

020235
After Recording, Return to:
Rocky Mountain Elk Foundation
Attn: Lands and Conservation Programs
P.O. Box 8249
Missoula, MT 59807-8249

State of South Dakota
County of Fall River

Filed For Record
24th Day of December 20 02
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Deed of Conservation Easement Hot Brook Canyon, South Dakota

THIS DEED OF CONSERVATION EASEMENT ("Easement"), dated this 20 day of December, 2002, is made by Raymond T. Keale, whose address is 605 South Illinois #2, Weslaco, Texas 78596 (the "Grantor"), and the ROCKY MOUNTAIN ELK FOUNDATION, INC., a Montana non-profit corporation whose address is 2291 West Broadway, P.O. 8249, Missoula, Montana 59807-8249 (the "RMEF");

RECITALS:

A. WHEREAS the Grantor is the sole owner in fee simple of certain real property in Fall River County, South Dakota, described in the attached Exhibit A (the "Property") and approximately located on the map attached as Exhibit B, and owns the rights to identify, to conserve and protect in perpetuity, and to enhance by restoration the significant, relatively natural habitat, scenic and open values ("Conservation Values") of the Property; and

B. WHEREAS the protection of the Property's Conservation Values pursuant to this easement constitutes retaining or protecting natural or open space values of the Property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality as authorized by and recognized in the S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001); and the Grantor intends to convey this Easement under S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001), and other applicable provisions of South Dakota statutory and common law; and

C. WHEREAS the Property constitutes a valuable element of the relatively natural habitat of the Hot Brook Canyon watershed and Black Hills ecosystem, including flora, fauna, and soils; the Property provides significant habitat for elk and provides habitat for deer, bear, mountain lion, and other regional South Dakota wildlife, and the maintenance of such natural habitat helps support wildlife populations in the Black Hills ecosystem. In particular, the primary

conservation values of the Property are: crucial annual elk range, high quality wildlife habitat for numerous species of animals, Ponderosa Pine forest intermixed with prairie grass communities with numerous species of plant life, and valuable scenic, aesthetic and open space in Fall River County, South Dakota. These "Conservation Values" are of great importance to the Grantor and to the people of the State of South Dakota, and are worthy of conservation; and

D. WHEREAS the Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not interfere with or substantially disrupt the Conservation Values, including the Permitted Uses identified in Section III; and

E. WHEREAS the RMEF is organized to conserve and protect natural areas and significant wildlife habitat for ecological, scientific, charitable, and educational purposes; and the RMEF is a qualified private organization and conservation easement holder under the terms of S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001); and

F. WHEREAS the RMEF is a qualified organization as that term is defined in § 170(h)(3) of the Internal Revenue Code and is a charitable organization that meets the conditions of the Internal Revenue Code § 501(c)(3); and

G. WHEREAS, RMEF has received letters from the Internal Revenue Service dated September 18, 1984 and July 18, 1990, kept on file at the offices of RMEF, to the effect that the RMEF is a "publicly supported" organization under § 509(a)(2) of the Code and is not a private foundation within the meaning of § 509(a) of the Code; and

H. WHEREAS, Grantor and the RMEF recognize the Conservation Values of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of restrictions on the Property and with the transfer from Grantor to the RMEF of affirmative rights for the protection of the Property, intending the grant of such restrictions and rights to qualify as a "qualified conservation contribution" as that term is defined under § 170(h)(2)(c) of the Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001), and other applicable provisions of South Dakota statutory and common law, the Grantor hereby grants, conveys and warrants to the RMEF this perpetual Easement over the Property. The scope of this Easement is set forth in this Deed of Conservation Easement.

Section I: Purpose and General Effect of Easement

A. **Purpose:** It is the purpose of this Easement to protect forever the relatively natural wildlife habitat, scenic, open space, and forested conditions of the Property described herein for conservation purposes through private conservation efforts, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property.

B. **Perpetual Restrictions:** This Easement shall run with and encumber the title to the Property in perpetuity and shall bind the Grantor and all future owners, tenants, licensees, occupants and users of the Property.

C. **Permitted Uses in General:** This Easement shall confine the use of the Property to the Permitted Uses, discussed in Section III below, which are to be conducted in a manner consistent with the purposes and terms of this Easement. Any activity on or use of the Property inconsistent with the purposes or terms of this Easement or detrimental to the Conservation Values is expressly prohibited.

D. **Dedication of Property:** Pursuant to the terms of S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001), the Property conserved by this Easement is declared to be open space and natural land and wildlife habitat, and may not be converted or directed to any uses other than those provided in this Easement.

Section II: Rights of RMEF

The rights conveyed by the Grantor to the RMEF to perpetually maintain the Conservation Values of the Property in this Easement include the following:

A. **Identification and Protection:** The RMEF has the right to identify, to conserve and protect in perpetuity, and to enhance by mutual agreement the Conservation Values on the Property in the manner set forth in this Easement, subject, however, to the Grantor's reserved rights in this Easement.

B. **Access:** The general public is not granted access to the Property under this Easement. The RMEF shall have the right of immediate entry upon the Property upon reasonable prior notice to Grantor, if, in the RMEF's sole judgment, such entry is necessary to prevent immediate damage to or the immediate destruction of the Conservation Values of this Easement.

The RMEF also has the right to enter upon the Property to inspect, monitor, and enforce compliance with this Easement at reasonable times. The RMEF also has the right to enter upon the Property with advance notice to and permission from the Grantor or Grantor's agent to undertake observations or ecological studies of natural resources protected by this Easement in a manner that will not unreasonably interfere with the use of the Property by the Grantor.

