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, the existing farming operations on Tract G as depicted on said Plat. The farming operation is limited to Tract G and does not significantly impair or interfere with the Conservation Values described above.

F. Grantors further intend, as owners 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 publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition. The Grantee has also been in existence and qualified under the above references to the Internal Revenue Code for more than two years prior to the date of this Grant.

H. Grantee agrees, by the acceptance of this grant, to honor the intention of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above 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.*, Grantors hereby grant and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose.

a. The purpose of this Easement shall be to insure that the Protected Property shall be retained forever in its present natural, scenic, and open condition and to prevent any use of the Property that would significantly impair or interfere with the Conservation Values of the Property.

b. However, as to Tract G, Grantors intend that the Easement will allow the continued use of the farming operation to the same level and extent carried on at the time of the signing of this easement. Grantors intend that this Easement will limit the use of the

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Property to the purposes of this Easement and to the present farming operation on Tract G and to any other activities which are consistent with the purpose of this Easement. However, as to Tract G, the permitted use will also include livestock access for drinking water to the creek and that small portion of the lakefront as the same is presently used.

c. The permitted use of Tract A will be for the operation of a ditch (including appurtenant facilities) to carry and distribute water for any lawful purpose including access to and upon the tract to improve, construct and maintain the ditch.

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 compliance with and otherwise enforce the terms of this easement. Such entry shall be upon prior reasonable notice to the Grantors, unless Grantors have conveyed the Protected Property to the Property Owner's Association of Grayhawk Knolls, P.U.D., which association is to be formed in accordance with the declaration of protective covenants for Grayhawk Knolls, P.U.D., then no notice to the Association shall be deemed necessary. However, reasonable notice shall be given to the tenant farmer of the permitted farming operation on Tract G, and Grantee shall not unreasonably interfere with the Tract G farming operation or to the Grantors' 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 to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. Prohibited Use. 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. Construction of Buildings and Other Structures. The construction or reconstruction of any building or other structure or improvement, except that a barn may be constructed within the building envelope shown on Tract G of the Plat, including the right to maintain, repair, renovate, restore, improve or replace the same provided that such barn shall be built according to applicable building, zoning or subdivision regulations of Larimer County or any other governmental entity having jurisdiction over the Property as the same may be presently in force or may be amended or enacted from time to time hereafter.

b. Fences. Grantors may repair or replace existing fences, and new fences may be built for purposes of reasonable and customary management of livestock and wildlife, and for separation of ownership and uses.

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c. Subdivision. Grantors reserve the right to sell, convey and transfer Tract G to any third person, but such sale, conveyance or transfer shall otherwise be subject to this easement. Except for the foregoing, any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.

d. Land Management. The Property shall be operated and managed in accordance with a land stewardship plan prepared and accepted with the mutual consent of Grantors and Grantee, which plan shall be updated no less frequently than every five years.

e. Timber Harvesting. 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. Commercial timber harvesting on the Property shall be prohibited.

f. Mining. The mining or extraction of soil, sand, gravel, rock oil, natural gas, fuel, or any other mineral substance is prohibited; however, such prohibition is subject to any rights which the United States of America may own for retained mineral rights in that portion of the Protected Property situated in Section 26. Such prohibition is further subject to the rights of the Union Pacific Railroad which owns all of the mineral rights on that portion of the Protected Property situated in Section 25. Therefore, the parties acknowledge that the prohibitions against mining may not be applicable to those mining rights not owned by the Grantors at the time of the signing of this Conservation Easement. Grantors further covenant that no drilling will be initiated by the Grantors or Grantors' successors, grantees and assigns, but Grantors reserve the right to take any actions that Grantors may deem appropriate to protect the correlative mineral rights of the Grantor, their successors, grantees and assigns within the Protected Property.

g. Paving and Road and Trail Construction. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving material. No road or trail shall be constructed without the advance written permission of Grantee. 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 or trail, will substantially diminish or impair the Conservation Values of the Property or is otherwise inconsistent with this Deed, 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 is prohibited.

i. Water Rights. The Grantors own adjudicated water rights for a spring and reservoir located on the Protected Property, and these water rights shall be conveyed to the homeowner's association for Grayhawk Knolls, P.U.D., upon formation of the association as provided in the declaration of protective covenants for the subdivision. The conveyance of said water rights will be subject to the provisions of this Conservation Easement as well as the Declaration of Protected Covenants for the development. Except as otherwise provided herein

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or in the Declaration of Protective Covenants for the use of the water for domestic purpose to the residential lots in Grayhawk Knolls, P.U.D., those water rights will be used to maintain and improve the Conservation Values of the Protected Property and the water rights shall not be transferred, encumbered, leased, sold or otherwise separated from the title to the Protected Property itself.

j. Commercial or Industrial Activity. No commercial or industrial uses shall be allowed on the Property, except for the farming activities as above set forth.

k. Vehicular Access. Access to the conservation easement property, including Geist Reservoir, by motorized vehicles, including recreational off-road vehicles, snowmobiles, bicycles, and automobiles, motorboats and jet skis is prohibited, except for maintenance and agricultural purposes.

4. Reserved Rights. Grantors reserve to themselves, and to their personal representatives, heirs, successors, grantees and assigns, all rights accruing from their 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 herein and are not inconsistent with the purpose of this Easement.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors 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 thirty (30) days prior to the date Grantors intend 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 Grantors' 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.

7. Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Grantee may enter the Property for the purpose of inspection for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantors in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantors shall either (a) restore the Property to its condition prior to the violation or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a

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resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. The parties agree to pursue mediation efforts in good faith and if after reasonable time the matter has not been resolved, the Grantee may bring an action in a court of competent jurisdiction for specific performance of this Agreement or for injunctive relief to enforce the terms hereof. Such remedies may also include a mandatory injunction to require restoration of the property to its condition prior to any violation.

