

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS is entered into by and between NICK R. HUGHES (hereinafter referred to as the "Grantor"), and the VALLEY LAND CONSERVANCY, a Colorado non-profit corporation, incorporated more than two years prior to the acceptance date hereof and exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose legal address is 12260 6450 Road, Montrose, Colorado, 81401 (hereinafter referred to as the "Grantee").

WHEREAS, Grantor is the sole owner in fee simple of the ranch property ("Property") legally described in Exhibit A attached to and made a part of this Deed, which consists of approximately 4,300 acres of land, together with buildings and other improvements, located in Delta County, State of Colorado. The Property has been created by the aggregation of three legally distinct and separately deeded adjoining properties (Valdez, Scott, Hotchkiss).

WHEREAS, the Grantor, as owner in fee of the property, desires to identify and to assure the preservation in perpetuity of the property's significant natural elements, and to maintain its agricultural, ecological, wildlife, aesthetic and scenic quality; said purposes shall be accomplished by Grantor's contribution of a "qualified real property interest" as defined by Section 170(h)(2)(C) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, The Property is primarily open ranchland, and is an important part of the productive agricultural land still remaining in Delta County. Jay Creek, a year-round drainage, begins on and flows through the Property for approximately 2 miles. West Reservoir, an agricultural water storage facility is located on the Property and provides irrigation water to Jay Creek for usage in the North Fork of the Gunnison River Valley. The western portion of the property provides watershed for Leroux Creek and Cow Creek, both significant sources for irrigation water. The Property also includes relatively natural and significant habitat with a variety of wildlife species, including deer, elk, bear, grouse and many other small animals. The property is part of the scenic views of the Grand Mesa National Forest, when viewed from the south; and

WHEREAS, the Property constitutes a valuable part of the natural resource system of the Gunnison River drainage; and

WHEREAS, the Property's agricultural, ecological and aesthetic values are of great importance to the Grantor, the Grantee, the people of the State of Colorado, and the general public, and are worthy of preservation; and

WHEREAS, Grantor intends to make a charitable gift of the property interest conveyed by this Deed pursuant to §170(h) of the Internal Revenue Code of 1986, as amended, and Colorado Revised Statutes §38-30.5-102 to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productivity, wildlife habitat, and scenic qualities

of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with §2032A(e)(4) and (5) of the Internal Revenue Code of 1986, as amended, and these conservation purposes will be prevented or corrected. The parties agree, however, that the current use of, and improvements to, the Property are consistent with the conservation purposes of this Deed and §2032A(e)(4) and (5) of the Internal Revenue Code of 1986, as amended.

WHEREAS, the Grantor intends that the property's natural characteristics, and its agricultural, ecological and aesthetic values be preserved by the continuation of uses, and non-use that has proven historically compatible with such elements and values; said preservation shall be accomplished by Grantor's contribution of a "qualified real property interest" as defined by Section 170(h)(2)(C) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Grantor, as owner in fee of the property, desires to identify and to assure the preservation in perpetuity of the property's significant natural characteristics, and to maintain its agricultural, ecological, wildlife, aesthetic and scenic quality; and

WHEREAS, the State of Colorado has recognized the importance of private efforts to preserve land in a natural, scenic, or open condition, and for wildlife habitat for the protection of open land having wholesome environmental quality, by the enactment of Section 38-30.5-101, et. seq., Colorado Revised Statutes 1973, as amended; and

WHEREAS, The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, et seq., whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

WHEREAS, the Grantee is a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Grantee intends, by acceptance of the grant made hereby, forever to honor the intentions of the Grantor stated herein to preserve and protect in perpetuity the natural elements and agricultural, ecological and aesthetic values of the property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, based upon the common law, and further pursuant to Section 38-30.5-101 et seq., Colorado Revised Statutes 1973, as amended, Grantor does hereby convey to Grantee a perpetual Conservation Easement in Gross (hereinafter referred to as the "easement") consisting of rights hereinafter enumerated, over and across that certain real property, situated in Delta County, Colorado, more particularly described in Exhibit A, and warrants the title to the same, subject to the terms and conditions set forth herein.