C. **Conservation, Enforcement, Injunction, and Restoration:** The RMEF has the right to prevent any activity on, or use of, the Property, which is inconsistent with this Easement. The RMEF is entitled to take any legal or equitable action to prevent such activity, including, but not limited to, obtaining an injunction in a court of competent jurisdiction and requiring removal of structures or vegetation in violation of the Easement. The RMEF also has the right to enforce the

restoration of the Property to the condition that existed prior to any violation. These remedies are cumulative.

D. **Signs:** The RMEF has the right to place signs on the Property which identify the Property as being protected by this Easement. The number and location of the signs are subject to the Grantor's approval.

Section III: Permitted Uses and Practices

The following uses and practices of the Grantor are consistent with the purpose of and are permitted by this Easement. These uses and practices may not be precluded or prevented by this Easement, except when this Easement requires prior approval of an activity by the RMEF as provided in Section IV of this Easement or when such use or practice is conducted or allowed to take place in a manner which violates the terms of this Easement, poses a serious threat of material damage to the Conservation Values protected by this Easement, or constitutes a prohibited use or practice as set forth in Section V of this Easement.

A. **Residential Facilities:** One single-family residence and associated outbuildings consisting of a cabin, one-car garage, and outhouse currently exist within a 10 -acre Residential Lot Site approximately located in Exhibit B. Those structures existing at the time of the granting of the easement will be described in the Baseline Documentation referred to in Section X. The Grantor has the right to construct or place, after prior notice to RMEF, one (1) additional single-family residence in the 10-acre existing Residential Lot Site. The additional residence shall not exceed a 2500 square feet footprint or 40 feet in height. Any existing or allowed residence may be repaired or replaced with a structure of similar size in approximately the same location within the Residential Lot Site. The Grantor may also construct, reconstruct, maintain, and repair, if necessary, utilities and an access road to each residence. Any utility corridor and roadways must follow the least damaging feasible route. After prior notice to RMEF, the Grantor may place or construct as many as 3 additional accessory structures and improvements, including one two car garage for motor vehicles, sheds and greenhouses, all in the Residential Lot Site. Additional accessory structures and improvements shall not include dwelling spaces of any kind nor be used for human habitation.

Any existing or allowed residence or accessory structure may be repaired or replaced with a structure of similar size in approximately the same location within the Residential Lot Site. The Grantor may also construct, reconstruct, maintain, and repair, if necessary, utilities and an access road to each residence. Any utility corridor and roadways must follow the least damaging feasible route.

B. **Recreational Facilities:** The Grantor may not construct or place any recreational facilities on the Property.

C. **Recreational Uses:** Unless otherwise restricted herein, any recreational use that does not impact the Conservation Values, in particular wildlife and wildlife habitat, is permitted.

The following recreational uses are expressly agreed to by the parties:

1. **Hunting and Fishing:** Hunting, fishing, trapping and predator control, in a manner consistent with state and federal laws and regulations, are permitted on the Property. The parties agree and acknowledge that controlled hunting may be desirable to maintain sustainable wildlife populations consistent with the condition of the range and habitat.

D. **Ranching Facilities:** The Grantor may maintain, replace, and repair, for ranching purposes, the fences, corrals, barns and sheds, and other ranching or agricultural improvements located on the Property as of the date of this Easement, as identified in the baseline documentation referred to in Section X, provided such fence, corral, barn or shed is maintained, replaced or repaired in its original approximate size and general location and is used for a ranching purposes. If any or all of such facilities are removed or destroyed, the Grantor may replace them with similar structures of the same approximate size in the same general locations to serve the same or similar ranching purposes.

The Grantor may construct, maintain, replace and repair additional fences, corrals, barns, and sheds as may be necessary for ranching activities permitted by this Easement, without the prior approval of the RMEF. No such structure constructed, maintained, repaired or replaced for ranching purposes may be used for a dwelling place or human habitation. The Grantor may also construct, maintain, replace and repair fences along the border of the Property without prior approval of RMEF. Localized fences may be constructed as necessary to control drifting snow without prior approval of RMEF. Big game proof fences are permitted immediately around harvested crops (e.g., haystacks) or around or within the Residential Lot Site without prior approval of RMEF. Pursuant to Section V, Subsections B and R, no other big game proof fences will be constructed on the Property.

E. **Utilities:** The Grantor may construct or install utility structures and/or systems, which are necessary for the permitted ranching activities and/or existing or permitted residences. The Grantor may not grant a major utility corridor right-of-way across the Property. However, in the circumstance where eminent domain statutes apply and clear public necessity has been demonstrated to the parties, such a right-of-way may be granted by the mutual agreement of the parties.

F. **Roads:** The Grantor may maintain existing roads, and, with prior approval of the RMEF may construct new roads as necessary for the permitted uses of the Property under the terms of this Conservation Easement. Provided, however, any road shall be sited, constructed, and maintained to minimize adverse effect on the Conservation Values of the Property. Other than roads authorized in Section III Subsection A, RMEF may refuse to approve any new road which threatens to impact the Conservation Values of the Property. Any road constructed for temporary

use must be stabilized and protected from erosion and weed invasion within six (6) months after discontinued use. The Grantor may only grant right-of-way easements across the Property with the prior approval of the RMEF.