8. Costs of Enforcement. In the event of litigation to enforce the terms of this Easement, the prevailing party shall recover his or its reasonable attorneys' fees and costs incurred in the prosecution or defense of such litigation. In the event that the Grantors violate the Agreement, Grantee shall also be entitled to recover any costs of restoration necessitated by Grantors' violation of the Easement.

9. 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 Grantors 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 Grantors shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

11. Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement, either expressly or by implication.

13. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

14. Taxes. Grantors 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,

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this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but not obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without the need to inquire into the validity of the taxes or the accuracy of the bill, statement, or estimate. The obligation created by such payment shall bear interest until paid by Grantors at the lesser of the prime rate of interest from time to time charged by Norwest Bank of Denver or the maximum rate allowed by law.

15. Hold Harmless. Grantors 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 called the "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; and (2) 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 which is regulated under any federal, state or local law.

16. Extinguishment. If circumstances arise in the future such as 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 when it first learns of such circumstances. The amount of the proceeds to which Grantee shall be entitled, after the satisfactions of prior claims from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with paragraph 17 below.

17. Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(b) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

18. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with

applicable law. The Board shall be entitled to compensation from Grantee in an amount as determined in accordance with paragraphs 16 and 17 above.

19. Assignment. This easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder (b) authorized to acquire and hold conservation easements under Colorado law, and (c) the assignee, as a condition of the assignment, agrees to continue and carry out the conservation purposes of this Agreement.

20. Subsequent transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty one (21) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. However, in no event shall any notice be required for the transfer of any of the residential shown on the Plat of Grayhawk Knolls, P.U.D which is not part of the legally described Protected Property.

21. Recordation. 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.

22. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of 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,

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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 Grantors' title in any respect.

f. 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, grantees and assigns and shall continue as a servitude running in perpetuity with the Property.

g. 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 the transfer.

h. 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.

i. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantors and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties and recorded.

j. Adequate insurance shall mean no less than \$500,000 per occurrence and the Grantee name as an "Additional Insured". Evidence of insurance must be provided to the Grantee and remain current.

k. Notices. Any notices required by this deed shall be in writing and shall be delivered personally or sent by Certified Mail, return receipt requested, to Grantors and Grantee, respectively, at the following addresses, unless either party has been notified by the other of a change of address:

Grantors: Frank Walsh
Post Office Box 30
Sterling, Colorado 80751

Patrick J. and Doris M. Stratton
9631 North County Road 15
Fort Collins, Colorado 80524

Windsor Reservoir and Canal Company
Box 206, Eaton, Colorado 80165

Grantee: Larimer Land Trust
2629 Redwing Road, #300
Fort Collins, Colorado 80526

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

GRANTORS:

GRANTEE:

Larimer Land Trust, a Colorado Nonprofit Corporation

Frank H. Walsh

By:

Laura Stone

Frank H. Walsh

Patrick J. Stratton

Patrick J. Stratton

Doris M. Stratton

Doris M. Stratton

WINDSOR RESERVOIR AND CANAL COMPANY

E.R. Gustafson

By: E.R. Gustafson, President

Don E. Engel

By: Don E. Engel, Secretary

STATE OF COLORADO *ARIZONA*)

)ss

COUNTY OF *MARICOPA*)

The foregoing document was acknowledged before me this 27th day of January, ~~1998~~ 1999 by Frank H. Walsh, Grantor.

Witness my hand and seal.

My commission expires:

Starr W. Simmons

Notary Public



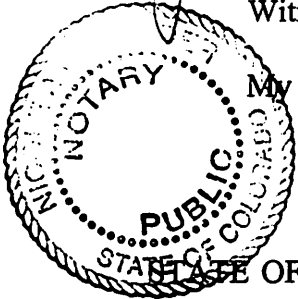
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STATE OF COLORADO)
)ss
COUNTY OF Larimer

The foregoing document was acknowledged before me this 22nd day of January, 1999 by Patrick J. Stratton and Doris M. Stratton, Grantors.

Witness my hand and seal.

My commission expires: 11-26-01



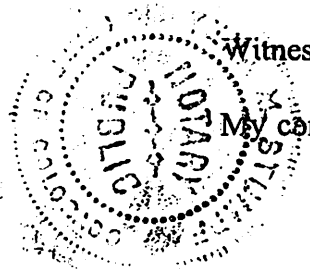
[Signature]
Notary Public

STATE OF COLORADO)
)ss
COUNTY OF _____

The foregoing document was acknowledged before me this 11th day of January, 1998 by E.R. Gustafson and Don E. Engel, as President and Secretary, respectively, of Windsor Reservoir and Canal Company, Grantor.

Witness my hand and seal.

My commission expires: 4-25-00



[Signature]
Notary Public

STATE OF COLORADO)
)ss
COUNTY OF LARIMER)

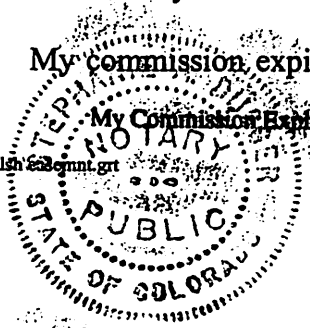
The foregoing document was acknowledge before me this 25 day of January, 1998 by [Signature], as Executive Director of Larimer Land Trust, Grantee.

Witness my hand and seal.

My commission expires:

My Commission Expires August 16, 2001.

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[Signature]
Notary Public