1. Purpose. It is the intention of Grantor to preserve the ability of the Property to be agriculturally productive, including continuing farming and ranching activities, to engage in future ranching activities, as defined by §2032A(e)(4) and (5) of the Internal Revenue Code of 1986, as amended, and to preserve the wildlife habitat, and scenic qualities of the Property. The Property may not be used for industrial activities, but may be used for other activities that are not prohibited by the terms of this Deed.

The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-1-101, et seq., provide in part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, et seq., provide that "it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state."

It is also the purpose of this easement to adhere to the Economic Development Objectives of the Delta County Master Plan which encourage existing agricultural businesses and industry to remain in operation and land use patterns which minimize conflicts between development and productive agricultural land. Furthermore, this easement seeks to protect and enhance the biological, abiotic and water resources of the property so that the health of the property's soil, water, plant and animal communities is maintained and improved. Techniques to enhance the property's resources will include, but not be limited to, management of livestock, wildlife, range and forestry in combination to achieve the purposes stated herein.

2. Affirmative Rights Conveyed. The affirmative rights conveyed by this easement to the Grantee are the following:

a) The Grantor hereby grants to the Grantee all development rights, as defined by §2031(5)(D) of the Internal Revenue Code of 1986, as amended, except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.

b) To identify, to preserve and to protect in perpetuity the natural, agricultural, ecological, wildlife, scenic and aesthetic characteristics, and the air and water quality of the property.

c) With 10 day advance notice to Grantor, to enter upon the property at reasonable times in order to monitor compliance with and enforce the terms of this easement. In cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of the easement, such entry shall not require prior notice to Grantor, and

Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the property.

d) Grantor retains the right to perform any act not specifically prohibited or limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose, so long as the Grantor does not convey less than an entire parcel (ie. entire Valdez parcel, entire Hotchkiss parcel or entire Scott Parcel) except as provided in Paragraph 3. a), below.

3. Permitted Uses and Practices. Grantor intends that this easement shall confine the future use of the property to the preservation of the natural, agricultural, wildlife habitat, scenic and aesthetic features which are described herein. The following uses and practices though not an exhaustive recital of consistent uses and practices, are permitted under this easement, and these practices are not to be precluded, prevented or limited by this easement:

a) Subdivision. The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is limited. The Property consists of three separate parcels, a deed for each of which is recorded with the Delta County Recorder's Office. The parcels are depicted in Exhibit B which is attached hereto and incorporated herein by this reference. If the Property is to be divided, it will be either as the existing legally deeded separate Properties (Valdez, Scott, Hotchkiss), or Scott may be split along the existing graveled road (marked 'division road' on Exhibit B) providing access to West Reservoir. If Scott is split, the portion of Scott north of the graveled road will be permanently deeded and joined to Valdez, and the portion of Scott south of the graveled road will be permanently deeded and joined to Hotchkiss. The three existing legally separate properties, or two properties including divided Parsons property, may be sold or conveyed as single discrete units of real property with the restrictive covenants associated with this Easement. No further divisions may be made.

b) Construction of Buildings and Other Structures. The construction of any building or other roofed structure, except those existing on the date of this Deed or those approved by Grantee subsequent to the date hereof but prior to construction, is prohibited except in accordance with subparagraphs A through D below. Forty-five (45) days before undertaking any construction that requires advance permission, Grantor shall notify Grantee of such activity.

1) Fences. Existing fences may be repaired and replaced or removed, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock, without any further permission of Grantee. No fence will be built exceeding 54 inches in height except in those rare instances where the natural topography causes the fence to extend above 54 inches (such as when a fence crosses a gully). Grantor shall not be required to erect any new fences for any purpose,

including, but not limited to, fencing out livestock from riparian areas or other designated habitats.