G. Range Management and Ranching Activities: The Grantor may use the Property for common or typical ranching and farming activities, including grazing, feeding, breeding, raising, and managing livestock, provided these activities do not materially jeopardize the Conservation Values. The term "livestock" includes livestock that are considered "traditional" at the time of the execution of this Easement and within the local area surrounding the Property. Traditional livestock shall not include any of the game farm animals discussed in Section V, Subsection B of this Easement.

Sound range stewardship and proper management of any domestic livestock are integral to the protection of the wildlife habitat and other Conservation Values protected by this Easement. As such, all activities affecting range health will be conducted in a manner that fosters and/or maintains the ecological function of the land and water processes including the water cycling, mineral cycling, energy flow and plant community succession. Livestock grazing shall not exceed a degree of use described as moderate by the United States Department of Agriculture - Natural Resource Conservation Service, as identified in Exhibit C, attached hereto, and shall not materially degrade or deteriorate the range and aquatic resources and wildlife and riparian habitats.. If the RMEF, in its sole discretion, decides that the grazing on the Property exceeds a moderate degree of use or range management is detrimental to the Conservation Values, the Grantor will prepare or have prepared a Grazing Management Plan ("GMP") to govern grazing activity on the Property. The GMP shall be prepared by a qualified natural resource specialist and reviewed and approved by the RMEF, as provided in Section IV. The RMEF reserves the right to have consultants, including range scientists, fisheries biologists, hydrologists, ecologists, and wildlife biologists, review the GMP and make on-site evaluations to provide recommendations to the RMEF and the Grantor.

If a GMP is required, the GMP shall be prepared within one year of the RMEF's notice that a GMP is required and shall be paid for by the Grantor. The GMP will consider the long-term health of the range resource and wildlife habitat. The GMP will describe appropriate use levels, seasons of use, kinds of livestock that will be grazing and necessary management practices. The GMP must meet all applicable state and federal laws, policies, guidelines, and regulations. Once a GMP is required, all livestock grazing taking place on the Property must comply with the GMP.

H. Division or Subdivision of the Property: Notwithstanding that the Property may have been divided or subdivided prior to this Easement, the Property subject to this Conservation Easement may only be conveyed as a single tract, the right to divide, subdivide, or take any action that creates an actual or *de facto* division or subdivision of the Property being expressly prohibited in Section V, Subsection F.

I. **Water Resources:** In accordance with applicable laws and regulations, the Grantor may maintain, enhance and develop water resources on the Property for permitted agricultural and ranching activities, domestic needs, fish and wildlife uses and private recreation. The Grantor may not sever any water rights from the Property except to legally designate those water use rights for in-stream flows. The Grantor will make reasonable efforts to ensure continuation of instream flows.

The Grantor may also carry out activities that will restore and enhance the aquatic, terrestrial, and wetland habitat for fish and wildlife use and production after prior notice of RMEF. Such activities may include stream bank stabilization, improvement to the quality and quantity of water available, and development of watering facilities and ponds, provided such activities are conducted in a manner consistent with state and federal laws and regulations and do not conflict with the intent of this Easement.

J. **Agrichemicals and Biological Controls:** The Grantor may use agrichemicals and biological controls, including but not limited to insects, fertilizers, biocides, herbicides, pesticides, insecticides and rodenticides, but only in accordance with all applicable laws and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable ranching and grazing objectives. The use of such agents shall be conducted in such a manner as to minimize any adverse effect upon the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

K. **Forest Management:** Maintenance of a healthy forest and tree cover is integral to wildlife, wildlife habitat, and water quality and the scenic and aesthetic provisions of this Easement. As such, all activities affecting the forest and tree cover will be conducted in a manner that maintains healthy forest conditions over time and sustains and perpetuates the mix of naturally occurring species in representative ages and group sizes, in accordance with sound silvicultural practices and with best management practices for the benefit of wildlife.

The Grantor may: (i) cut trees for posts and poles for use on the Property; (ii) cut and gather dead, dying and down trees for firewood for personal use on the Property; (iii) cut or prune trees and brush, which constitute a hazard to persons, property, or road; and (iv) cut trees within the Residential Lot Site.

All other proposed tree cutting, including the cutting and removal of trees to abate disease or infestation, to perpetuate a healthy forest, or to provide or enhance diverse habitat for elk and other wildlife, and any commercial timber harvesting, will be conducted in accordance with an approved Timber Management Plan ("TMP") prepared by a qualified natural resource manager or professional forester. The TMP must be approved by the RMEF, as provided in Section IV, prior to any tree cutting activity other than that listed in parts i-iii in the immediately preceding paragraph. The RMEF reserves the right to have consultants such as professional fisheries biologists, hydrologists, ecologists, wildlife biologists, etc. review the TMP and make on-site evaluations to provide recommendations to the RMEF and the Grantor.

The TMP will encompass the long-term management of the forestland to provide diverse habitat for elk and other wildlife, to perpetuate a healthy forest, to maintain scenic quality, and to abate erosion. Timber harvest activity will be undertaken at times and by methods that will have the most reasonably minimum impact on the use of the Property by wildlife. All applicable state and federal forestry laws, plans, practices, guidelines and regulations must be met. The TMP may incorporate requirements from Forest Practices Acts of other states or jurisdictions as enforceable contractual provisions between the parties.

