

NONEXCLUSIVE EASEMENT AND RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, made and entered into as of the 4th day of January, 1999, by and between George A. and Nadine Holter, whose mailing address is 3509 S. Mason Street, Fort Collins, CO 80525, hereinafter referred to as "the Grantor", and EAST LARIMER COUNTY WATER DISTRICT, a Political Subdivision of the State of Colorado, the address of which is 232 South Link Lane, Post Office Box 2044, Fort Collins, Colorado 80522, hereinafter referred to as the "the District".

WITNESSETH:

For and in consideration of the mutual promises and covenants herein contained and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby confessed and acknowledged, the Grantor has granted and conveyed and by these presents does grant and convey unto the District, its successors and assigns, a permanent nonexclusive easement for the installation, construction, maintenance, inspection, operation, replacement or removal of one (1) or more water lines and all underground and surface appurtenances thereto, including metering stations and other fixtures, in, over, across and upon:

A fifty foot (50') temporary construction easement and twenty foot (20') permanent nonexclusive utility right-of-way and easement, which is described as follows:

Temporary Construction Easement:

The easterly fifty feet (50') of a tract of land located in the Northwest and Southwest Quarters of Section 1, T8N, R69W of the 6th PM, Larimer County, Colorado, said tract known to the Larimer County Assessor as Parcel #9801000004.

Permanent Utility Nonexclusive Right-Of-Way and Easement:

The easterly twenty feet (20') of a tract of land located in the Northwest and Southwest Quarters of Section 1, T8N, R69W of the 6th PM, Larimer County, Colorado, said tract known to the Larimer County Assessor as Parcel #9801000004.

The parties hereto acknowledge that said nonexclusive easement and right-of-way (hereinafter referred to as "the Easement") is located on a parcel of property owned by the Grantor legally described as follows and hereinafter referred to as the "the Grantor's Property".

A tract of land located in the Northwest and Southwest Quarters of Section 1, T8N, R69W of the 6th PM, Larimer County, Colorado, said tract known to the Larimer County Assessor as Parcel #9801000004.

In addition to the foregoing grant of nonexclusive easement and right-of-way by the Grantor to the District, the Grantor further grants and conveys to the District the following rights and privileges:

- A. The right to grade the Easement for the full width thereof in such a manner as the District may reasonably determine to be necessary or advisable.
- B. The right of ingress and egress to and from the Easement by means of the existing county road which is adjacent to and parallel to the subject easement.
- C. To install, maintain and use gates or other livestock barriers on all fences which now cross or hereinafter cross the Easement.

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- D. To mark the location of the Easement with markers set in the ground provided that any such markers remaining after the period of construction of the water line and appurtenances shall be placed in locations which will minimize interference with any reasonable use of the Easement area by the Grantor.
 - E. All other rights necessary and incident to the full and complete use and enjoyment of the Easement for the purposes herein granted.

The Grantor hereby covenants and agrees to and with the District, its successors and assigns, that:

- A. Except as otherwise provided in this subparagraph A, the Grantor, its heirs, personal representatives, administrators, successors and assigns, shall not erect or place any permanent building, structure, improvement, fence, tree or other landscaping on the Easement. In the event of the placement of such obstacles on the Easement contrary to the provisions of this subparagraph A, the District shall have the right to require the Grantor to remove such obstacles from the Easement and, in the event the Grantor fails to do so upon request, the District may remove such obstacles without any liability for repair or replacement thereof. Notwithstanding the foregoing, the Grantor, its heirs, personal representatives, administrators, successors and assigns shall have the right, without the consent of the District, to plant grasses and other ground cover and small shrubs upon the Easement area which are usual and customary for the full use and enjoyment of the Grantor's Property. However, the District shall not be responsible for repair or replacement of any "exotic" plantings, ornamental trees or similar landscaping other than usual and customary ground covering and shrubs.
- B. The Grantor does covenant and agree to and with the District that the Grantor is lawfully seized of the Easement and the Grantor's Property, and that the Grantor has a good and lawful right to convey the Easement to the District and that the Grantor warrants the title thereto.

The District does hereby covenant and agree to and with the Grantor as follows:

- A. The District shall not fence or otherwise enclose the Easement, except during periods of construction and repair.
- B. All trenches and excavations made in the laying or repairing of the water line shall be properly backfilled and as much of the original surface soils as reasonably possible shall be placed on top. All large gravel, stones and clods will be removed from the finished backfill. The District will finish the backfill after normal settling of the soil so that the use and enjoyment of the Easement by the Grantor shall be suitable for the purpose now used. The District will maintain the trench area and the water line.
- C. In the event the Grantor's Property is being used for grazing purposes, the District agrees that during the period of construction of the water line, or any subsequent alteration, removal or replacement of said water line, the District will leave or arrange for reasonable crossing over the Easement for cattle and livestock of the Grantor and its tenants and lessees. Further, whenever it becomes necessary for the District, its agents or contractors to cut a fence on the Grantor's Property, the District shall, at its option, either keep the gate closed or guarded in such a manner so as to prevent the entrance and exit of cattle or livestock through such opening, or construct in any one or more places substantial gates with dual locks and to furnish the Grantor with one set of keys thereto. Before any such fence is cut by the District, the fence shall be braced in order to prevent slackening of wires along the fence in each direction from the District's temporary opening.

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- D. In the event the Grantor's Property is being used for production of any crops which require irrigation at the time the pipeline is constructed as set forth in this Agreement, the District agrees, unless otherwise provided, to install and operate flumes or appropriate crossing devices across the Easement at all times during such construction operations. The District further agrees, unless otherwise provided, not to block, dam or obstruct in any manner any irrigation canal, drainage ditched or creeks located on the Grantor's Property and further agrees to replace or repair any levees or banks disturbed or damaged by the activities of the District on the Grantor's Property.
- E. The District shall pay the fair market value for any crops, fences or livestock of the Grantor, his tenants and lessees, which are damaged or destroyed as a result of the construction, operation and maintenance of the water line.
- F. To the extent allows by law, the District shall be liable for loss or damage which shall be caused by any wrongful exercise of the rights of ingress or egress to or from the Easement or by wrongful or negligent acts or omission of its agents or employees during the course of their employment on the Grantor's Property.

It is mutually agreed between the parties hereto that:


- A. This nonexclusive easement and right-of-way agreement is nonexclusive, reserving unto the Grantor, its successors and assigns the right to use the area within the easement for any purpose which will not interfere with the grantee's intended use of the easement including but not limited to other utility lines and services.
- B. The benefit and burdens of the Agreement shall inure to and be binding upon the respective heirs, personal representatives, successors or assigns of the parties hereto.
- C. Whenever used herein, the singular shall include the plural and the plural the singular and the use of gender shall apply to all genders.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

George A. Holter
George A. Holter

Nadine Holter
"the Grantor" Nadine Holter

Attest:



[Signature]
Secretary

EAST LARIMER COUNTY WATER DISTRICT

[Signature]
President
"the District"

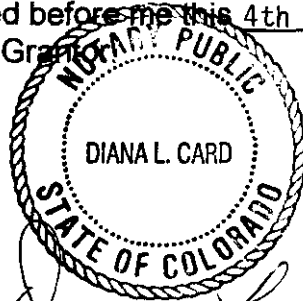
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STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 4th day of January, 1999, by George A. Holter and Nadine Holter as Grantors

WITNESS my hand and official seal.

My commission expires: 9-3-2001



Diana L. Card
My Commission Expires 9-3-2001
Notary Public

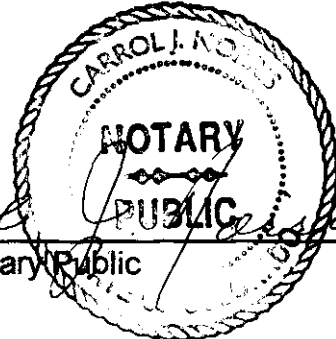
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 6 day of January, 1999, by H. Webster as Secretary of EAST LARIMER COUNTY WATER DISTRICT. & Lyle E. Petrus President

WITNESS my hand and official seal.

My commission expires:

My commission expires
12/09/2000



Carol J. Noles
Notary Public