- 2) *Agricultural Structures and Improvements.* All existing agricultural buildings and agricultural structures may be repaired, reasonably enlarged (no greater than two times original size) and replaced at their current location without further permission of Grantee. However, all such improvements are restricted to a maximum of 0.5% (21.5 acres) of the total surface area of land covered by the property as described in Exhibit A ("Agricultural Building Limitation"). The Agricultural Building Limitation includes the construction, re-construction, or repair of existing or new agricultural buildings, utilities, new roads and improvements for agricultural purposes. No agricultural building will have any residential units except for those agricultural buildings which are included in the building envelopes. The Grantor will be required to submit to the Grantee a report on all planned agricultural construction annually (by January 31) including the size and location of each construction, re-construction or repair project which is planned for that year. The acreage restriction contained in this paragraph does not include the acreage presently consumed by existing roads.

New buildings and improvements to be used solely for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property as per §2032A(e)(5)(B) of the Internal Revenue Code of 1986, as amended, may be built where Grantor deems appropriate, and useful and if such does not diminish the agricultural value of the property.

No construction of any other new buildings or improvements for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes shall be constructed. Grantor shall notify Grantee in writing, at least forty-five (45) days prior to construction, so Grantee can update its records. Agricultural buildings, facilities and improvements that existed at the historic ^{Scott} Parson homestead may be rebuilt in their prior locations. Loafing sheds, and other minor agricultural buildings and improvements may be constructed anywhere on the Property and are subject to the "Agricultural Building Limitation". Ditches, ponds, dams or reservoirs may be maintained, developed and enhanced in accordance with standards maintained by the State Engineer, Colorado Division of Water Resources if applicable, in order to preserve and increase agricultural productivity, protect topsoil and benefit wildlife habitat, without further permission from Grantee. Weather stations may be located as appropriate on the Property, as well as wireless communications structures serving the weather station and agricultural operations, but will be no more than a 100 square feet in size and no more than thirty feet in height each.

- 3) *Single-Family Residential Dwellings.* The only existing single-family residential dwelling on the Property is located on the Scott Parcel. The Scott residential

dwelling may be repaired, enlarged (no greater than two times original size) and replaced at the current location with written notice and building plans submitted to Grantee at least forty-five (45) days in advance of construction. The building envelope for the Scott Homestead will be five acres in size.

In addition, 1 (one) new single-family residential dwelling, together with associated outbuildings such as garages and sheds and barns with residential units may be built on the Property within a twenty acre Building Envelope described on **Exhibit B** attached to and made a part of this Deed (the "Building Envelope") without further permission of Grantee.

At least forty-five (45) days prior to the time that construction of such dwelling or dwellings is to commence, the Grantor will survey and stake the building envelope and Grantee shall be notified in writing so that its records can be updated. Barns that include residential apartments solely for ranch staff's use will also be identified within the defined Building Envelope. Equine centers or livestock training arenas comprising greater than 1,500 square feet footprint will be contained within the Building Envelope.

- 4) *Repair and Replacement.* All buildings that are permitted to be constructed hereunder may be repaired, reasonably enlarged (no more than twice original size), and replaced at their permitted location without further permission from Grantee. At least forty-five (45) days prior to the time that construction is to commence, Grantee shall be notified in writing so that its records may be updated.

c) *Conservation Practices.* Grantor recognizes the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using standard stewardship and management practices, which shall include compliance with governmental noxious weed control regulations. Standard stewardship and management practices may be established by reference to published recommendations by the following groups and associations or their successors: Colorado Cattlemen's Association, Colorado Farm Bureau, Colorado State University Extension Service Agriculture and Natural Resources, State of Colorado Department of Natural Resources, Colorado Division of Wildlife.

d) *Paving* No portion of the Property, except areas within and providing immediate access to Building Envelope facilities shall be paved or otherwise be covered with concrete, asphalt, or any other continuous sheet paving material. For purposes of this section, application of base rock and compacted gravel on roads shall not be considered to constitute 'paving'. Those existing roads that require a covering or improvement in order to ensure year-around access to agricultural facilities or animals will be excepted from this prohibition. No road for access or other purposes may be constructed, except for any unpaved road necessary to provide access to the buildings currently located on the Property or permitted

to hereafter be constructed on the Property. Any road permitted by this Paragraph and constructed after the date of this Agreement shall be constructed in a manner that does not substantially impair the Conservation Values of the Property. However, all roads shall be confined to a maximum width of fifteen (15) feet.