L. **Cultivation or Farming:** The Grantor may cultivate and/or farm within the Residential Lot Sites, the introduction of any noxious or detrimental species being expressly prohibited in accordance with the provisions of Section V, Subsection E. Any cultivation or farming on the Property must have the RMEF's prior written approval, pursuant to Section IV of this Easement.

M. **Habitat Improvement:** Subject to other provisions of this Easement, the Grantor reserves the right to undertake habitat improvement projects that will enhance wildlife habitat, with an emphasis on improving the land as elk habitat. All such activities shall be undertaken in order to protect the Conservation Values of the Property. Pursuant to Section V, Subsection E, the Grantor will not introduce into the Property any plant species as defined or listed as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies. The Grantor may reseed disturbed areas with high quality, certified weed-free seed that is commonly used and that is acceptable to the natural resource agencies in South Dakota.

N. **Residual Rights:** Except as limited by this Easement, the Grantor may exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose consistent with this Easement.

Section IV: Prior Approval of Actions by RMEF

If any provision of this Easement requires the Grantor to obtain the prior approval of the RMEF before performing any activity or undertaking any use on the Property, or if the Grantor proposes to undertake any activity or use that is contemplated but not expressly addressed in Section III or Section V of this Easement, then the Grantor shall not perform that activity or undertake that use until Grantor has satisfied the notice and approval provisions of this Section. Nothing in this Section shall prohibit or limit in any manner the ability of the RMEF to obtain writs or injunctive relief relating to any violation of this Easement.

A. **Grantor's Written Notice:** Prior to the commencement of any activity or use which requires the RMEF's approval, the Grantor will notify the RMEF in writing of the activity, or use which the Grantor intends to undertake. This notice must inform the RMEF of all material aspects of such proposed activity or use. The Grantor will send such notices to the RMEF by registered or certified mail, return receipt requested, addressed to the RMEF at P.O. Box 8249, Missoula, Montana 59807-8249, Attention: Lands and Conservation Programs, or to such other address as the RMEF may designate in writing.

B. **RMEF's Response:** The RMEF shall have forty five (45) days from the date that it receives such notice, as indicated by the registered or certified return receipt, to review the proposed activity or use and to notify the Grantor of any objections that it may have to the activity or use. The objections, if any, shall be based upon the RMEF's opinion that the proposed activity or use may cause material damage to the Conservation Values and is therefore inconsistent with the purpose and/or provisions of this Easement. If in RMEF's sole opinion, the notice does not inform RMEF of all material aspects of such proposed activity or use, the RMEF's response may be a temporary objection, specifically requesting additional material information. RMEF shall then have forty five (45) days from the date it receives additional requested information, as indicated by the registered or certified return receipt, to review the proposed activity, use, or enterprise, and to notify the Grantor of any objections that it may have to the activity, or use. If, in the RMEF's judgment, the proposal set forth by the Grantor can be modified to avoid material damage to the Conservation Values and therefore conform with the purpose and provisions of this Easement, then the response shall inform the Grantor of the manner in which the proposed activity or use can be modified to be consistent with this Easement. Except as provided in Subsection C of this Section, the Grantor may commence or conduct the proposed activity or use only if it receives the RMEF's express written approval, and only in the manner explicitly proposed by the Grantor and approved by the RMEF. The RMEF will send such response to the Grantor by registered or certified mail, return receipt requested, addressed to the Grantor at 605 South Illinois #2, Weslaco, Texas 78596, or to such other address as the Grantor may designate in writing.

C. **RMEF's Failure to Respond:** If the RMEF fails to post its response to a proposal sent to it by the Grantor within forty five (45) days after it receives the proposal, then the proposed activity or use shall automatically be deemed consistent with the terms of this Easement, and the RMEF will have no further right to object to the activity, use or enterprise described in the proposal.

D. **Force Majeure:** The Grantor will not be obligated to send any prior notice to the RMEF, and the RMEF will not be entitled to bring any action against the Grantor, with respect to any prudent activity undertaken by the Grantor immediately before, during, or following such event in a good faith effort to prevent, abate, or mitigate injury to the Property from fire, flood, storm, earth movement, acts of war, and similar causes beyond the control of the Grantor. The Grantor will promptly inform the RMEF of injury to the Property caused by such events or actions.

Section V: Prohibited Uses and Practices

Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or which is likely to cause material damage to the Conservation Values is expressly prohibited. The Grantor states and agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are deemed to be inconsistent with the purposes of this Easement, and shall be prohibited.

A. **Commercial Facilities and Activities:** Any commercial activities that damage or interfere with wildlife or wildlife habitat are prohibited. Prohibited commercial uses include, but are not limited to, any restaurant, night club, campground, trailer park, bed and breakfast, motel, hotel, guest ranch, commercial swimming pool, snowmobiling, gas station, equestrian park, ski area, retail outlet or facility for the manufacture or distribution of any product.

B. **Game Farming or Game Farm Animals:** The Grantor shall not construct, conduct, or operate a game farm, or raise or hold game farm animals on the Property. Game farm animals include game farm animals and non-domestic mammals regulated or prohibited by the South Dakota legislature or the Animal Industry Board in consultation with the Game Fish and Parks Commission pursuant to S.D. Codified Laws Ann. §§ 40-3-25 through 40-3-26 (2001), inclusive, or any successor statutes and also include penned, enclosed or privately-owned caribou, black bear, grizzly bear, mountain lion, white-tailed deer, mule deer, black-tailed deer, coues deer, elk, moose, antelope, mountain sheep, mountain goat, red deer, and any other cloven-hoofed ungulate which is indigenous to South Dakota and any non-indigenous or exotic cloven-hoofed ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to South Dakota, provided however that "traditional" domestic livestock, including domestic cattle, domestic sheep, domestic goats, domestic pigs and domestic llamas are not included in the definition of game farm animals.

