



47102

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement is granted by PATRICIA K. MARSHALL and ROBERT C. MARSHALL ("Grantors") on the 7th day of September, 1997, to the CITY OF BOULDER, a Colorado home rule city ("Grantee").



WHEREAS, the Grantors are the owners of certain real property described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and 6 1

WHEREAS, the Property is currently improved by one existing single family residence, appurtenant outbuildings, fencing and corrals; and

WHEREAS the property has unique visual, agricultural and open space amenities; and

WHEREAS, contemporaneously with the granting of the within Conservation Easement by Grantors to Grantee, the City of Boulder has acquired from Grantors fee ownership of 60.05 acres of unimproved agricultural land ("Open Space") lying northerly of the property and contiguous on the northerly and easterly boundary line of the Grantors' property and on the southerly and westerly boundary of the City's Open Space Property to be used by the City of Boulder for Open Space purposes; and

WHEREAS, historically the improvements on the Grantors' property have been used along with the City's Open Space Property for agricultural purposes, including animal husbandry, riding, training horses and riders, and other related agricultural purposes; and

WHEREAS, the Grantors will restrict development of the Property in accordance with the terms of the Conservation Easement as set forth herein;

NOW THEREFORE, for good and valuable consideration, the Grantors hereby grant and convey to the Grantee a conservation easement in gross, pursuant to Title 38, Article 30.5 of the 1973 Colorado Revised Statutes, over the Property.

The terms of this Easement are as follows:

1. Grantors shall not permit any access to the surface of the Property for the extraction of any minerals, oil and gas, or sand and gravel from the Property.
2. Grantee shall have the right to preserve and protect the land and the view of and over the Property in its present natural, scenic and open space condition.
3. Grantee shall have the right to enter upon the Property in a reasonable manner and



at reasonable times, after prior notice to Grantors for the purposes of inspection and enforcement of any and all rights granted herein.

4. Grantee shall have the right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the rights granted hereby, including but not limited to the right to require the restoration of the Property to its September, 1997 condition if any damage is caused by acts or omissions of the Grantors or their agents in violation of this agreement. Grantee shall not be deemed to waive or forfeit the rights to take any action to insure compliance herewith by any failure to act. 6-2

5. Except as expressly granted herein, Grantors reserve all rights as owners of the Property, including the right to use the Property for all purposes not inconsistent herewith, but specifically limited to one single-family residence, appurtenant outbuildings, and fencing and corralling. The residence shall be restricted to a maximum structure height of 35 feet, and the square footage of the residence shall be restricted to a maximum of 5,000 square feet above grade. Grantors agree that no indoor riding arenas, or barn structures larger than a total of 4,500 square feet foot print, excluding loafing sheds, shall be permitted on the property.

6. Grantors shall not use the Property or allow the Property to be used in a manner inconsistent with the spirit and purposes stated herein.

7. The granting of the Conservation Easement shall not give to the public any rights or access to the property.

8. Except as provided herein, there shall be no construction or placing or maintenance of any commercial or industrial structure or use on the Property, including, but not limited to, a mobile or manufactured home (specifically excluding temporary RV parking), a feed lot, a commercial chicken farm, a commercial greenhouse, a junk yard, a vehicle or vehicle replacement parts storage area, parking lot, or a horse, dog, motorcycle, bicycle or automobile race track, golf course, commercial helicopter or airplane landing area, or hunting, or a sign, billboard, or other advertising material, except one sign of not more than 12 square feet in area, to advertise the sale, hire or lease of the Property. Any sign shall be in compliance with the sign code regulations of Boulder County.

9. Grantors shall not permit the dumping or storage of ash, trash, junk, rubbish, sawdust, garbage, chemicals, or other unsightly or offensive material, or changing of the topography through dredging or filling, or the placing of soil or other substances, hazardous materials or landfill on the Property. "Hazardous materials" as used herein shall mean and include any pollutants, contaminants or hazardous or toxic substances, wastes or materials as defined, listed or regulated by any federal, state or local law, regulation, order or decree. It is not the intent of this paragraph to prevent agricultural uses of the property by Grantors.

10. Grantors shall not allow, dedicate, or convey any easement or right of way for any private, municipal, county or state road or any other purpose without prior written approval of



Grantee. However, the parties hereto recognize and agree that Grantors may not preclude a condemnation of easements or rights-of-way by appropriate governmental agencies and that, under the threat of condemnation Grantors may choose to grant such easement. In that event, the amount of consideration paid for the condemnation or payment in lieu of condemnation shall belong exclusively to the Grantors.

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11. Grantee agrees that it shall not introduce or transport prairie dogs onto the Property.

12. Grantors shall not use or convey further, or assign or transfer any density or development rights relating to the Property, except that Grantors may convey the entire fee, subject to this Conservation Easement.