The parties agree that the Grantee shall have no responsibility whatever to monitor or restrict use of the existing roads whether listed herein or not. The Grantor shall have the right to erect and maintain gates across the roads but agrees to provide Grantee with a key or combination to all such gates upon which Grantor places a lock.

e) Water Resources To develop and maintain such water resources on the property as are necessary or convenient; provided, however, that the development and use of such water resources shall be compatible with the purposes of this easement to protect and preserve the natural, agricultural, aesthetic and scenic values of the property. If a water resource is developed, the disturbed area will be managed to enhance diverse, complex vegetative cover. The Grantor may construct dams or barriers that are for the development of wetlands for wildlife habitat and livestock watering.

Grantor specifically retains all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the land as owned at the time of the easement or hereafter acquired; provided, however, that no application shall be filed with the State Engineer, the Division 4 Engineer or the Division 4 Water Court by the Grantor which application would affect the property without prior consultation with the Grantee. No sale, lease or other transfer of any water right(s) appurtenant to the property shall be allowed without the written consent of the Grantee.

Furthermore, Grantor shall not give, sell, lease, encumber, mortgage, pledge or otherwise hypothecate any conditional or absolute water right(s) appurtenant on the property; this prohibition extends to appurtenant water rights (both adjudicated and unadjudicated) owned by the Grantor at the time of execution of this easement and to all appurtenant water rights acquired hereafter. Stated differently, Grantor shall take no action which might result in severance from the land of the water rights appurtenant thereto.

In addition, Grantor shall not, by direct action or inaction, cause an abandonment of all or any part of a water right appurtenant to the land to occur. Grantor shall pursue completion of any conditional water right with diligence and, if necessary, shall apply for a finding of diligence every six years on all conditional water rights. Grantor agrees to put all water rights appurtenant to the land (both adjudicated and unadjudicated) to their decreed and/or historic beneficial use(s) in order to maintain the property in the condition delineated in the Baseline Data.

f) To control predatory animals and varmints by the use of selected control techniques which techniques shall be limited so as to affect only the specific, targeted animals.

g) To utilize the property for hunting by the Grantor, members of the Grantor's family, guests, contractors and contractors' clientele of the Grantor to the extent that such is consistent with Colorado Division of Wildlife rules and regulations.

h) To utilize the property for agricultural activities including livestock grazing in a manner consistent with the conservation purposes of this Easement.

i) The Grantor reserves the right to practice selective harvesting of timber and the right to manage the forest resource toward the future resource base description contained in the management plan. Specific management practices for specific areas to achieve delineated objectives will be included in a long term management plan which will be submitted to the grantee within six months of the recording of this conservation easement. Where necessary, the expertise of consulting foresters will be sought to help determine the most appropriate plan of action on a site specific basis.

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other non-commercial domestic uses, including construction of permitted buildings and fences on the Property.

j) Soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is done by Nick R. Hughes and is solely for use on the Property. Such extraction must be in conjunction with activities permitted herein, and be accomplished in a manner which is consistent with the Conservation Values expressed in this Deed. No more than one acre of the Property may be disturbed by such extraction. This provision is intended to be interpreted in a manner consistent with § 170(h) of the Internal Revenue Code of 1986, as amended.

The right to extract soil, sand, gravel or rock is personal to Nick R. Hughes and does not run with the real property. Hughes shall reclaim the extraction area before conveying the Property to any subsequent owner.

4. Prohibited Uses and Practices. Grantor promises not to perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor hereby authorizes Grantee to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any fire, Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Deed relieves him of any obligation or restriction on the use of the Property imposed by law.