C. **Wildlife Harassment:** Harassment of elk or other wildlife, as defined by South Dakota laws, including S.D. Codified Laws Ann. §§ 32-20A-12 (2001) or any successor statutes, by people, vehicles or domestic animals is prohibited. Lawful hunting is not wildlife harassment.

D. **Alteration of Watercourses and Topography:** The Grantor shall not change, disturb, alter, excavate, or impair any watercourse or wetland on the Property, except as expressly permitted by Section III, of this Easement. The Grantor will not change the topography of the surface of the Property except as incidental and necessary to expressly permitted activities.

E. **Noxious and Detrimental Species.** The Grantor shall not introduce into the Property any plant species designated as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies.

F. **Subdivision:** The Grantor does not have the right to divide, subdivide, or take any action which creates an actual or *de facto* subdivision of the Property.

G. **Construction:** The Grantor shall not construct any structures or facilities except as specifically provided for in Section III.

H. **Roads:** The Grantor shall not construct any new roads except as specifically provided for in Section III, Subsections A and F.

I. **Off-Road Vehicles:** The Grantor shall not use vehicles off of existing roads and travelways in a manner that may result in significant erosion or compaction of the soil, impact on the natural appearance of the Property, damage or destruction to vegetation, or interference with use of the natural habitats by the wildlife species occurring on the Property. The parties recognize, however, that the use of off-road vehicles may be necessary in property management and retrieval of harvested big game animals, and such limited use is therefore expressly permitted, provided that all reasonable efforts are made to minimize any adverse impact of the use, consistent with the terms and intent of this Easement. Any off-road vehicle use must be consistent with the first sentence of this Subsection and with Section V, Subsection C.

J. **Commercial Feed Lot:** The Grantor shall not establish or maintain any commercial feedlot. For the purposes of this Easement, a commercial feed lot shall be defined as a permanently constructed, confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this subsection shall prevent Grantor from seasonally confining the Grantor's livestock into an area for feeding consistent with historical practices.

K. **Dumping and Deposit of Hazardous Waste:** No trash, debris, ashes, sawdust, and other non-compostable refuse may be dumped or otherwise disposed of on the Property, except that waste generated by the uses permitted in this Easement, and permitted by applicable state and federal laws. If the Grantor becomes aware of any accidental, illegal, or other placement or spilling of hazardous waste or toxic materials on the Property, the Grantor shall notify the RMEF on a timely basis.

L. **Utilities:** Other than those permitted in Section III, Subsection E, additional, non-residential and non-agricultural utility structures and systems are prohibited.

M. **Mineral Activities:** All surface or open pit exploration for extraction or removal of oil, gas, and other minerals, rock, gravel, or sand found in, on, or under the Property is prohibited. No sub-surface or other exploration or extraction of oil, gas, rock, gravel, sand, or other minerals, including the lease, sale, or other disposition of the rights to such materials, may impair or result in the destruction of the Conservation Values.

N. **Timber Harvesting:** The Grantor does not have the right to harvest timber on the Property except as specifically allowed in Section III, Subsection K.

O. **Billboards:** The Grantor shall not construct, maintain, or erect any commercial signs or billboards on the Property. Small signage may, however, be displayed to state the name of the owner and the Property and that the Property is protected by this Easement, to prohibit any unauthorized entry or use, or to advertise for the sale of the Property.

P. **Aircraft Facilities:** The Grantor shall not construct or erect any aircraft facilities or aircraft landing facilities on the Property.

Q. **Cultivation or Farming:** Farming, plowing or any type of cultivation outside of existing cultivated areas is prohibited, except that gardening for personal use and residential landscaping in the Residential Lot Site are permitted.

R. **Game Proof Fences:** Grantor shall not construct any big game proof fences, defined as any fence which cannot be crossed by elk, deer or other big game wildlife, except in the Residential Lot Site or as specifically permitted in Section III, Subsection D.

Section VI: Breach, Restoration, and Remedies

A. **Breach and Restoration:** If a violation or potential violation of any prohibition contained in Section V of this Easement or damage or potential damage to the Conservation Values associated with the Property, whether by the Grantor or by a third party, comes to the attention of the RMEF, the RMEF may notify Grantor in writing of such violation, potential violation, damage or potential damage. Upon receipt of such notice by the Grantor, the Grantor agrees to immediately cease and desist from any actions that may in any manner, potentially, possibly, or actually violate the terms or intent of this Easement and/or the prohibitions contained in Section V.

The Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including initiation of restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If the Grantor fails to take such corrective action, the RMEF may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections. The cost of such corrections, including the RMEF's expenses, court costs, and legal fees, shall be paid by the Grantor. However, in the event the Grantor, the Grantor's family, any shareholder or partner in the Property, any agent, guest or employee of the Grantor, or other persons permitted or allowed on the Property by the Grantor is determined to not be in violation of this Easement, then the Grantor's legal fees shall be paid by the RMEF. Provided, however, and notwithstanding any provision of this Easement to the contrary, the Grantor expressly agrees that if any activities are taking place on the Property which may potentially, possibly or actually violate the terms or intent of this Easement and/or the restrictions contained in Section V, the RMEF is entitled, at any time, to seek and obtain any injunctive relief or writs from a court of competent jurisdiction so as to conserve and protect the Property until there is final resolution of any dispute.