13. Grantors shall be responsible for the construction and maintenance of all fences and gates on the Property.

14. Grantors agree to pay all taxes and assessments levied on the Property.

15. Grantee recognizes the right of Grantors to utilize or rent the Property for a single-family residence, for the grazing of animals and raising of crops and for other agricultural purposes not inconsistent with the rights granted herein to Grantee.

16. Each of the parties hereto shall be entitled to specific performance by the other party of all rights granted herein. In the event one of the parties fails to abide by the terms hereof, the other party shall be entitled to all applicable remedies at law or in equity, including, but not limited to, restraining orders, temporary and permanent injunctions, and damages for destruction or injury of the Property and the injured party's interest herein.

17. All notices under this agreement shall be given by registered or certified mail, postage prepaid, addressed as follows, and shall be deemed given on the date of mailing:

a. If intended for Grantors:

Patricia K. Marshall and Robert C. Marshall
7035 S. Boulder Road
Boulder, CO 80303

b. If intended for Grantee:

City Manager
c/o Director of Open Space/Real Estate
P.O. Box 791
Boulder, CO 80306



18. The terms of this Conservation Easement shall be binding upon the Grantors and their agents, personal representatives, heirs, lessees and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Property.

19. Grantors and Grantee covenant and agree that they will defend and maintain the validity of the Conservation Easement granted hereby.

20. This instrument and the attached exhibit contain the entire agreement between the parties relating to the Conservation Easement on the Property, and may be modified only by an instrument in writing executed by both parties.

21. The parties hereto agree that, except for such of the terms, conditions, covenants and agreements which are, by their very nature, fully and completely performed upon the closing of the transaction herein provided for, all the terms, conditions, covenants and agreements herein set forth and contained shall survive the closing to run with the Property and to be binding upon and inure to the benefit of the parties hereto, their agents, personal representatives, heirs, lessees, successors, and assigns.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the day and year first above written.

GRANTORS

Patricia K. Marshall
Patricia K. Marshall

Robert C. Marshall
Robert C. Marshall

GRANTEE:

CITY OF BOULDER,
a Colorado home rule city

By *Chris Dropinski*
Chris Dropinski, Acting City Manager
Approved as to form

ATTEST:

g:\admin\marshall.eas

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By Cappie Fine
Director of Finance and Record
Ex-Officio City Clerk

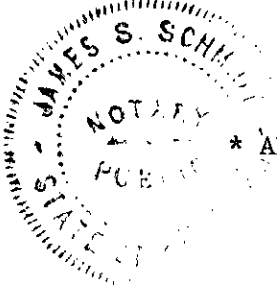
APPROVED AS TO FORM

by _____
City Attorney

STATE OF COLORADO)
COUNTY OF BOULDER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 17th
OF SEPTEMBER, 1997, BY PATRICIA K. MARSHALL, ROBERT C. MARSHALL AND CHRIS
DROPINSKI, ACTING CITY MANAGER*FOR CITY OF BOULDER, A COLORADO HOME RULE CITY.

WITNESS MY HAND AND OFFICIAL SEAL.
MY COMMISSION EXPIRES: JULY 18, 2000.



James S. Schindler
NOTARY PUBLIC

* AND CAPPIE J. FINE, DIRECTOR OF FINANCE AND RECORD

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**DESCRIPTION OF PARCEL A**

A part of the East 1/2 of the S.E. 1/4 of Section 2, Township 1 South, Range 70 West, 6th Principal Meridian, Boulder County, Colorado, said part being described as follows:

Commencing at the S.E. corner of said Section 2; Thence N.00°58'12"E., 35.89', along the East line of the said S.E. 1/4, to a point on the Northerly right-of-way line of South Boulder Road as it is presently surveyed and monumented;

Thence N.84°50'06"W., 23.30', along said Northerly right-of-way line; the Point of Beginning;

Thence generally along an existing fence line as follows: N.00°57'51"E., 413.63'; N.84°13'54"W., 616.61'; N.71°51'23"W., 236.36'; N.50°20'47"W., 319.30'; N.17°37'09"W., 145.52'; N.29°51'23"W., 176.47' and S.89°40'06"W., 57.58' to a point on the West line of the said East 1/2, S.E. 1/4;

Thence S.00°53'01"W., 1061.43', along said West line to a point on said Northerly right-of-way line of South Boulder Road;

Thence along said Northerly right-of-way line of South Boulder Road as follows:

S.88°55'08"E., 190.54';

N.82°12'04"E., 100.44'; N.87°19'02"E., 100.07'; S.89°33'39"E., 500.78';

N.81°18'45"E., 172.84' and

S.84°50'06"E., 222.11', to the Point of Beginning, containing 17.00 acres, more or less.

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