The following uses and practices, though not an exhaustive list, are inconsistent with the purpose of this easement and shall be prohibited upon or within the property:

- a) The harvesting of timber, except as provided in paragraph 3(j), above.
- b) The impairment of the natural, agricultural, wildlife, and scenic features and values within and upon the property.
- c) The establishment of any commercial, residential or industrial uses which are not specifically allowed herein.
- d) The use of motorized vehicles, including snowmobiles and all-terrain vehicles, off of existing roadways (except for agricultural management activities) which would in any way result in the degradation of the land or the wildlife habitat thereon. The term "degradation" shall mean, but not be limited to, the creation of a semi-permanent (visible for two years) or permanent track. Current uses of vehicles as identified in the Baseline Study shall be allowed to continue.
- e) *Mining.* The commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method is prohibited. Mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the Property that is not irremediably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without sixty (60) days prior written notice to 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.
- f) The dumping or accumulation of any kind of trash or refuse on the property. However, this shall not prevent the storage of agricultural products and byproducts on the property, so long as it is done in accordance with all applicable government laws and regulations.
- g) Commercial Recreational Uses Prohibited. Golf courses, airstrips, helicopter pads and any other commercial recreational activities are strictly prohibited on the Property. It is hereby acknowledged that occasional take-off and landing by private aircraft on existing access roads providing common access under terms of a deeded easement for access, or under a prescriptive easement for access to adjacent properties is permitted under those rights of access. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Paragraph 3, and shall require the advance written permission of the Grantee in its sole discretion. Use of the Property for more than "de minimis" commercial recreation activity is prohibited in accordance with §2031(c)(8)(B) of the Internal Revenue Code of 1986, as amended. The term "de minimis" shall have the same meaning as in §2031(c)(8)(B) of the Internal Revenue Code of 1986, as amended and the Treasury Regulations adopted pursuant thereto.

Alternative livestock ranching and directly associated activities conducted in accordance with Colorado Revised Statutes§35-41.5 -101 et seq. are considered 'agricultural activities' and allowed as are hunting leases with individuals or Colorado Registered Outfitters.

h) Feed Lot. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding, from leasing pasture for the grazing of livestock owned by others, and from feeding on a seasonal basis not more than 300 pairs of cattle owned by persons other than Grantor, so long as such conforms to acceptable grazing practices as defined by the agencies listed in Paragraph 3.c), above.

5. Baseline Data. Grantee acknowledges by acceptance of this easement that Grantor's historical and present uses of the property are compatible with the purposes of this easement. In order to establish the present condition of the property's natural, agricultural, wildlife, scenic and aesthetic resources, so as to be able to properly monitor future uses of the property and assure compliance with the terms hereof, Grantor shall prepare or cause to be prepared an inventory of the property's relevant features and conditions (the "Baseline Data"). The Baseline Data may include, but need not be limited to, aerial photographs, topographical maps, wildlife habitat and migration maps, measures of the quality of ground cover on grazing areas, maps indicating the extent of agricultural uses, and botanical and wildlife photographs and reports. Grantor agrees to bear all costs incurred in preparation of the Baseline Data. The parties hereto acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the property subject to this easement as of the date thereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

6. 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 forty-five (45) 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.

7. Grantee's Approval. Where Grantee's approval is required Grantee shall grant or withhold its approval in writing within forty-five (45) 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.

8. Enforcement Rights of Grantee. Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With 10 day advance notice to Grantor, Grantee or Grantee's agents may enter the Property for the purpose of inspecting for violations. Such inspections shall normally take place no more often than twice annually and shall be conducted during normal business hours. If Grantee receives information that a violation is occurring, it may inspect the property after giving Grantor reasonable notice of the inspection. Grantee shall provide its written inspection report within 30 business days of the inspection. If Grantee finds what it believes is a violation, Grantee shall give Grantor written notice of the violation and ninety (90) days to correct it, before filing any legal action except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property

In the event of a violation of any term the Grantee may institute a suit to enjoin such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants, and purposes of this easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this easement in the future. In the event of any such legal action, the prevailing party shall be entitled to an award of attorney's fees against the other party. Venue for any and all legal proceedings shall be in the Delta County District Court, Delta, Colorado.

9. Restoration. Grantor further agrees that should any prohibited activity be undertaken on the property, the Grantee shall have the right to cause the restoration of that portion of the property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by Grantor, his successors or assigns, against whom a judgment is entered. Nothing contained herein shall be construed to preclude Grantor from exhausting his legal remedies in determining whether the proposed activity to which the Grantee has objected is consistent with this easement.

10. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

11. Costs and Taxes. Grantor agrees to bear all costs (e.g. attorney fees, fax, copy and telephone charges) of preparation and recordation of this Deed of Conservation Easement in Gross and all costs of operation, upkeep, and maintenance of the property and does hereby indemnify the Grantee therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the property or on this easement.

12. Responsibilities of the Grantor and the Grantee Not Affected. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owners of the Property. Among other things, this shall apply to:

- a) Taxes. The Grantor shall continue to be solely responsible for

payment of all taxes and assessments (including homeowner's assessments and water assessments, if any) levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same. Proof of payment of property taxes and water assessments shall be provided to Grantee no later than July 1, every year.

b) Upkeep and Maintenance. The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

c) Liability and Indemnification. If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, the Grantor shall indemnify and reimburse the Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless the Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, the Grantor warrants that the Grantee is a named insured on the Grantor's property insurance policies covering the Property.

d) No Liability After Transfer. Anything contained herein to the contrary notwithstanding, Grantor shall have no obligation pursuant to this Easement where Grantor shall cease to hold any interest (present, partial, contingent, collateral or future) in the Property by reason of a bona fide transfer for full value.

13. Transfer of Easement. With the prior written consent of Grantor (which consent shall not be unreasonably withheld), and in the event of Grantee's dissolution, Grantee shall have the right to transfer the easement created by this Deed to a private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, et seq., has similar purposes, expertise and agricultural orientation and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee desires to transfer this easement to a qualified organization having similar purposes, expertise and agricultural orientation as Grantee, but Grantor unreasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) of the Internal Revenue Code of 1986, as amended or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes, expertise and agricultural orientation that agrees to assume the responsibility provided that Grantor receives notice of and an opportunity to participate in the court proceeding.

14. Transfer of the Property. Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing 20 days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed of Conservation Easement.

15. Amendment of Easement. This easement may be amended only with the written consent of the Grantee and the Grantor by an instrument duly executed and recorded in the real property records of Delta County. Any such amendment shall be consistent with the purposes of this Deed and shall comply with § 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Colorado Revised Statutes §§ 38-30.5-101, et seq.

16. Real Property Interest Value. 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 the grant. The values at the time of this grant, as illustrated in the appraisal, shall be those values used in the above- referenced formula. 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.

17. Termination of Easement. If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both the Grantor and the Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of the conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated and the Property is sold or taken for public use, then, as required by IRS Regulation § 1.170A-14(g)(6), the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. The Grantee shall use the proceeds consistently with the conservation purposes of this Deed.

18. Force Majeure. 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, negligence or intentional acts including, without limitation, fire, flood, storm, and earth movement, or from prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes as long as the management follows the intent and purposes of this conservation easement. Emergency management actions taken will be reported to Grantee within thirty days after the event.

19. Grantor's Environmental Warranty. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws. 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

20. Access. Nothing contained herein shall be construed as affording the public access to any portion of the land subject to this easement. Nothing in this easement shall be construed to preclude Grantor's right to grant public access to third parties, as appropriate. Such access shall be allowed in a reasonable manner that does not result in degradation of the property and/or disturbance of plant or wildlife habitat.

21. Grant in Perpetuity. The easement herein granted shall be a burden upon and shall run with the property in perpetuity and shall be binding upon the Grantor, his successors and assigns forever.

22. Effective Date. The easement herein granted shall take effect upon recordation in the real property records of Delta County.

23. Notices. Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to the Grantor and the Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To the Grantor:
NICK R. HUGHES
1012 County Road 265
Somerset, CO 81434

To the Grantee:

VALLEY LAND CONSERVANCY
12260 64.50 Road
Montrose, CO 81401

24. Miscellaneous.

a) The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean and include the above named Grantor and their heirs, personal representatives, executors, successors, and assigns and the above named Grantee and its successors and assigns.

b) 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 Deed of Conservation Easement in Gross and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

c) The Grantor agrees that reference to this easement will be made in any subsequent deed, or other legal instrument, by means of which they convey any interest in the property (including a leasehold interest) and that they will attach a copy of this Deed of Conservation Easement in Gross thereto.

d) The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

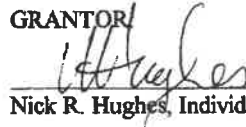
e) Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

f) 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.

g) Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

IN WITNESS WHEREOF, Grantor has executed this Deed of Conservation Easement in Gross this 28th day of December, 2000.

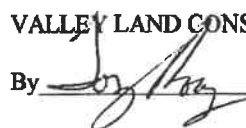
GRANTOR:


Nick R. Hughes, Individually

Acknowledged and Accepted:

GRANTEE:

VALLEY LAND CONSERVANCY

By 

Tony Hoag, Executive Director

ATTEST:

By

Bradley N. Switzer

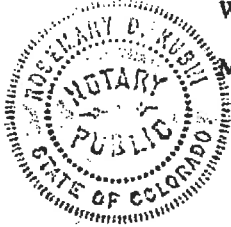
STATE OF COLORADO)

:ss

County of Delta)

The foregoing Deed of Easement in Gross was acknowledged before me this 28th day of December, 2000, by NICK R. HUGHES , individually.

Witness my hand and official seal.



My commission expires: 11/01/2003

Notary Public

STATE OF COLORADO)

:ss

County of Delta)

The foregoing Deed of Easement in Gross was acknowledged before me this 28th day of December, 2000, by TONY HOAG, as Executive Director of VALLEY LAND CONSERVANCY and by BRADLEY N. SWITZER.

Witness my hand and official seal.



My commission expires: 11/01/2003

Notary Public

VMA

EXHIBIT A

Lots 11, 12, 13, and 14, Section 13, Township 13 South, Range 93 West of the 6th Principal Meridian. Lots 4, 5, 11, and 12, Section 24, Township 13 South, Range 93 West of the 6th Principal Meridian. Lots 9 and 16, Section 14, Township 13 South, Range 93 West of the 6th Principal Meridian. Lots 1, 7, and 8, Section 23, Township 13 South, Range 93 West of the 6th Principal Meridian. Lots 9, 10, 15 and 16, Section 13, Township 13 South, Range 93 West of the 6th Principal Meridian. Lots 1, 2, 3, 6, 7, 8, 9, 10, 14, 15, and 16, Section 24, Township 13 South, Range 93 West of the 6th Principal Meridian. (SCOTT)

Lots 15, 16, 17, 18, 19 and 20, Section 18; Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 and Lots 18, 19, and 20, Section 19; Lot 13, Section 21; Lots 4 and 5, Section 28; Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, Section 29; Lots 5, 6, 7, 10, 11, 12, 13, and 14, Section 30; all in Township 13 South, Range 92 West of the 6th Principal Meridian. (HOTCHKISS)

Lots 18, 19 and 20, Section 1; Lot 16 Section 11; Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, Section 12; Lots 1, 2, 3, 4, 5, 6, 7, and 8 Section 13; Lots 1, 2, 7, 8, 10, and 15; Section 14, all in Township 13 South, Range 93 West of the 6th Principal Meridian. (VALDEZ)



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17 of 18 R 90.00 D 0.00 Delta Cty, CO Clerk & Rec

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540318 12/28/2000 03:39P B871 P451 LMcCracken
18 of 18 R 90.00 D 0.00 Delta Cty, CO Clerk & Rec

EXHIBIT "B" BUILDING ENVELOPES

New Building Envelope - A portion of the Parson's Patent (Scott) generally contained in the NW1/4SE1/4 of Section 13 containing approximately 20 acres.

Existing Parson Cabin - A 5 acre building envelope including and surrounding the Parson's cabin located in the NW1/4SW1/4, Section 24.