B. **Injunctive and Other Relief:** The Grantor and the RMEF further intend that should the Grantor undertake or cause to be undertaken any activity which requires the prior approval of the RMEF without obtaining the prior approval of the RMEF in the manner required by Section IV of this Easement, or undertake or cause to be undertaken any activity in violation or potential violation of the terms of this Easement, then the RMEF, at the RMEF's sole election, shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any

unauthorized activities and/or force the restoration of that portion of the Property affected by such activity to a condition similar or equivalent to the condition that existed prior to the undertaking of such unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable domestic vegetation, and/or taking such other action as the RMEF deems necessary to achieve restoration. In such case, the costs of such restoration shall be borne by the Grantor or those of its successors or assigns against whom a judgment is entered, or, in the event that the RMEF secures redress without a completed judicial proceeding, by the Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity.

C. **Actual or Threatened Non-Compliance:** The Grantor acknowledges that actual or threatened events of non-compliance under this Easement constitute immediate and irreparable harm. The RMEF is entitled to invoke the equitable jurisdiction of any court to enforce this Easement.

D. **Cumulative Remedies:** The remedies of the RMEF set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by the RMEF if there is an actual or threatened violation of this Easement.

E. **Delay in Enforcement:** Enforcement of the terms and provisions of this Easement shall be at the discretion of the RMEF. Any forbearance on behalf of the RMEF to exercise its rights hereunder in the event of any breach by Grantors or their respective heirs, personal representatives, or assigns shall not be deemed or construed to be a waiver of the RMEF's rights hereunder in the event of any subsequent breach.

Section VII: Costs and Taxes

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with South Dakota laws, including S.D. Codified Laws Ann. §§ 38-22-16 to -17 (2001) and S.D. Admin. R. 12:62:02:01, :03:01 (2002) and successor statutes and regulations. The Grantor shall pay before delinquency any and all lawful taxes, assessments, fees, and charges (collectively "taxes") levied by competent authority on the Property. The RMEF is authorized, but in no event obligated, to make or advance any payment of taxes upon 3 days prior written notice to the Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by the Grantor at the maximum rate allowed by law.

Section VIII: Indemnity

The Grantor shall hold harmless, indemnify, and defend the RMEF and the RMEF's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses,

damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Grantor's Property. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Grantor's Property by the RMEF or the RMEF's representatives or agents.

Section IX: Assignment of Easement

The RMEF may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of §170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in §170(h)(4)(a) of said Code. Any such qualified organization shall agree to enforce the conservation purposes of this Easement.

Section X: Baseline Documentation

The parties agree that the specific Conservation Values of the Property and other natural resources and development on the Property are documented in a report furnished by the Grantor to the RMEF to be kept on file at the offices of the RMEF, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property as of the effective date of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The Baseline Documentation is intended to serve as an objective baseline for monitoring compliance with the terms of this Easement. Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

In the event that range or habitat conditions significantly improve on the Property, the parties may agree to prepare an updated baseline documentation to reflect the improved conditions. The updated inventory of baseline data must be approved in writing by the parties. Upon approval by the parties, the updated baseline documentation will be used as the baseline for future monitoring and compliance with the terms of this Easement.

Section XI: Extinguishment of Development Rights

The Grantor agrees that all of the Grantor's rights or interest in all development rights, except as specifically reserved herein, are conveyed to Grantee, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield or density of the Property or any other property with regard to any land use or zoning which affects or may affect the Property. Grantee may not convey any development rights so acquired by it to any property (including the Property), entity or person and, upon execution of this Easement, those development rights are extinguished.

Section XII: Subsequent Sale, Exchange or Involuntary Conversion

The Grantor and the RMEF agree that the conveyance of this Easement gives rise to a property right, immediately vested in the RMEF. The RMEF's property right in this Easement shall be based on the condition and improvements on the Property at the time that the Easement is established, and this condition shall be documented as referred to in Section X, above. For purposes of this Section, the RMEF's property right shall be deemed to have a fair market value at least equal to the proportionate value that this Easement bears to the entire value of the Property as a whole at the time of its creation. The parties agree that such proportionate value is currently 30% of the fair market value of the Property. Should a change in conditions give rise to the extinguishment of this Easement, as provided in Treasury Regulation §1.170A-14(g)(6)(i), or extinguishment of a portion of the RMEF's rights under this Easement due to an exercise of eminent domain, a condemnation action, or an involuntary conversion of the Property or a portion of the Property, the RMEF shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time of its creation, unless otherwise provided by South Dakota law or other applicable law at the time of the of any such extinguishment, in which case such applicable law shall govern.

All interpretations of the RMEF's property rights shall follow Treasury Regulation §1.170A or its successor statutes or regulations.

In the event all or part of the Property is taken in exercise of eminent domain, or under claim of rights of eminent domain, by public, corporate, or other authority, by condemnation action or an involuntary conversion, so as to abrogate the restrictions imposed by this Easement, the Grantor shall and the RMEF may join in appropriate actions to recover the full value of the Property taken and all incidental or direct damages resulting from such taking. All reasonable expenses incurred by the Grantor and the RMEF in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between the Grantor and the RMEF in proportion to their interest in the Property, as provided in the first paragraph of this Section. If the recovered proceeds are not sufficient to reimburse all reasonable expenses incurred by the Grantor and the RMEF, the recovered proceeds shall be divided between the Grantor and the RMEF in proportion to their reasonable expenses.

The Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached thereto. The Grantor will notify the RMEF in writing of any conveyance of interest by sending written notice to the RMEF as provided in Section IV, Subsection A. The Grantor agrees to provide notice of this Easement to successor owners of interest, and to any potential purchasers or subsequent owners. In the event the Grantor elects to sell the Property, the Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.

Section XIII: Miscellaneous Provisions

A. **Partial Invalidity:** If any provision of this Easement, or the application of this Easement, or the application of this Easement to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

B. **Enforcement:** The Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of the RMEF, and that the RMEF's failure to exercise its rights under this Easement, in the event of any breach of this Easement by the Grantor, shall not be deemed or construed to be a waiver of the RMEF's rights under this Easement in the event of any subsequent breach.

C. **"Grantor" and "RMEF":** The term "Grantor," as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantor, and his heirs, personal representatives, executors, successors and assigns. The term "RMEF," as used in this Easement, and any pronouns used in place thereof shall mean the Rocky Mountain Elk Foundation, Inc., and its successors and assigns.

D. **Titles:** Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

E. **Liberal Construction:** This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with S.D. Codified Laws Ann. §§ 1-19B-56 through -60, inclusive (2001).

F. **Perpetuity of Easement:** This Easement shall run with and burden the title to the Property in perpetuity and is binding upon, and will inure to the benefit of the Grantor's and the RMEF's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as the Grantor.

G. **Governing Law:** This Easement will be construed in accordance with appropriate South Dakota laws.

H. **Entire Agreement:** This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

I. **Compliance With Law:** All uses and practices permitted by this Easement, including the Permitted Uses, will not exceed or violate but will be in full compliance with all applicable state and federal laws.

J. **Attorney's Fees and Enforcement Costs of Suit:** If the RMEF incurs attorney's fees or other reasonable costs in enforcing the terms of this Easement, those expenses shall be borne by the Grantor or those of its successors or assigns against whom a judgment is entered. In the event that the RMEF secures redress without a completed judicial proceeding, those expenses shall be borne by the Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity. However, if a judgment is entered against the RMEF in an effort to seek injunctive relief or restoration, and the Grantor, the Grantor's family, any shareholder or partner in the Property, any agent, guest or employee of the Grantor, or other persons permitted or allowed on the Property by the Grantor are held not to be in violation of this Easement, then the RMEF shall pay the Grantor's reasonable costs of suit, including reasonable attorney's fees.

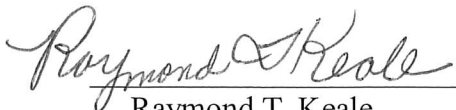
K. **Amendment:** If an amendment to or modification of this Easement is made, the amendment or modification must be in compliance with the terms of this Easement, must strengthen the protection of the Conservation Values protected by this Easement and may not affect its perpetual duration. Any amendment must be in writing, signed by both the parties, and recorded in the official records of Fall River County, South Dakota. The Grantor or, in the event of the Grantor's death, the personal representative of the Grantor may amend this Easement to be more restrictive regarding commercial recreational activities, in order to comply with the *de minimis* standard set forth in 26 U.S.C. §2031(c).

L. **Effective Date:** This Easement shall be effective when signed by all parties, and it is the intent of the parties that this Easement shall be effective in the year 2002.

IN WITNESS WHEREOF, the Grantor and the RMEF execute this Easement.

GRANTOR:

RMEF:


Raymond T. Keale

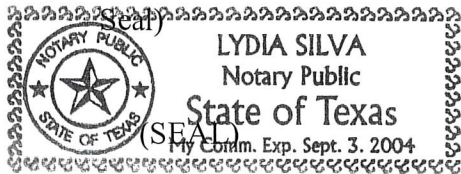
By 
Rich Lane, President and CEO

STATE OF TEXAS)
 : ss.
County of Hidalgo)

Before me Lydia Silva (here insert the name and character of the officer) on this day personally appeared Raymond T. Keale, known to me (or proved to me on the oath of Driver License or through South Dakota (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 20th day of December, 2002.

(Personalized



Lydia Silva
Notary Public for the State of Texas
Residing at 521 E. Bus. 83, Weslaco Tx 78596
My commission expires Sept 3, 2004

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on December 19, 2002, by Rich Lane, who is known to me to be the President and CEO of the Rocky Mountain Elk Foundation, Inc. for which the instrument was executed.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal on the date above written.



Annette R. Brown (signature)
Annette R. Brown (printed name)
Notary Public for the State of Montana
Residing at Missoula, Montana
My commission expires July 5, 2003

Exhibits:

- A- Legal Description of Property
- B- Map of Property
- C- NRCS Degree of Use

Exhibit A

Legal Description

Township 7 South, Range 5 East, BHM, Fall River County, South Dakota

Sec. 3: SW1/4SW1/4

Sec. 4: SE1/4SE1/4

Sec. 9: NE1/4; N1/2SE1/4; SE1/4NW1/4

Sec. 10: W1/2W1/2; SE1/4NW1/4; SW1/4NE1/4; N1/2SE1/4SW1/4 and
SW1/4SE1/4SW1/4 lying north of the north county highway right of way
line, according to the plat thereof recorded in Book 19 of Plats, page 39A

Exhibit B
Hot Brook Canyon
Conservation Easement
Fall River County, South Dakota

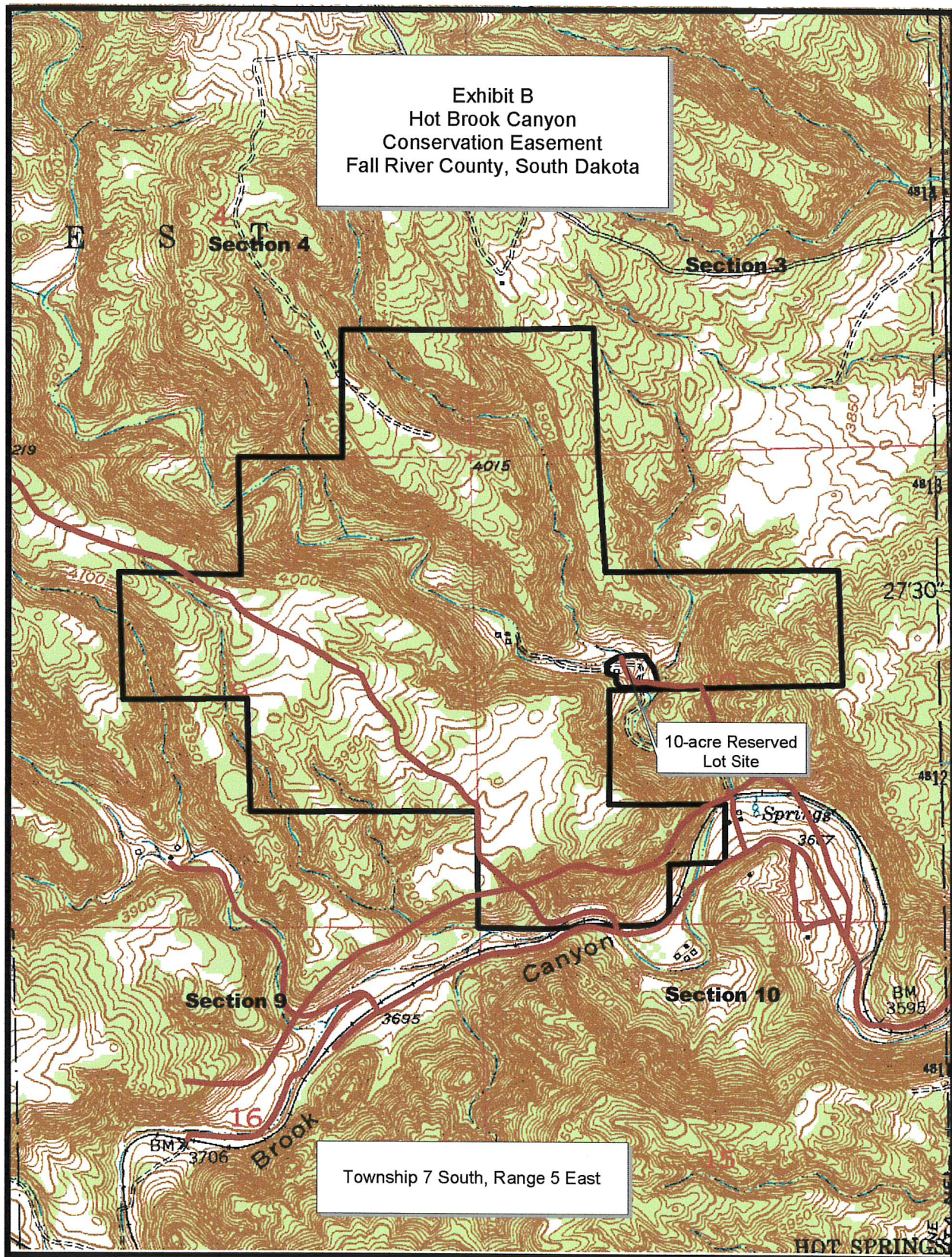


Exhibit C

NRCS Degree of Use

UNITED STATES DEPARTMENT OF AGRICULTURE
Soil Conservation Service

MT-JS-WS-502
RANGE (Rev. July 1986)

Guide to Degree of Use

<i>Degree of Use</i>	<i>Description</i>
Unused 0 percent	No livestock use.
Slight 1-20 percent	Practically undisturbed. Only choice areas and Choice forage grazed.
Moderate 21-40 percent	Most of the accessible range shows grazing. Little or no use of poor forage. Little trailing to grazing.
Full (<i>This or less Use is Proper Use</i>) 41-50 percent	All fully accessible areas are grazed. Major sites have key forage species properly utilized. Overused areas less than 10 percent of pasture area.
Close 51-60 percent	All accessible range plainly shows use and major sections are closely cropped. Livestock forced to use much poorer forage.
Severe 61-80 percent	Key forage species almost completely used. Low-value forage carrying grazing load. Trampling damage is widespread in accessible area.
Extreme 81-100 percent	Range appears stripped of vegetation. Key forage species are weak from continual grazing of regrowth. Poor quality forage closely grazed.

1. Determine the degree of use at or near the end of the grazing period.
2. Proper use determination is based on key species on major sites, not total vegetation.
3. When properly grazed, the vegetation left will supply adequate cover for soil protection and will maintain or improve the quantity and quality of desirable vegetation.

Proper use of Annual Growth Depends on SEASON OF USE:

Spring Use	(Moderate)
Summer and Early Fall Use	(Full)
Late Fall and Winter Use	Dormant season (Close)

Remarks: