

PAGOSA AREA WATER AND SANITATION DISTRICT)
)
ARCHULETA COUNTY) S.S.
)
STATE OF COLORADO)

NOTICE OF REGULAR MEETING

NOTICE IS HEREBY GIVEN that a Regular Meeting of the Board of Directors of the Pagosa Area Water and Sanitation District (PAWSD) has been scheduled for Thursday September 14, 2023 at 5:00 p.m. The Regular Meeting will be held at 100 Lyn Avenue, Pagosa Springs, Colorado.

Proposed Agenda is as follows:

Regular Meeting

1. Call to Order
2. Roll Call
3. Approval of Minutes – 08/24/2023 Regular Meeting Minutes
4. Public Comment
5. Board Training with PAWSD Attorney
6. Consideration of Agenda Approvals
7. Consideration of 4160 CR 200-W Diamond X LLC Water Connection
8. Consideration of 5053 CR 200 Fourmile Ranch Inclusion
9. Consideration of Annual Inclusion Date Cutoff of September 1st
10. Consideration of Weber Lease Agreements
11. Discussion on SJWCD Meeting
12. Consideration of Running Iron Ranch 5 acres
13. Consideration of 21-acre Running Iron Western Parcel
14. Consideration of Visionary Amendment Agreement
15. Manager Talking Points
16. Any other Business Brought before the Board will be Duly Considered

PAGOSA AREA WATER AND SANITATION DISTRICT

By /s/ Justin Ramsey
For the Board of Directors

SEAL



From: Erik Potter <john.erik.potter@gmail.com>
Sent: Thursday, August 31, 2023 7:01 PM
To: Cyndi Foster <cyndi@PAWSD.org>
Subject: Fwd: Request for Sept 14 Board Meeting

Resending due to wrong email address

From: **Erik Potter** <john.erik.potter@gmail.com>
Date: Thu, Aug 31, 2023 at 6:50 PM
Subject: Request for Sept 14 Board Meeting
To: <cindi@pawsd.org>
Cc: Joe Stewart <joestewart081053@gmail.com>, Tracey Mosher <traceymosher@gmail.com>, Joyce Farrow <joyceefarrow@gmail.com>, <kalei@janncpitcher.com>

Hello, Cindi

We would like to request a time slot on the September 14th board meeting on the subject of "the W-Diamond-X Ranch Meter Connection"

Discussion Points

- 16 months and no water meter - \$16,020 invested with PAWSD to date
 - Discussion on water meter placement in an easement on Mark Wilsey's property
 - Discussion on Snowball Road mainline extension
- Mainline cost share with John McUlley and Kalei Pitcher
- Guarantee from BoD that our costs won't increase based on delays caused by PAWSD

Expected Outcomes

1. Get a committed date for meter installation
2. Get a commitment from PAWSD on a service line installation of mainline installation

I'd like to note that we did call in to get on the board agenda for August, but it was left off accidentally. We only found this out after waiting through 3-hours of the board meeting, which, while interesting, was a time commitment, I drove from Durango. As a final note, there's a chance this will get resolved when we meet with Justin Ramsey on September 9th. If it isn't resolved, it really needs to escalate to the board level so a decision can be made, so we would appreciate your consideration of our request to discuss this with the board.

Thanks sincerely,
Erik

Erik Potter
john.erik.potter@gmail.com | ☎ 970.903.2006 mobile

!!WARNING!! This message originated outside the organization. Consider whether it is legitimate before responding, opening attachments or activating links.

Kalei Pitcher 4570 CR 200

Fourmile
Ranch 5053
CR 200

W Diamond X, LLC
4160 CR 200

County
Road 200

Approximate
Water
Mainline

Mark Wilsey
4070 CR 200

Bert Hyde
3840 CR 200

MP
4

2

DEDICATION OF EASEMENT

Mark and Linda Wilsey, (the Grantor) are the owners of a parcel of land situated in Archuleta County, Colorado, as described in Exhibit A attached. The Grantor wishes to dedicate a portion of land in Exhibit A as easements for public water facility. The easement property is described in Exhibit A attached.

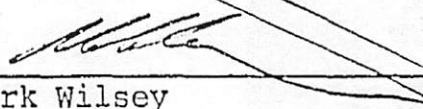
Therefore, for and in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, bargains, sells and conveys to the Pagosa Area Water & Sanitation District (the District), whose address is 100 Lyn Avenue - Pagosa Springs, CO 81147, its successors, and assigns, certain non-exclusive easements to construct, lay, maintain, alter, repair, re-lay, replace, reconstruct, add to, use, operate and remove such utility systems as the District may from time to time deem desirable or necessary as authorized by present or future law, including but not limited to water ditches, drains, pipes, mains and laterals and other appurtenances on, over, under and through the property located in Archuleta County, Colorado, as described in Exhibit A attached. The easement property is subject to clearing and grading.

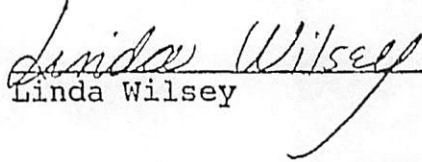
The easement granted hereby is and will be appurtenant to all lands, easements, and property owned or to be acquired by the District in Archuleta County, Colorado.

The District at all times shall have the right of ingress and egress upon the easement property and to and from the easement property upon and over contiguous lands of the Grantor on strips of land to be designated by the Grantor and the District for the purpose of exercising all rights herein granted. The District shall restore the easement property to its original condition in the event of its use of such easement property.

To have and to hold said easements unto the District, its successors and assigns, without interruption, so long as the same shall be used or deemed required or useful by the District for the purposes aforesaid.

In witness whereof, the Grantor has executed this Dedication of Easements this 19 day of October, 1994.


Mark Wilsey



Linda Wilsey

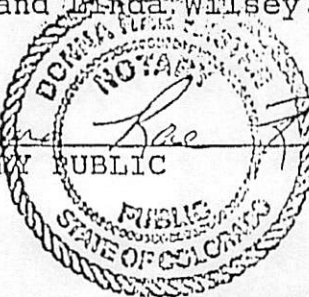
STATE OF COLORADO)

COUNTY OF ARCHULETA)

SS

The foregoing instrument was acknowledged before me this 19th day of October, 1994, by Mark and Linda Wilsey.
Witness my hand and official seal.


NORTARY PUBLIC


My Commission Expires 10/29/97

WILSEY PROPERTY

EXHIBIT A

MARK AND LINDA WILSEY PROPERTY

A tract of land lying and being in the NE1/4NW1/4 of Section 31, township 36 North, Range 1 West, N.M.P.M., being more particularly described as follows:

BEGINNING at the Southwest Corner of said NE1/4NW1/4,
Thence North 2 degrees 14' West, 798.76 feet;
Thence South 41 degrees 12' East 168.50 feet;
Thence along the arc or a curve to the right, with a radius
of 739.77 feet, a distance of 99.85 feet;
Thence South 33 degrees 28' East, 395.10 feet; along the arc
of a curve to the left with a radius of 504.65 feet, a
distance of 197.44 feet;
Thence South 55 degrees 53' East, 166.58 feet;
Thence South 87 degrees 20' West, 634.80 feet to the point of
beginning.

Together with an easement for the purpose of installation and
maintenance of a water transmission line, being a strip of land
20 feet in width, measured inward from and adjacent to the entire
perimeter of the above described tract of land. ~~EXCEPT WHERE SHOWN OTHERWISE~~
BUILDINGS EXIST ON SAID 20 FT. EASEMENT,

From: FourMile Ranch <fourmileranch.4mr@gmail.com>

Sent: Monday, August 28, 2023 2:06 PM

To: Renee Lewis <renee@PAWSD.org>

Cc: Marlo Counsell <Marlo@PAWSD.org>

Subject: Re: Fourmile Ranch Water Rights

Good Afternoon,

In regard to water rights, after the meeting Thursday the understanding is that the district will require water rights to be shared or given to complete this project.

The McCauley's do not wish to share or give water rights to move forward.

Please let me know if that is the only option, and if it is we will need to close the process.

Thank you

Shannan Davison

Project Manager Four Mile Ranch

FourMileRanch.4MR@gmail.com

469-426-5586

On Mon, 28 Aug 2023 at 13:11, Renee Lewis <renee@pawsd.org> wrote:

Hello,

Following PAWSD Board direction during the 8/24/23 meeting and pursuant to 5-11-1(C)(8) of the PAWSD Rules & Regulations, please provide a complete written description of all water rights associated with the property that is being petitioned for inclusion. Please contact me with any questions and I will copy Marlo on any and all correspondence.

Thank you,

Renee

!!WARNING!! This message originated outside the organization. Consider whether it is legitimate before responding, opening attachments or activating links.

**ORDER BY BOARD OF DIRECTORS OF THE
PAGOSA AREA WATER AND SANITATION DISTRICT FOR INCLUSION**

WHEREAS, there was filed with the Board of Directors of the Pagosa Area Water and Sanitation District a duly acknowledged Petition, a copy of which is attached hereto as Exhibit A, and incorporated herein by this reference, constituting one hundred percent (100%) of the fee owner of the real property described in the Petition, and requesting that the Board of Directors of the District include such property within the Pagosa Area Water and Sanitation District, for water service; and

WHEREAS, such Petition was heard at an open meeting of the Board of Directors of the District on August 24, 2023, at the hour of 5:00 p.m., at the regular meeting place, 100 Lyn Ave, Pagosa Springs, Colorado, after publication of notice of the filing of such Petition, the place, time and date of such meeting, and the names of the Petitioner in the Pagosa Springs Sun on August 17, 2023, a copy of the proof of publication is attached hereto as Exhibit B, and incorporated herein by this reference; and

WHEREAS, the subject property is capable of being served by District facilities; and

WHEREAS, it is deemed to be in the best interests of the District and the taxpaying electors thereof that said Petition be granted subject to the terms and conditions outlined in the Petition attached hereto; and

IT IS THEREFORE ORDERED that such Petition be granted as to the real property described therein, subject to the terms and conditions outlined in the Petition and to the rules and regulations of the District; that the boundaries of the Pagosa Area Water and Sanitation District shall be enlarged by the inclusion of the real property described in the Petition; and that the Clerk of the District Court of Archuleta County, Colorado, in which Court an Order was entered establishing this District, be requested to enter an Order that the real property described in the Petition be included within the District, for water purposes.

I certify that the foregoing Order was unanimously passed at a meeting of the Board of Directors of Pagosa Area Water and Sanitation District, duly called and held on September 14, 2023, at the hour of 5:00 p.m., and that the undersigned is the duly acting and authorized Secretary of Pagosa Area Water and Sanitation District.

Secretary

2023
PETITION FOR WATER INCLUSION

IN THE MATTER OF PAGOSA AREA WATER AND SANITATION DISTRICT

TO THE BOARD OF DIRECTORS OF THE DISTRICT:

The undersigned Petitioner(s), being the fee owner of 100% of the real property hereinafter described, hereby prays that such property be included within the Pagosa Area Water and Sanitation District, as provided by law, and for cause, states:

1. That such property is capable of being served with facilities of the District.
2. That assent to the inclusion of such property in the District is hereby given by the undersigned, who constitutes the fee owner of 100% of such property.
3. That there shall be no withdrawal from this Petition after consideration by the Board, nor shall further objections be filed thereto by the Petitioner(s).
4. That the inclusion of such property into the District shall be subject to any and all terms and conditions established by the Board and accepted by Petitioner(s), and to all duly promulgated rules, regulations and rates of the District.
5. That the property to be included is for water purposes only.
6. Administrative Cost: Minimum of \$1,000 Date Paid: 6-1-2023
7. Total Number of Equivalent Units: 7 X \$4,546 = \$ 31,822
8. That the property owned by Petitioner(s) and sought to be included in the District is described as follows:
9. The petitioner for inclusion shall be responsible for payment of the Fees (within 7 days of the invoice date), per equivalent unit.

See Exhibit A attached hereto and incorporated herein by reference.

PETITIONER:

SIGNED ON NOTARY PAGE

Address: _____

By: _____

Date: _____

Print Name: _____

2023
PETITION FOR WATER INCLUSION

PETITIONER:

JONATHAN MCCAULEY

By: [Signature]

Print Name: Jonathan McCauley

Address: 1785 Terra Bella Dr
Westlake, TX 76262

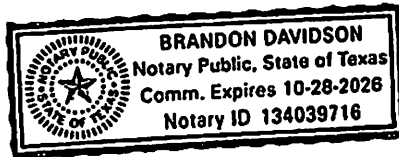
Date: _____

STATE OF TEXAS)
~~COLORADO~~) ss.
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 1st day of
June, 2023 by JONATHAN MCCAULEY as N/A of
NA.

Witness my hand and official seal.

My commission expires: 10-28-2026



Notary Public [Signature]

Exhibit A

TRACT I:

Township 36 North, Range 1 West, N.M.P.M., Archuleta County, Colorado:

Section 30: Lot No. Four (4)

Section 31: Lot No. One (1)

LESS AND EXCEPT that tract of land conveyed to Kingsbury Pitcher and Charity Jane Pitcher by Warranty Deed recorded February 19, 1985 as Reception No. 129584, and that tract of land conveyed to Mark E. Wilsey and Linda T. Wilsey by Quit Claim Deed recorded December 1, 1987 as Reception No. 0152045.

ALSO LESS AND EXCEPT that tract of land conveyed to Alan Farrow and Joyce Farrow by Warranty Deed recorded February 14, 2008 as Reception No. 20801107.

-and-

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 24: SE1/4

Section 25: E1/2 and E1/2W1/2

LESS AND EXCEPT that tract of land conveyed to Kingsbury Pitcher and Charity Jane Pitcher by Warranty Deed recorded February 19, 1985 as Reception No. 129584.

TRACT II:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 23: SE1/4NE1/4

Section 24: W1/2NE1/4; E1/2NW1/4 and SW1/4NW1/4

TRACT III:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 36: NE1/4 and E1/2NW1/4

TOGETHER WITH that tract of land conveyed to Jacob W. Hershey by Warranty Deed recorded April 10, 1981 in Book 179 at Page 123.

LESS AND EXCEPT that tract of land conveyed to Alan Farrow and Joyce Farrow by Warranty Deed recorded February 14, 2008 as Reception No. 20801107.

ALSO LESS AND EXCEPT that tract of land to be conveyed to Amie Rodnick and Lawrence Mark Smith pursuant to Agreement recorded December 28, 2007 as Reception No. 20711758.

TRACT IV:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 11: N1/2SE1/4

Section 12: N1/2 and N1/2S1/2

TRACT V:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 11: SE1/4SE1/4

Section 12: S1/2S1/2

Section 13: S1/2NW1/4; NW1/4NW1/4; NE1/4 and N1/2SE1/4

Section 14: NE1/4NE1/4

ST / st

Colorado Title & Closing Services, LLC

Serving All of Colorado
**ISSUING AGENT FOR
CHICAGO TITLE INSURANCE COMPANY**

Prepared for:
**JANN C. PITCHER REAL ESTATE
2261 Eagle Dr
Pagosa Springs, CO 81147**

Attention:
AMY JOHNSON / KATHY VEGA

Copies to:
**PAGOSA LAND COMPANY / MATT FORD / FRONT DESK
FOURMILE RANCH LLC., A TEXAS LIMITED LIABILITY
COMPANY
AMIE RODNICK and LAWRENCE MARK SMITH**

Issuing Office:
**456 Lewis Street P.O. Box 334
Pagosa Springs, CO 81147
Phone: (970) 264-4178
Fax: (970) 264-4775
Title Examiner:
Sara Townsend
stownsend@coloradotitleservices.com
(970) 375-5907
Closing Officer:
Tracy Teran
tteran@coloradotitleservices.com
(970) 375-5903
Closing Assistant:
Tina Allred
tallred@coloradotitleservices.com**

SCHEDULE A

	<u>POLICY LIABILITY</u>	<u>PREMIUM CHARGES</u>
Owner's Policy ALTA (06/17/2006)	\$550,000.00	\$1,710.00
Copies of Documents and Plat		\$50.00
Loan Policy ALTA (06/17/2006)		\$0.00
Tax Certification		\$25.00
	Total Due	\$1,785.00

- Effective date: **October 17, 2022 at 5:00 PM**
- Policy or Policies to be issued:
Owner's Policy ALTA (06/17/2006)
Proposed Insured: **FOURMILE RANCH LLC., A TEXAS LIMITED LIABILITY COMPANY**

Loan Policy ALTA (06/17/2006)
Proposed Insured:
- Title to the **FEE SIMPLE** estate or interest in said Land is at the effective date hereof vested in:

AMIE RODNICK and LAWRENCE MARK SMITH

4. The Land referred to in this Commitment is located in the County of Archuleta, State of Colorado and described as follows:

A tract of land located in the S1/2NE1/4 and the N1/2SE1/4 of Section 36, Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado, being more particularly described as follows, to wit:

Assuming that the North line of said NE1/4 of Section 36 bears North 89° 17' 30" West, then, BEGINNING at the Northwest Corner of the Tract herein described, whence the Northeast Corner of said Section 36 bears North 45° 49' 46" East, 2734.24 feet distant;

Thence North 88° 05' 16" East, 1696.96 feet to the Northeast Corner of the Tract herein described, a point on the West line of that Tract of land described in Book 179 at Page 124 of the records in the office of the Archuleta County Clerk and Recorder;

" along the West line of said Tract (Book 179, Page 124) the following courses and distances:

(1) South 11° 20' 06" East, 52.48 feet;

(2) South 11° 09' 48" East, 349.18 feet;

(3) South 14° 59' 52" East, 227.10 feet;

(4) South 20° 52' 34" East, 114.87 feet;

(5) South 28° 20' 41" East, 97.91 feet to a point on the boundary of that certain Tract of land described in Book 179 at Page 123 of the records in the office of Archuleta County Clerk and Recorder;

" along the boundary of said Tract (Book 179, Page 123) the following courses and distances:

(1) South 42° 46' 01" East, 75.04 feet and

(2) South 78° 49' 01" East, 99.29 feet to the East 1/4 Corner of said Section 36;

" continuing along the boundary of said Tract (Book 179, Page 123), South 01° 31' 20" East, 247.62 feet to the Southeast Corner of the Tract herein described;

" along the South boundary of said Tract (Book 179, Page 123), North 85° 51' 31" West, 2082.52 feet to the Southwest Corner of the Tract herein described;

" North 00° 07' 35" East, 921.75 feet to the point of beginning.

TOGETHER WITH a non-exclusive access and utility easement for the purposes of ingress, egress and the installation and maintenance of public utility lines as more particularly described in Instrument recorded December 28, 2007 a Reception No. 20711758 and as described in Judgement and Decree Quieting Title, Section B-I, recorded January 20, 2022 as Reception No. 22200388.

SCHEDULE B - SECTION 1
REQUIREMENTS

The following requirements must be met:

- (1.) Pay the agreed amounts for the interest in the Land and/or for the mortgage to be insured.
- (2.) Pay us the premiums, fees and charges for the policy.
- (3.) The following documents satisfactory to us must be signed, delivered and recorded.
- (4.) A Certificate of Taxes Due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent.

NOTE TO BUYERS AND LENDERS: Be aware!!! Online banking fraud is on the rise!!!

We will send wire instructions to you **ONLY** out of the following bank:

***** **First SouthWest Bank Durango Escrow** *****

If you receive wire instructions naming any other bank contact your closing officer **immediately**.

Your closing officer is: **Tracy Teran (970) 375-5903**

- A. WARRANTY DEED from AMIE RODNICK and LAWRENCE MARK SMITH to FOURMILE RANCH LLC., A TEXAS LIMITED LIABILITY COMPANY.
- B. Duly executed STATEMENT OF AUTHORITY pursuant to the provisions of Section 38-30-172, C.R.S. for FOURMILE RANCH LLC., A TEXAS LIMITED LIABILITY COMPANY, disclosing the name of the entity, and the name(s), address and position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property.

NOTE: If Colorado Title & Closing Services, LLC is to prepare the above required instrument, a copy of the operating agreement must be submitted to the company for review.

SCHEDULE B – SECTION 1, continued
REQUIREMENTS FOR ISSUANCE OF ENDORSEMENTS

OWNER

Exception number 6 herein will be modified on the owners policy to be issued to show that the current years real estate taxes are not yet due or payable and prior years real estate taxes have been paid upon receipt of a Certificate or Statement of Taxes Due from the County Treasurer and upon verification that all outstanding real estate taxes have been paid.

The above is subject to payment of the premiums as disclosed on Schedule A herein.

SCHEDULE B - SECTION 2
EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:

1. Any facts, rights, interests or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or materials heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by the Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) ditches and ditch rights; water rights, claims or title to water; (d) all interest in oil, gas, coal and other mineral rights severed by predecessors in Title and any and all assignments thereof or interests therein; whether or not the matters excepted under (a), (b), (c) or (d) are shown by the Public Records.
8. All rights to any and all minerals, ore and metals of any kind and character, and all coal, asphaltum, oil, gas and other like substances in or under said land, the rights of ingress and egress for the purpose of mining, together with enough of the surface of the same as may be necessary for the proper and convenient working of such minerals and substances, as reserved in Patent from the State of Colorado of record.
9. Terms, agreements, provisions, conditions and obligations as contained in Agreement, between Terese Tarlton Hershey and Amie Rodnick, Lawrence Mark Smith, Zane Rodnick-Smith and Max Rodnick-Smith, recorded December as Reception No. [20711758](#).
10. Easement, and the terms, agreements, provisions, conditions and obligations as contained therein as set forth in Right-of-Way Grant from Amie Rodnick, Lawrence M. Smith, Zane Rodnick-Smith, Max Rodnick-Smith and Terese T. Hershey to SourceGas Distribution LLC, recorded January 12, 2009 as Reception No. [20900204](#).
11. Terms, agreements, provisions, conditions and obligations as contained in Driveway Easement, Cost Sharing and Access Easement, recorded February 25, 2022 as Reception No. [22201135](#).
12. Easement, as to that portion burdening subject property, as described in instrument from Driveway Easement, Cost Sharing and Access Easement, recorded February 25, 2022 as Reception No. [22201135](#) and as described in Judgment and Decree Quietening Title recorded January 20, 2022 as Reception No. [22200388](#).

- Note 1: Colorado Division of Insurance Regulation 8-1-2, Section 5, Paragraph H, requires that "Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owner's policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed". Provided that Colorado Title & Closing Services, LLC, conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception No. 5 in Schedule B-2 will not appear in the Owner's Title Policy and Lender's Title Policy when issued.
- Note 2: Colorado Division of Insurance Regulation 8-1-2, Paragraph M of Section 5, requires that prospective insured(s) of a single family residence be notified in writing that the standard exception from coverage for unfiled Mechanic's or Materialman's Liens may or may not be deleted upon the satisfaction of the requirement(s) pertinent to the transaction. These requirements will be addressed upon receipt of a written request to provide said coverage, or if the Purchase and Sale Agreement/Contract is provided to the Company then the necessary requirements will be reflected on the commitment and may include, but are not limited to:
- A. The Land described in Schedule A of this commitment must be a single family residence, which includes a condominium or townhouse unit.
 - B. No labor or materials may have been furnished by mechanics or materialmen for purpose of construction on the Land described in Schedule A of this Commitment within the past 13 months.
 - C. The Company must receive an appropriate affidavit indemnifying the Company against unfiled mechanic's and materialmen's liens.
 - D. Any deviation from conditions A through C above is subject to such additional requirements or information as the Company may deem necessary, or, at its option, the Company may refuse to delete the exception.
 - E. Payment of the premium for said coverage.
- Note 3: The company will not issue its policy or policies of title insurance contemplated by this commitment until it has been provided a Certificate of Taxes due or other equivalent documentation from the County Treasurer or the County Treasurer's authorized agent; or until the Proposed Insured has notified or instructed the company in writing to the contrary. Furthermore, the following disclosures are hereby made pursuant to C.R.S. §10-11-122:
- (i) The subject real property may be located in a special taxing district;
 - (ii) A certificate of taxes due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent; and
 - (iii) Information regarding special districts and the boundaries of such districts may be obtained from the County Commissioners, the County Clerk and Recorder, or the County Assessor.
- Note 4: If the sales price of the subject property exceeds \$100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of C.R.S. §39-22-604.5 (Non-resident withholding)
- Note 5: Pursuant to C.R.S. §10-11-123 Notice is hereby given:
- (a) If there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate then there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
 - (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.
- Note 6: Effective September 1, 1997, C.R.S. §30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one-half inch. The clerk and recorder may refuse to record or file any document that does not conform.

Note 7: Our Privacy Policy is attached to this commitment.

Note 8: Pursuant to C.R.S. §38-35-125 and Colorado Division of Insurance Regulation 8-1-2 (Section 5), if the parties to the subject transaction request us to provide escrow-settlement and disbursement services to facilitate the closing of the transaction, then all funds submitted for disbursement must be available for immediate withdrawal.

Note 9: C.R.S. §39-14-102 requires that a real property transfer declaration accompany any conveyance document presented for recordation in the State of Colorado. Said declaration shall be completed and signed by either the grantor or grantee.

Note 10: Pursuant to C.R.S. §10-1-128 (6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

Note 11: Colorado Division of Insurance Regulation 8-1-3, Paragraph C. 11.f of Section 5 requires a title insurance company to make the following notice to the consumer: "A closing protection letter is available to be issued to lenders, buyers and sellers"

Note 12: C.R.S. §38-35-109 (2), 1973, requires that a notation of the purchaser's legal address, (not necessarily the same as the property address) be included on the face of the deed to be recorded.

Note 13: Regulations of County Clerk and Recorder's offices require that all documents submitted for recording must contain a return address on the front page of every document being recorded.

Note 14: Pursuant to instrument recorded July 7, 1976 as Reception Number 401417 your property may or may not be in a Geological Hazard Area. It is the responsibility of the insured to make that determination. Note 14 only applies to properties in La Plata County.

Notwithstanding anything to the contrary in this Commitment, if the policy to be issued is other than an ALTA Owner's Policy (6/17/06), the policy may not contain an arbitration clause, or the terms of the arbitration clause may be different from those set forth in this Commitment. If the policy does contain an arbitration clause, and the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

Nothing herein contained will be deemed to obligate the company to provide any of the coverages referred to herein unless the above conditions are fully satisfied.



Privacy Policy Statement

This notice is being provided on behalf of Colorado Title & Closing Services; Affiliates: Colorado Land Title Co. Inc, CLX Exchange Accommodators Inc, Rocky Mountain Escrow Inc and La Plata Abstract Co. dba Colorado Abstract and Title Services. It describes how information about you is handled and the steps we take to protect your privacy. We call this information "customer data" or just "data". If your relationship with us ends, we will continue to handle data about you the same way we handle current customer data.

Protecting Customer Data

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to customer data about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees to ensure that your information will be handled responsibly and in accordance with our privacy policy. We require our employees to keep the data secure and confidential.

Information We Collect

In the course of our business some of the customer data we collect may be nonpublic personal information about you from the following sources:

- Information we receive from you or your authorized representative on applications or other forms;
- Information about your transactions with us, our affiliates, or others;
- Information we receive from our internet web sites;
- Information we receive from the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others;
- Information we receive from consumer or other reporting agencies; and
- Information from lenders and third parties involved in your transaction.

We maintain safeguards to protect your customer data from unauthorized access or intrusion. We limit access to your customer data only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Use of Information

We may provide your customer data to various individuals and companies, as permitted by law, without obtaining your prior authorization. Disclosures may include, without limitation, the following:

- To our affiliates and/or successor in interest;
- To agents, brokers, lenders or representatives to provide you with services you have requested;
- To third-party contractors or service providers who provide services or perform marketing or other functions on our behalf;
- To others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest; and
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose data as permitted or required by law, for example:

- To law enforcement officials;
- In response to subpoenas or a government investigation;
- To regulators and the Insurance Companies we represent; or
- To prevent fraud.

Links to Other Websites

Our websites contain links to websites that are provided and maintained by third parties and that are not subject to our Privacy Policy Statement. Please review the privacy policy statements on those websites. We make no representations concerning and are not responsible for any such third party websites or their privacy policies or practices.

Changes to this Privacy Policy Statement

This Privacy Policy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Policy Statement, we will post a notice of such changes on our website. The effective date of the Privacy Policy Statement, as stated below, indicates the last time this Privacy Policy Statement was revised or materially changed.



Chicago Title Insurance Company

COMMITMENT FOR TITLE INSURANCE

Issued by



"Trusted Since 1946"

Agent For
Chicago Title Insurance Company

Chicago Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Issued By:

COLORADO TITLE & CLOSING SERVICES, LLC
970 Main Avenue (P.O. Box 3389)
Durango, CO 81302
(970) 247-5464
Fax: (970) 247-0105

As Agent

Seaton

Countersigned:

Authorized Signatory

CHICAGO TITLE INSURANCE COMPANY



By:

Robert M. Faria

President

ATTEST

John C. [Signature]

Secretary

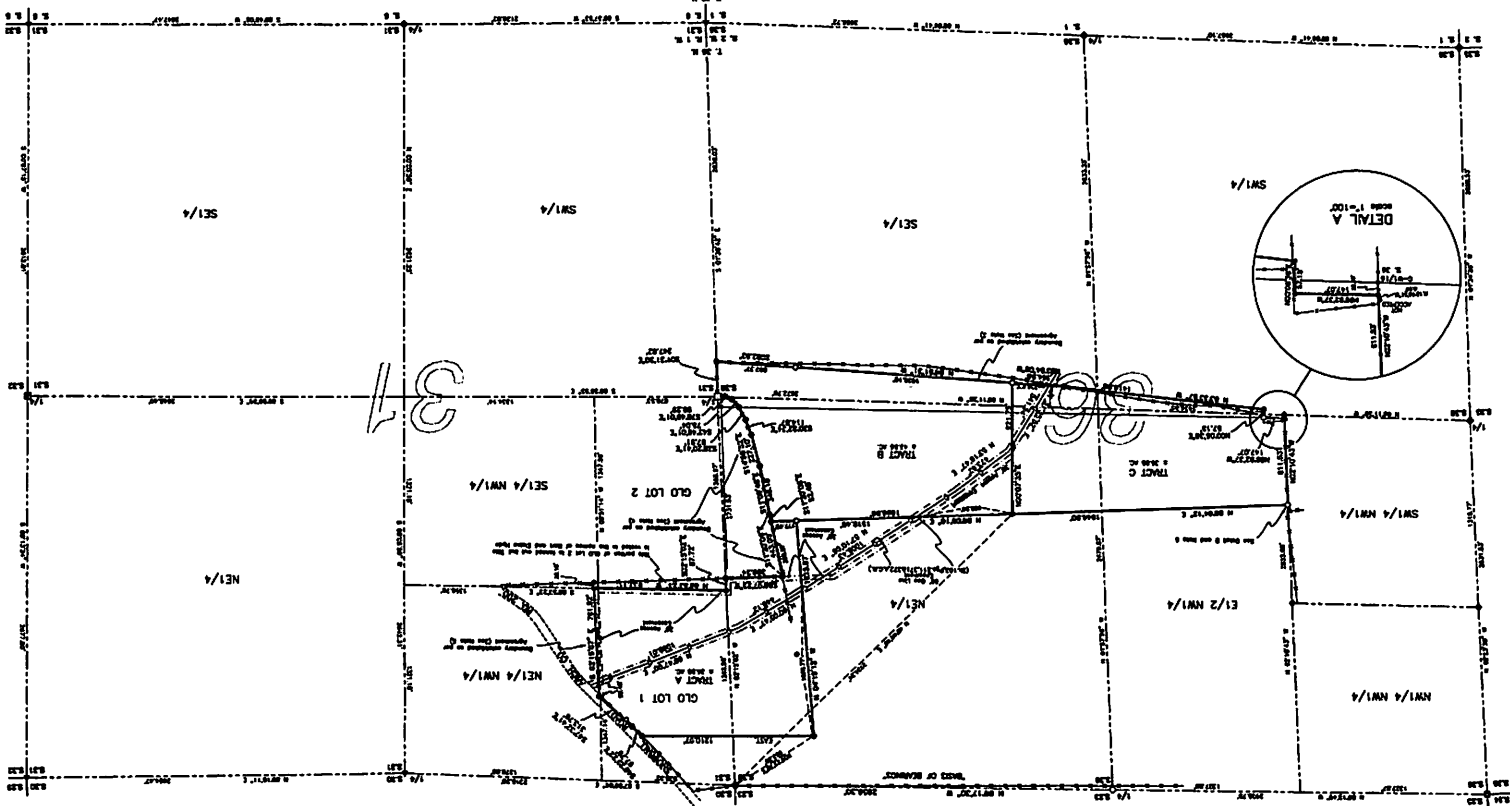
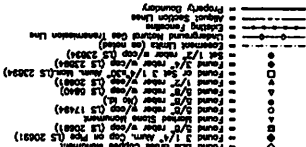
CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.

Containing 30.58 acres, more or less.

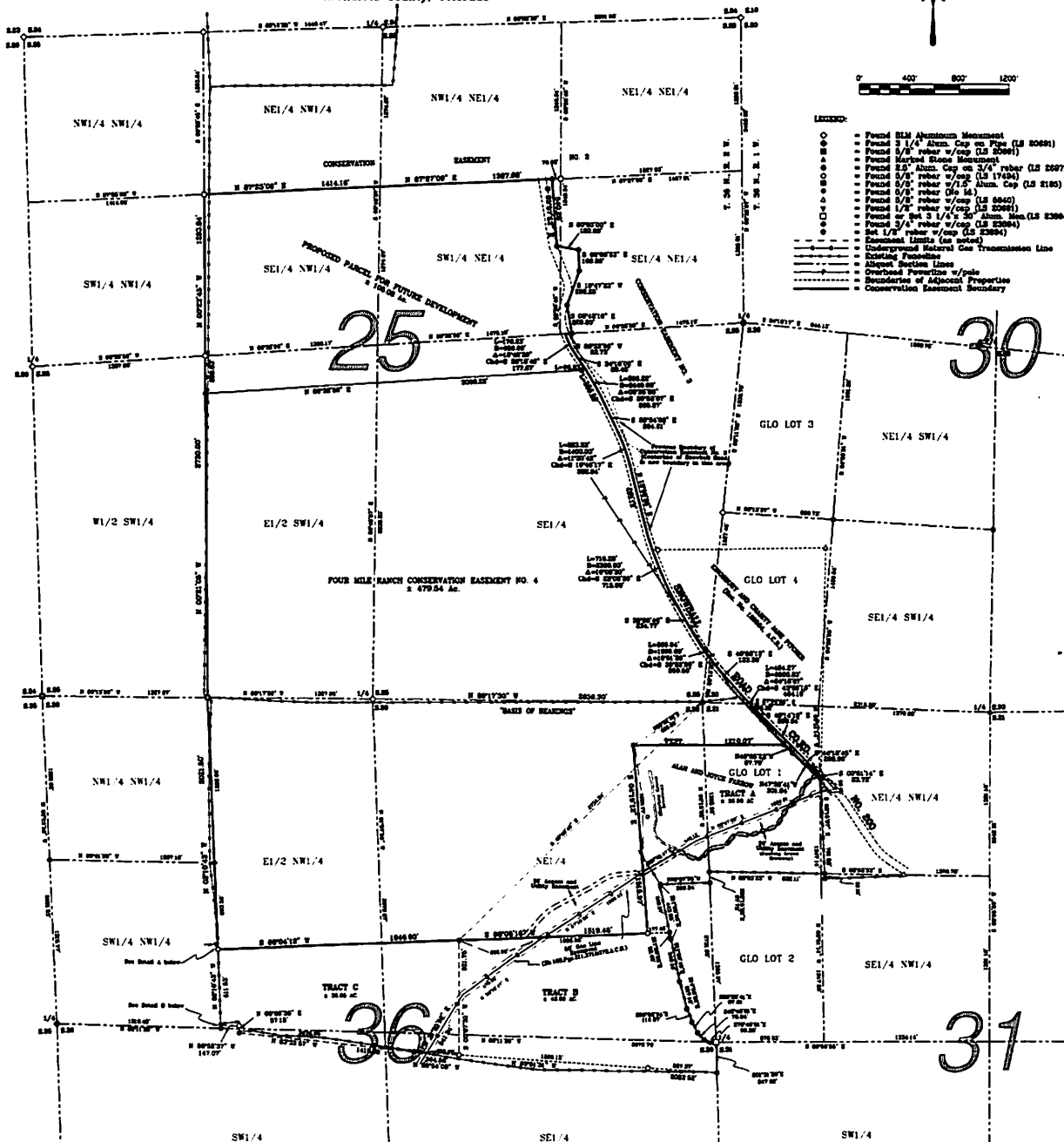
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Detail B



Results of Survey FOUR MILE RANCH CONSERVATION EASEMENT NO. 4

Loc. in Sections 30 and 31, T. 36 N., R. 1 W. and
Sections 25 and 36, T. 36 N., R. 2 W., N.M.P.M.,
Archuleta County, Colorado



Four Mile Ranch Conservation Easement No. 4 - Legal Description

A parcel of land located in GLO Lot 4, Section 30 and GLO Lot 1, Section 31, T. 36 N., R. 1 W. and in Section 25 and the NW 1/4 of Section 36, T. 36 N., R. 2 W., all in the N.M.P.M., Archuleta County, Colorado, which parcel is more particularly described by metes and bounds as follows, to-wit:

Beginning at the northeast corner of the parcel herein described which corner is identical with the northwest corner of the SW 1/4 NW 1/4 of said Section 25; thence S. 87°27'00\"/>

The parcel herein above described contains 479.54 acres, more or less.

The parcel herein above described is SUBJECT TO any and all existing easements and/or rights of way of whatever nature.

NOTES:

1. Bearings shown on this map are based on the assumption that the north line of the NE 1/4 Section 30 bears N. 89°17'30\"/>

I hereby certify that the foregoing plat was prepared from the field notes of a survey made by me or under my direct supervision, and is strictly conformable thereto.



FOUR MILE RANCH CONSERVATION EASEMENT NO. 4 Loc. in Sections 30 and 31, T. 36 N., R. 1 W. and Sections 25 and 36, T. 36 N., R. 2 W., N.M.P.M., Archuleta County, Colorado.	
DATE OF SURVEY 11/10/07	SURVEYOR DAVID E. KRUEGER
PREPARED BY Mrs. Terese Herberly	CHECKED BY [Signature]

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Kristy Archuleta
Archuleta County

(1)

**AGREEMENT REGARDING SNOWBALL DITCH LATERAL
WATER RIGHTS AND MAINTENANCE**

THIS AGREEMENT, effective on the date of the last person to sign, is executed by **TERESE T. HERSHEY** ("T. Hershey"); **SOUTHWEST LAND ALLIANCE**, a Colorado non-profit corporation ("Alliance"); **MACHT RANCH, INC.**, a Colorado Corporation ("Corporation"), through its officers, **JEAN M. TAYLOR**, President; **GENELIE MACHT** ("G. Macht"), Vice President; and **JOHN TAYLOR**, Secretary/Treasurer (John and Jean M. Taylor are hereinafter collectively referred to as "J/J Taylor" or "Taylor").

RECITALS

A. Jacob W. Hershey ("J. Hershey"), late husband of T. Hershey, was conveyed by warranty deed dated December 30, 1971, recorded at Reception No. 75296 in the records of the Clerk and Recorder of Archuleta County, attached hereto and made a part hereof as Exhibit "A" ("Warranty Deed"), the McGirr Property ("Hershey McGirr Land") and water rights, including 2.5 cfs of the Snowball Ditch ("Hershey Water Rights") diverting out of Turkey Creek by G. Macht and her late husband, H. Ray Macht ("R. Macht").

B. J. and T. Hershey understood, and had a document which so stated, that the Warranty Deed was intended to convey to J. Hershey the first 2.5 cfs of water in the Snowball Ditch ("Ditch") owned by R. and G. Macht personally. The Corporation is the owner of the "Snowball Ranch" described in Exhibit "B," attached hereto and made a part hereof, which neighbors the U.S. Forest Service property between the Hershey McGirr Land and Snowball Ranch.

C. T. Hershey acquired the Hershey McGirr Land and Hershey Water Rights as the heir of J. Hershey.

D. In 1993, T. Hershey conveyed to the Alliance a conservation easement in gross for the Hershey McGirr Land and the Hershey Water Rights at a time when John Taylor and G. Macht were on the Alliance Board and voted to accept conveyance of the Hershey Water Rights. The Corporation conveyed to the Alliance an easement in gross for the Snowball Ranch and appurtenant water rights.

E. Other shareholders in the Corporation include Carl Macht ("C. Macht"), Gloria Macht ("Gl. Macht") and Kari Macht ("K. Macht").

F. To reach Hershey McGirr Land, the water represented by the Hershey Water Rights in the Ditch must travel across the Snowball Ranch in the McGirr Lateral of the Ditch ("Ditch Lateral"). Prior to the death of J. Hershey, deliveries of the Hershey Water Rights were appropriately made and R. Macht responsibly cleaned the Ditch annually, from 1971 to 2000. Since the death of J. Hershey, the Hershey McGirr Land has not received a full delivery of the priority Hershey Water Rights, despite numerous requests. In 2003 and 2004, the only water delivery from the Ditch Alan Farrow, T. Hershey's Ranch Manager, was able to negotiate with

Rtu. LAW OF THE ROCKIES
525 N MAIN
Gunnison, CO 81230

Recorders Note:
THIS IS A COPY

RECORDERS NOTE:
NO EXHIBIT ATTACHED

08:21 08-01-2022

Original for page 9/15/05 : re-sent this page only w/
was lost — MBSS, LLC → cover page on 6/5/06.

Ronnie Lecker, the irrigator of the Corporation, and/or C. Macht and G. Macht, was to allow the Hershey McGirr Land water for ten days in rotation with the Snowball Ranch receiving water for ten days. The Ditch Lateral now cannot carry more than 0.5 to 0.7 cfs because C. Macht illegally forbade Alan Farrow to come on to the Snowball Ranch to clean and maintain the Ditch Lateral, even after he had done so in 2000 and 2001, and the Corporation and/or C. and G. Macht have failed to have the Ditch Lateral cleaned.

G. The Corporation and/or C. and G. Macht utilized most of the water under the Hershey Water Rights in 2002, 2003, and 2004, and even earlier, without the permission of T. Hershey, on land owned by the Corporation other than the Snowball Ranch.

H. Failure to receive the Hershey Water Rights injured T. Hershey because many fewer cattle can be grazed on the Hershey McGirr Land when there is insufficient water.

I. To avoid additional injury, T. Hershey has sought since 2000, through personal meeting; and correspondence, to obtain assurances from the Corporation that the Hershey Water Rights would be fully delivered to the Hershey McGirr Land annually.

J. The Alliance wrote to T. Hershey and the Corporation on August 19, 2005, that they were not satisfying their irrigation obligations under their conservation easements.

K. J.J Taylor wish to have conveyed to them by the Corporation the Snowball Ranch and enough shares of water in the Ditch appurtenant to the Snowball Ranch to properly irrigate the property and satisfy the requirements under the Alliance's conservation easements.

NOW, THEREFORE, in settlement of T. Hershey issues relating to non-delivery of Hershey water rights to the Hershey McGirr Land; to ensure that the Hershey McGirr Land receives its water from the Ditch Lateral; and, to describe the parties' respective interests and obligations relating to the Ditch and Ditch Lateral, and in consideration of the terms and conditions set forth below, the parties hereto agree as follows:

1. T. Hershey will waive damages from the lack of delivery of the Hershey Water Rights, including, but not limited to, the loss of profits from grazing.

2. T. Hershey and the Corporation or Taylor, as the case may be, (a) confirm the importance of irrigation to the conservation easements on both the McGirr and Snowball Ranches ("Two Ranches"); (b) recognize the need for installation and maintenance of Parshall flumes and other structures to adequately deliver and administer the required water; and (c) agree to work closely in the maintenance of Ditch Lateral and delivery of the required irrigation water for the Two Ranches.

3. Ditch Lateral Maintenance

A. Responsibility for the cleaning of the Ditch Lateral across the Snowball Ranch shall be shared by the Corporation or Taylor, as the case may be, and T. Hershey, via her

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Kristy Archuleta
Archuleta County

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Kristy Archuleta
Archuleta County

employees and agents. The Ditch will be cleaned across the Snowball Ranch in the fall of 2005 to facilitate the transporting of sufficient water for both Snowball Ranch irrigation and the 2.5 cfs for the Hershey McGirr Land.

B. As a fair distribution of Ditch Lateral expenses, the Corporation or Taylor, as the case may be, and T. Hershey shall share Ditch Lateral maintenance costs across the Snowball Ranch on a pro rata basis, based on the amount of water owned by each party to be carried in the Ditch Lateral.

C. T. Hershey shall install a Parshall flume in the Ditch Lateral on the boundary line common to the Snowball Ranch and U.S. Forest Service land to allow monitoring of Ditch Lateral deliveries to the Hershey McGirr Land.

D. If the Ditch Company has recently installed a new headgate in the Ditch on Turkey Creek, as part of this settlement, T. Hershey shall pay the Corporation or Taylor, as the case may be, for her share of such installation, if paid for by the Corporation, based on a ratio of the equivalent of 2.5 cfs in shares as opposed to the number of the Corporation shares in the Ditch.

4. The Corporation or Taylor, as the case may be, shall use its water from the Ditch Lateral on the Snowball Ranch in such a manner as to assure that T. Hershey receives her Hershey Water Rights entitlement. The Corporation or Taylor, as the case may be, pledges to work cooperatively with T. Hershey and her employees or agents to deliver the Hershey Water Rights to the boundary of Snowball Ranch and to explore unique solutions for maximum water benefits between the parties as conditions change.

5. In a spirit of cooperation, and as further concession in this controversy, T. Hershey will share Ditch lateral water shortages because of lack of water in Turkey Creek at the Ditch headgate ("Lateral Water Shortages"), as follows:

Assuming that 5.0 cfs or the equivalent in shares is agreed upon in writing as appurtenant to the Snowball Ranch and necessary for irrigation of the Ranch, the Corporation or Taylor, as the case may be, shall deliver 2.5 cfs to T. Hershey until the Ditch Company delivery of water to the Ditch falls below 6.0 cfs. T. Hershey will receive 2.25 cfs of Ditch Company deliveries to the Ditch Lateral between 5 - 6 cfs; 2 cfs of deliveries between 4 - 5 cfs; 1.75 cfs of deliveries between ~~3 - 4~~ cfs; 1.5 cfs of deliveries between 2 - 3 cfs; and 0.75 cfs of the water delivered between 1 - 2 cfs. The parties, instead, may agree, as good neighbors, on an equitable rotation system in a year of a Lateral Water Shortage. If it should be determined that less than 5.0 cfs or the equivalent in Ditch shares is needed to irrigate the Snowball Ranch, the parties hereto will, in good faith, amend this Agreement to reapportion Lateral Water Shortages.

6. The Corporation or Taylor, as the case may be, shall pay Ditch Company assessments for the 2.5 cfs and T. Hershey shall promptly reimburse the Corporation or Taylor for assessments paid for the 2.5 cfs but only for Ditch headgate work and for the delivery reach to the McGirr Lateral.

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Kristy Archuleta
Archuleta County

7. **Notice.** Any notice required to be given under this Agreement shall be provided, in writing, by certified mail to the following address, unless a new address is provided to the other party:

Terese T. Hershey

Until October 15, 2005, and for a period of time each year as notice is provided:
P.O. Box 817
Pagosa Springs CO 81147

and year-round to:
c/o Jacob and Terese Hershey Foundation
2121 San Felipe, Suite 124
Houston TX 77019

with a copy to:

Janice C. Sheftel
Maynes, Bradford, Shipps and Sheftel, LLP
P.O. Box 2717
Durango CO 81302

Southwest Land Alliance
Attn: Michael Whiting
P.O. Box 3417
Pagosa Springs CO 81147

Macht Ranch, Inc.
P.O. Box 486
Pagosa Springs CO 81147

Genelle Macht
P.O. Box 360
Pagosa Springs CO 81147

John and Jean Taylor
P.O. Box 130
Pagosa Springs CO 81147

8. **Binding Agreement.**

a. This Agreement shall be binding upon the agents, successors, heirs, and assigns of the parties hereto. G. Macht specifically agrees that this Agreement is binding on her personal heirs, successors and assigns.

b. No amendment or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

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Kristy Archuleta
Archuleta County

9. Indemnification. Should any stockholder in the Corporation, or any other party, seek to void or modify this Agreement without the concurrence of all parties hereto, (a) the Corporation shall hold harmless and indemnify T. Hershey for any damages, costs and/or expenses she might incur to defend the Agreement, including reasonable attorney fees; and, (b) in addition, T. Hershey shall be entitled to her damages for loss of grazing as set forth in the draft complaint previously circulated to all stockholders in the Corporation.

10. Attorney Fees. In the event that any terms of this Agreement become the subject of litigation, the prevailing party in such litigation shall be entitled to recovery of its reasonable costs and attorney fees.

11. Counterparts. This Agreement may be signed in counterparts, each of which shall be regarded as an original, and all of which shall constitute one Agreement.

12. Facsimile Signatures. In the execution of this Agreement, faxed signatures of the parties to this Agreement shall be considered original signatures. A party executing this Agreement with a faxed signature shall promptly provide the other parties to this Agreement with an original signature.



Terese T. Hershey

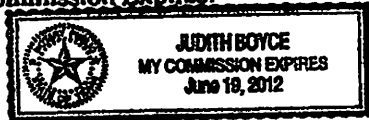
Date: 9/20/05

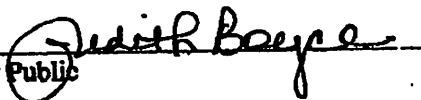
STATE OF Texas
COUNTY OF Harris)ss

Subscribed and sworn to before me this 29 day of Sept, 2005, by Terese T. Hershey.
October 2009

WITNESS my hand and official seal

My Commission Expires:




Notary Public

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Kristy Archuleta
Archuleta County

Date: 9-20-05

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Kristy Archuleta
Archuleta County

MACHT RANCH, INC.

by: Jean M. Taylor
Jean M. Taylor, President

Date: September 19, 2005

by: Genelle Macht
Genelle Macht, Vice President

Date: September 19, 2005

by: John Taylor
John Taylor, Secretary/Treasurer

Date: 9/19/05

STATE OF COLORADO)
)ss
COUNTY OF ARCHULETA)

Subscribed and sworn to before me this 19th day of September, 2005, by Jean M. Taylor, as President, Genelle Macht, as Vice President, and John Taylor, as Secretary/Treasurer of Macht Ranch, Inc.

WITNESS my hand and official seal

My Commission Expires: 12/21/06

Kristy Archuleta
Notary Public
703 San Juan St.
Pagosa Springs, CO 81447

Jim Smith, President/Chairman
Glenn Walsh, Vice President



Peter Hurley, Treasurer
Bill Hudson, Secretary
Gene Tautges, Director

MEMORANDUM

TO: John McCauley
FROM: Justin O. Ramsey, PE
CC: Aaron Burns; Glenn Walsh
DATE: June 21, 2023
RE: Fourmile Ranch Inclusion

This memorandum outlines the Pagosa Area Water and Sanitation Districts (District) requirements for the Fourmile Ranch inclusion.

BACKGROUND

The Fourmile Ranch has requested inclusion into the Districts boundaries for water service. The ranch is a 1,074 acre ranch located at 5053 County Road 200. This area is located at the northern boundary of the Elk Run BPS Tank Pressure Zone. The development does not currently have access to sewer services from either the District or the Pagosa Springs Sewer General Improvement District (PSSGID).

A water model must be completed and potential impacts to the current Districts water system must be addressed.

Although currently the Ranch is not within the boundaries of the PSSGID, the owner must agree to future compensation and requirements to the District if the Ranch requests inclusion and is accepted into the PSSGID in the future. The compensation and requirements are outlined in this memorandum.

This Memorandum outlines recommends requirements to the Developer in order to allow inclusion into the district. The recommendations are based on results of the model and current inclusion requirements. All recommended fees including possible fees associated with inclusion into the PSSGID shall be the fee at the year the inclusion is implemented.

Equity Buy-in (also known as Inclusion fees), Capital Investment and Raw Water Acquisition Fees are recalculated annually. All infrastructure improvements must be designed by a professional engineer registered in the State of Colorado. All design plans shall be reviewed by District staff and all design and installation of infrastructure shall be done in accordance with current District specifications, best practices and all local, state and federal regulations.

100 Lyn Avenue
Pagosa Springs, Colorado 81147

www.pawsd.org

(970) 731-2691

Requirements:

- Inclusion fees (AKA Equity Buy In Fee) for 7 EU's
 - Current Fee is \$4,546/EU for water and \$3,574/EU for wastewater.
- Water Capital Investment Fees (CIF) and Raw Water Acquisition Fees for 7 EU's
 - Current Water CIF is \$3,082/EU
 - Current Raw Water Acquisition Fee is \$2,271/EU
- Water Connection Fees (to be paid as units are connected to the water system)
 - Current connection fees for single family residence 3/4" meter is \$2,235. Connection fees for multi-family dwellings or commercial facilities are dependent upon the meter sizing worksheet.
- Installation of a 6" water main extending approximately 1,400 feet from the existing 6" water main west of Snowball Road.

In the event the Fourmile Ranch is included into the PSSGID, the Four Mile Ranch Shall:

- Pay a Wastewater Capital Investment Fees for 7 EU's.
 - Current Wastewater CIF is \$2,271/EU.
- Pay wastewater Inclusion Fee for 7 EU's.
 - Current Wastewater inclusion fee is \$3,574/EU.
- PAWSD will create a sub-district for the Four Mile Ranch and possibly surrounding properties. All EU's within this sub-district would be assessed a monthly wastewater fee calculated annually by subtracting the wastewater treatment fee per 1,000 gallons assessed to the PSSGID from the monthly wastewater EU rate paid by all PAWSD sewer customers. For this calculation PAWSD will assume a wastewater flow of 3,000 gallons per month per EU. These monthly fees would not be assessed until the sewer connection was completed for the individual unit.

**NOTICE OF OPEN MEETING FOR HEARING ON PETITION
FOR INCLUSION OF ADDITIONAL REAL PROPERTY
WITHIN THE PAGOSA AREA WATER AND SANITATION DISTRICT**

NOTICE IS HEREBY GIVEN to all interested persons that a Petition for Inclusion of additional real property has been filed with the Board of Directors of the Pagosa Area Water and Sanitation District. The Board of Directors has fixed the day of Thursday, August 24, 2023, at the hour of 5:00 p.m., at 100 Lyn Ave, Pagosa Springs, Colorado, as the date, time, and place of an open meeting at which such Petition shall be heard.

The name and address of the Petitioner and a general description of the property to be included into the District are as follows:

PETITIONER: Fourmile Ranch LLC

Jonathan McCauley

1785 Terra Bella Dr.

Westlake, TX 76262

PROPERTY: RURAL Sec: 25 Twn: 36 Rng: 2W 36-2W SEC 25 A PARCEL OF LAND
LOCATED IN E2NE4; 36-36-2W; AND W2NW4; 31-36-1W

Commonly known as Parcel # 558125100017 or

5053 COUNTY RD 200

PAGOSA SPRINGS, CO 81147

All interested parties may appear at such hearing to show cause in writing why such Petition should not be granted.

BY ORDER OF THE BOARD OF DIRECTORS OF THE PAGOSA AREA WATER AND
SANITATION DISTRICT.



PAGOSA AREA WATER AND
SANITATION DISTRICT

By: /S/ Jim Smith

Chairman: Jim Smith

Published in: The Pagosa Sun

Published on: August 17, 2023

Fourmile Ranch – Conservation Easement Dwelling Unit Summary

Collectively, there is the opportunity to have 10 dwelling units within the total 2,232 acres that are conserved.

1. Conservation Easement #1 – The North parcel is called the McGirr – 1,160 acres. One house not to exceed 5,000 SF on the north half (560 acres), and two houses on the south half (600 acres), each of which may not exceed 5,000 sq ft. No designated building envelopes, but designation of dwelling locations shall be subject to consent of Colorado Open Lands, said consent not to be unreasonably withheld, and shall be located consistent with the purpose of the Easement. It appears you may also have the right to replace the existing cabin on the north half, but specifics of this replacement are less clear. This might result in one additional dwelling unit.
2. Conservation Easement #2 & #3 (merged by amendment in 2001 – This is the middle piece including most of the Snowball Creek bottoms - ~596 acres. This parcel authorizes a total of five dwellings, which includes the right to replace two existing homes (Ranch Manager's Home & Small Trailer/Cabin labeled the "small house) up to 4,000 square feet each, and the right to develop three new homes, two of which may not exceed 2,500 square feet, and one of which may not exceed 5,000 square feet. All renovation and new construction is subject to a 35 foot height limitation. Additional accessory structures and improvements, with appropriate utilities and access for residential purposes (including private recreational facilities such as swimming pools and tennis courts) are also allowed, as are additional agricultural structures, and facilities. Designation of the parcels, construction, and new home sites are all subject to the written consent of Colorado Open Lands, said consent not to be unreasonably withheld.
3. Conservation Easement #4 – South Parcel including corrals and barns – ~479 acres. Building Envelope A is on Parcel A and is expected to have excellent north and east views. This building envelope is defined by center-point coordinates and all improvements must fit within a radius of 250 feet from that point (~4.5 acres). Within Building Envelope A, you may build one additional residential structure, and one related non-residential structure. This additional residential structure, its related accessory structure, and the access road to reach it must be designed, constructed, and located to minimize their impact on the Conservation Values of the Property. There does not appear to be a maximum square footage limitation on these structures (but they must fit within the 4.5 acre building envelope). Building Envelope B is what used to be called the ranch manager's house [now labeled the "small house"] that sits very near the corrals/barns. This structure can be repaired, remodeled, renovated, or replaced. It cannot be enlarged to greater than 2,400 square feet. Colorado Open Lands needs to be notified before any construction occurs.

*** This description was prepared by the listing brokerage and carries no guarantee as to accuracy or completeness. Buyer is strongly advised to consult an attorney as to the specifics of the recorded conservation easement deeds which can be provided upon request.**

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AMENDED DEED OF CONSERVATION EASEMENT IN GROSS

THIS AMENDED GRANT DEED OF CONSERVATION EASEMENT is made this 22 day of June, 2001, by the ESTATE OF J. W. HERSHEY and TERESE T. HERSHEY, individuals having an address at P. O. Box 3121 San Felipe 130244, Houston, TX 77019 ("Grantors"), in favor of SOUTHWEST LAND ALLIANCE, INC., a nonprofit Colorado corporation qualified to do business in Colorado, having an address at P. O. Box 3417, Pagosa Springs, Colorado 81147 ("Grantee").

WITNESSETH:

A. WHEREAS, Grantors granted two Deeds of Conservation Easement in Gross under Reception numbers 97002276, attached hereto as Exhibit D, and 99012614 attached hereto as Exhibit E ("Easements") encumbering certain real property in Archuleta County, Colorado, more particularly described in Exhibits A and B attached hereto and incorporated by this reference (the "Property"); and

B. WHEREAS, there were certain mutual mistaken beliefs and understandings by both Grantors and Grantee in previously executed and recorded Easements; and

C. WHEREAS, Grantors and Grantees desire to correct said mistakes and to clarify said Easements; and

D. WHEREAS, the power to amend having been specifically reserved in each of said Easements; and

E. WHEREAS, said Amendment will not affect the qualification of the Easements or the status of Grantee under any applicable laws, including state statute or Section 170(h) of the Internal Revenue Code, and this Amendment is consistent with the purpose of said Easements and does not effect their perpetual duration; and

F. WHEREAS, the Property possesses natural, scenic, open space, agricultural, riparian and wildlife values (collectively, "Conservation Values") of great importance to the Grantors, the people of the town of Pagosa Springs, Archuleta County, and of the State of Colorado, and this Amendment will not negatively impact said Conservation Values; and

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the right and power reserved in the Easements to amend, Grantors and Grantee hereby voluntarily amend and restate said original Easements by this Amended Deed of Conservation Easement in Gross, in their entirety. This Amended Deed of Conservation Easement in Gross, dated June 22, 2001, shall replace the original two aforementioned Easements (Exhibits D and E).

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained in perpetuity predominately in its natural, ecological, scenic, aesthetic, agricultural, wildlife habitat, forested, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. The parties to this agreement agree that a central component of the Conservation Values is the maintenance of the natural ecological processes and land health that currently exist on the property, as well as the agricultural operations that are taking place there. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitations, those involving ranching, timber production, and public recreation or education, as are not inconsistent with the purposes of this Easement.

2. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

Returned for Grantors 08-22-2001

- (a) To preserve and protect the Conservation Values of the Property; and
- (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 6, below; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 6, below.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. When there are variances requiring advance written approval of the Grantee, it shall be in accordance with paragraphs 5.1 and 5.2. Without limiting the generality of the foregoing, and subject to the terms of paragraphs 4, 5.1, and 5.2, the following activities are expressly prohibited:

(a) **Subdivision.** The legal or de facto division, subdivision, or partitioning of the Property for any purpose, nor the separate conveyance of any previously divided or separately deeded portion of the Property, except as required by law for the uses permitted in subparagraph 3(d). Sale, exchange, devise or gift of any portion of the Property shall not be considered a subdivision, provided that the Property may not be divided into more than five parcels, designation of these parcels shall be subject to the written consent of the Grantee, said consent not to be unreasonably withheld, and such transfer(s) is effected consistent with the provisions of paragraph 11 below; and

(b) **Development Rights.** The use, exercise, or transfer of development rights on or to the Property, or any portion thereof, as it is now or hereafter may be bounded or described, or any other property within any development district that might include the Property, now or in the future, except as may be required by law for the uses permitted in subparagraph 3(d). For purposes of this subparagraph, "development rights" include, without limitation, any and all rights, however designated, now or hereafter associated with the Property or any other property that may be used, pursuant to applicable zoning laws or other governmental laws or regulations, to compute permitted size, height, bulk, or number or structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property; and

(c) **Commercial Development.** Any commercial or industrial use of or activity on the Property other than those related to agriculture, recreation, or home occupations as permitted under paragraph 4 or mineral development meeting the requirements of subparagraph 3 (m); and

(d) **Construction and Improvements.** The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind (including without limitation, fences, roads, parking lots, and utility lines and related facilities) other than the following:

(1) The maintenance, renovation, expansion, or replacement of existing agricultural, residential, and related buildings, structures, and improvements with appropriate utilities and access in substantially their present location as shown on Exhibit C, after prior written approval of the Grantee, with said approval not to be unreasonably withheld; provided that any renovation, expansion, or replacement of an existing building, structure, or improvement may not occupy more than 4000 square feet of interior area or exceed 35 feet in height without the prior approval of the Grantee; said renovation, expansion or replacement of existing buildings to be used for residential, agricultural or educational purposes; and

(2) The designation of three additional home sites. Designation of these home sites shall be subject to the written consent of the Grantee, said consent not to be unreasonably withheld. Grantors may place or construct one single family residence within each home site envelope, with appropriate utilities and access, provided that two of such additional residences may occupy not more than 2500 square feet of interior area or exceed 35 feet in height, and one of such additional residences may not occupy more than 5000 square feet of interior area or exceed 35 feet in height without the prior approval of the Grantee; and

(3) The placement or construction, after prior written approval of the Grantee, not to be unreasonably withheld, of additional accessory structures and improvements, with appropriate utilities and access, for residential purposes (including, without limitation, private recreational facilities such as swimming pools and tennis courts but not including dwelling places of any kind); and

(4) The placement or construction, after prior written approval of the Grantee, with said approval not to be unreasonably withheld, of additional buildings, structures, and improvements, with appropriate utilities and access, for agricultural purposes; and

(5) The placement or construction, after prior notice to the Grantee, of facilities for the development and utilization of energy resources (including, without limitation, wind, solar, hydroelectric, methane, wood, alcohol, and fossil fuels), with appropriate utilities and access, for use principally on the Property; provided that the design and location of any such facilities shall be subject to the prior written approval of the Grantee, and provided further that the development of fossil fuels resources shall be subject to the provisions of subparagraph 3(m); and

(e) **Surface Alteration.** Any alteration of the surface of the land (including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod), except as may be required in the course of any activity expressly permitted herein or, after notice to the appropriate state agency and with the prior approval of the Grantee, archaeological investigation; provided that construction materials, such as rock, dirt, sand, and gravel may be taken for use in connection with permitted activities on the Property only from locations approved by the Grantee; and

(f) **Soil and Water.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters; provided that this prohibition shall not be construed as extending to agricultural operations and practices (including, without limitation, the use of agrichemicals such as fertilizers, pesticides, herbicides, and fungicides) that are substantially in accordance with standard agricultural practices; and

(g) **Ponds, Water Courses, and Wells.** The alteration or manipulation of the ponds, watercourses, and wells located on the Property as shown in Exhibit C, or the creation of new water impoundments, water courses, or wells, for any purpose other than permitted agricultural, wetland, or residential uses of the Property or the limited energy development permitted under subparagraphs 3(d)(2 through 5) and 3(g). Further, Grantors shall use their best efforts to assure the retention of any and all water rights appurtenant to the Property as are necessary to preserve and protect the Conservation Values of the Property and shall not transfer, encumber, sell, lease, or otherwise separate such rights from the Property or allow them to lapse due to nonuse or for any other reason; and

(h) **Timber Harvesting.** The harvesting, pruning, cutting down, or other destruction or removal of trees located within the forest preserve, and residential areas described in Exhibit C, except as necessary to control or prevent hazard, disease, or fire, to maintain the designated open space areas described in Exhibit C, and as is necessary in the residential area for the permitted activities, or in accordance with a Forest Stewardship Plan, funded by the Grantors, that is prepared and accepted with the mutual consent of Grantors and Grantee, and that has been reviewed and approved by the Colorado State Forest Service, which shall be designed to assure the maintenance of good quality growing stock (including mixed age and old growth Ponderosa Pine) and shall permit the cutting of healthy, mature trees only when in the vicinity of younger trees coming into their maturity, while protecting soil stability, water quality, and other Conservation Values of the Property as identified in the Baseline Documentation, including, without limitation, scenic, riparian, and wildlife habitat values; and

(i) **Commercial Feedlots.** The establishment or maintenance of any commercial feedlot, poultry sheds, or hog parlors which are defined for the purposes of this Easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market; and

(j) **Waste Dumps.** The processing, storage, dumping, or other disposal of wastes, refuse, and debris on the Property, except for non-hazardous and nontoxic materials generated by activities permitted herein; provided that only sites having prior written approval by the Grantee are used for this purpose; and

(k) **Storage Tanks and Utility Systems.** The installation of underground storage tanks or the above-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, but excluding systems for irrigating the Property, and excluding systems done with prior written approval of the Grantee, not to be unreasonably withheld, when in conjunction with permitted activities, unless prohibited by law, including, without limitation, when in conjunction with permitted activities, unless prohibited by law, including, without limitation, power lines and above ground storage tanks for fuels; and

(l) **Signs and Billboards.** The placement of any signs or billboards on the Property, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise the property for sale or rent, to post the Property to control unauthorized entry or use, and, with prior written approval of the Grantee, to advertise or regulate on-site activities permitted pursuant to paragraph 4; and

(m) **Mineral Development** The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conservation Values of the Property. Prior to engaging in any mineral exploration, development, or extraction by any method not otherwise prohibited by this paragraph, Grantors must notify Grantee and submit a plan for Grantee's approval that provides for minimizing the adverse effects of the operation on the Conservation Values of the Property. In addition to such other measures as may be required to protect the Conservation Values of the Property, the plan must provide for: (1) preserving the quantity and quality of all surface and ground water; (2) concealing all facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and (3) restoring any altered physical features of the land to their original state; and

(n) **Off-Road Vehicles.** The use of any off-road vehicles in such a manner as will result in soil erosion or compaction or in the interference with vegetation or with the natural habitats of those animal species found on the Property; and

(o) **Weed Control.** The permitting of noxious weeds to spread and proliferate. Grantor shall bear full expense and responsibility of actively protecting the Conservation Values from invasion or expansion of noxious weeds, as well as shall make a reasonable, best possible effort to eradicate all noxious weeds that are on the property at the time of the deeding of the Easement; and

(p) **Recreational Hunting.** Recreational hunting shall be prohibited on the property subject to this easement.

4. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. When advance written approval of the Grantee is required, it shall be in accordance with paragraphs 5.1 and 5.2, the following rights are expressly reserved:

(a) **Residential.** To reside on the Property; and

(b) **Agricultural.** To engage in any and all agricultural uses of the Property. For the purposes of this Easement, "agricultural uses" shall be defined as breeding, raising, boarding, pasturing, and grazing livestock of every nature and description; breeding and raising bees, fish, poultry and other fowl; planting, raising, harvesting, and producing agricultural, aqua-cultural, horticultural, and forestry crops and products of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the property, except as restricted in paragraph 3 (k); and

(c) **Business.** To engage in any home business that is conducted by a person residing on the Property, and in any of the dwellings, art studios, or other structures permitted in 3 (d), or that involves the provision of goods or services incidental to, and occupies structures used principally for, the agricultural uses of the property, but these permitted activities shall not in any way impair any of the Conservation Values, in particular the scenic and aesthetic; and

(d) **Recreational.** To engage in and permit others to engage in recreational uses of the Property, including, without limitation bird watching, fishing, hiking, and camping that require no surface alteration or other development of the land.

5. Notice and Approval.

5.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 3 and 4, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

5.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Paragraph 3 and 4, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

5.3 **Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and the Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(a) **Purpose.** The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions, or restrictions of this Easement.

(b) **Participation.** The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

(e) **Costs.** The costs of the mediator shall be borne equally by Grantors and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

5.4 **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and mediation has either failed or been rejected, and Grantors agree not to proceed with the use or activity resolution of the dispute, either party may refer the dispute to arbitration by request made in

writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance the American Arbitration Association or a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. All matters of arbitrator selection and of settlement shall be in accordance with the laws of the State of Colorado then in effect. The decision rendered by this arbitration procedure shall be the full and final settlement of the said dispute, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. Cost and expenses shall be in accordance with paragraph 6.6 below, and any court of competent jurisdiction may be called upon to enforce the award.

6. Grantee's Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

6.2 Injunctive Relief. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

6.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 Emergency Remedies. After due consideration of the dispute resolution procedures called for under Sections 5 and 6 above, if either party reasonably determines such procedures to be inadequate in light of an imminent threat to the Conservation Values of the Property, either party may pursue its remedies under this paragraph without prior consultation with the other party. Where, due to the imminent nature of the threat, time is of the utmost importance, either party may bring an action in law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin any violation of this Easement, or to require restoration of the Property to the condition that existed prior to any such violation. The emergency rights under this paragraph apply equally to the event of either actual or threatened violations of the terms of the Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.5 Scope of Relief. Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of arbitration and enforcement, litigation and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action, each party shall bear its own costs.

6.7 Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such terms or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

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

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs, Liabilities, Taxes, and Environmental Compliance.

8.1 Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage, and including Soil or Forest Stewardship Plans. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

8.2 Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.3 Representations and Warranties. Grantors represent and warrant that to the best of their knowledge, but without any independent investigation:

(a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed, abandoned, or transported in, on, from, or across the Property;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(c) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

8.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

8.5 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on 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 ("CERCLA").

8.6 Hold Harmless. Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 8.1 through 8.5.

8.7 Disclaimer. Grantors, in granting the easement disclaim any and all reliance upon representations of the Grantee, its officers or agents, and does so after full opportunity to consult with tax and legal advisors.

9. Extinguishment and Condemnation.

9.1 Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 9.2.

9.2 Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9.1, the parties stipulate to have a fair market value determined by multiplying (1) 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 (2) x/y , which is the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant are those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. 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.

9.3 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 9.2.

9.4 Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Section 9 in a manner consistent with its conservation purposes, which are exemplified by this grant.

10. Assignment. This Easement is transferable, with the written approval of the Grantors, not to be unreasonably withheld, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Section 38-30.5-104, Colorado Revised Statutes 1973, as revised (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

10.1 Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under section 170(h) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under Section 38-30.5-104, Colorado Revised Statutes 1973, as revised, then Grantee's rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Colorado law and consistent with the requirements for an assignment pursuant to paragraph 10.

11. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within thirty (30) days of receipt of Grantors' written request therefor.

13. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: ESTATE OF J. W. HERSHEY
TERESE TARLTON HERSHEY, Independent Executor
P.O. Box 130244 — 2121 San Felipe, Rm 124
Houston, TX 77249 77019

TERESE T. HERSHEY
P.O. Box 130244 — 2121 San Felipe, Rm 124
Houston, TX 77249 77019

To Grantee: SOUTHWEST LAND ALLIANCE
P. O. Box 3417
Pagosa Springs, CO 81147

or to such other address as either party from time to time shall designate by written notice to the other.

14. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Archuleta County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

15. **General Provisions.**

15.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

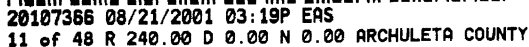
15.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Section 38-30.5-101, et seq., Colorado Revised Statutes 1973, as revised. 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.


15.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.4 **Entire Agreement.** 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. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15.11.

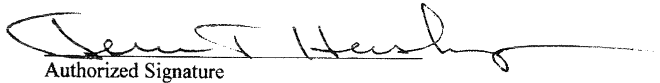
15.5 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

15.6 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee", whenever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.



 JUDITH BOYCE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JUNE 19, 2004

BY THE GRANTOR TERESE T. HERSHEY

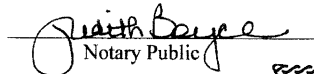

Authorized Signature

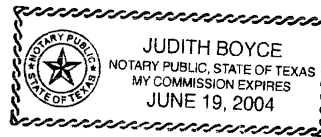
STATE OF TEXAS)
) SS.
County of Harris)

The foregoing instrument was acknowledged before me this 22 day of June, 2001, by TERESE T. HERSHEY, Grantor.

WITNESS my hand and official seal.

My commission expires: 6-19-04


Notary Public



BY THE GRANTEE SOUTHWEST LAND ALLIANCE, INC.

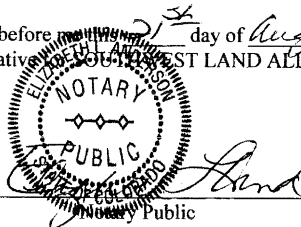
by 
its Authorized Representative

STATE OF COLORADO)
) SS.
County of ARCHULETA)

The foregoing instrument was acknowledged before me this 21st day of August, 2001, by Ron Chace, the Authorized Representative of SOUTHWEST LAND ALLIANCE, INC.

WITNESS my hand and official seal.

My commission expires: 9/30/2002


Notary Public

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement under Reception number 97002276
- B. Legal Description of Property Subject to Easement under Reception number 99102614
- C. Site Description/Map
- D. Deed of Conservation Easement in Gross, Reception No. 97002276
- E. Deed of Conservation Easement in Gross, Reception No. 99012614

EXHIBIT A

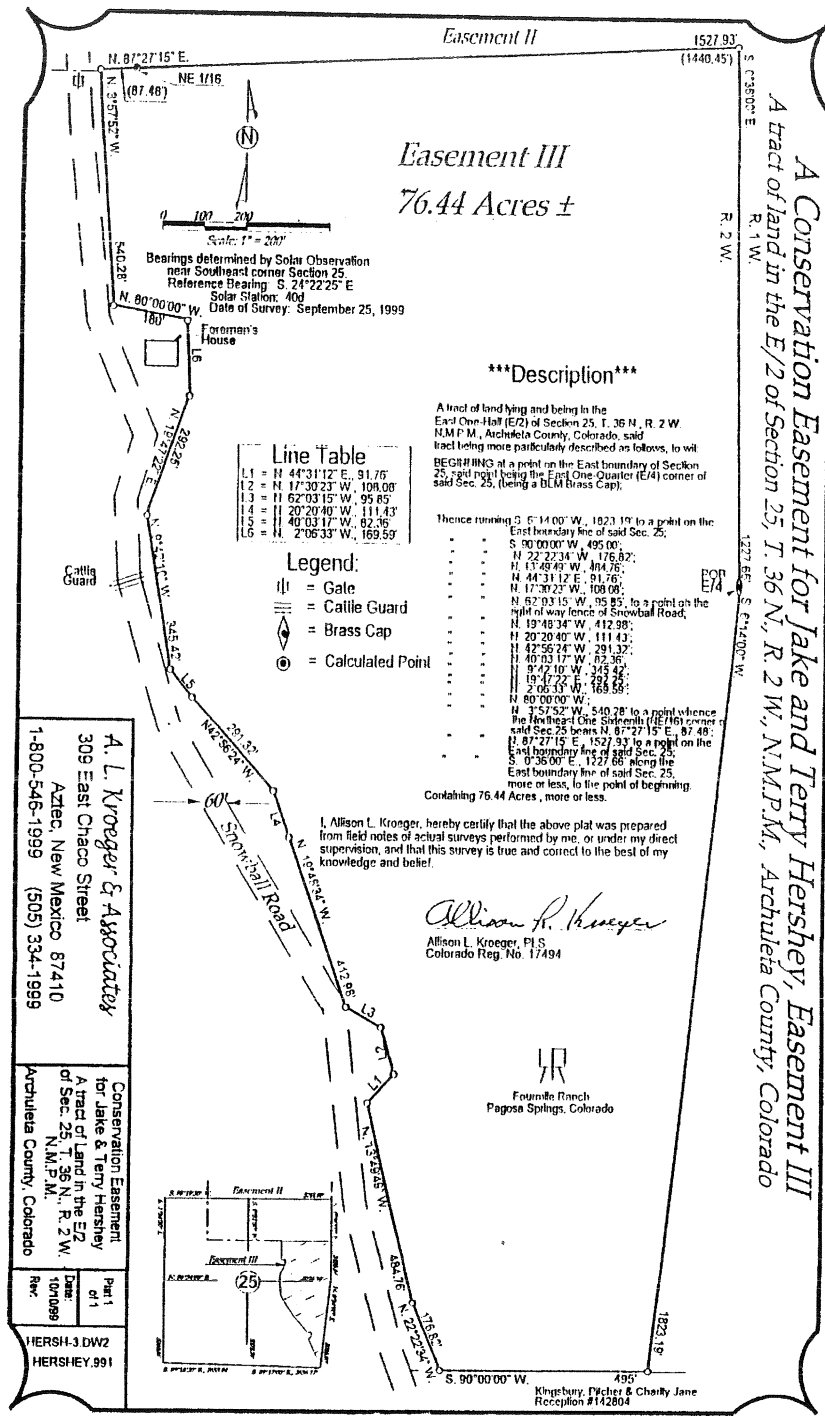
LEGAL DESCRIPTION

SE4NE4 SECTION 23, T36N, R2W, N.M.P.M.	40 ACRES
W2NE4; E2NW4; SW4NW4 SECTION 24, T36N, R2W, N.M.P.M.	200 ACRES
SE4 SECTION 24, T36N, R2W, N.M.P.M.	160 ACRES
NE4NW4 & NW4NE4 & NE4NE4 SECTION 25, T36N, R2W, N.M.P.M. All in Archuleta County, Colorado	120 ACRES
TOTAL ACREAGE UNDER APPRAISEMENT:	520 ACRES

Parcel #
A portion of Parcel
#5581-251-00-016

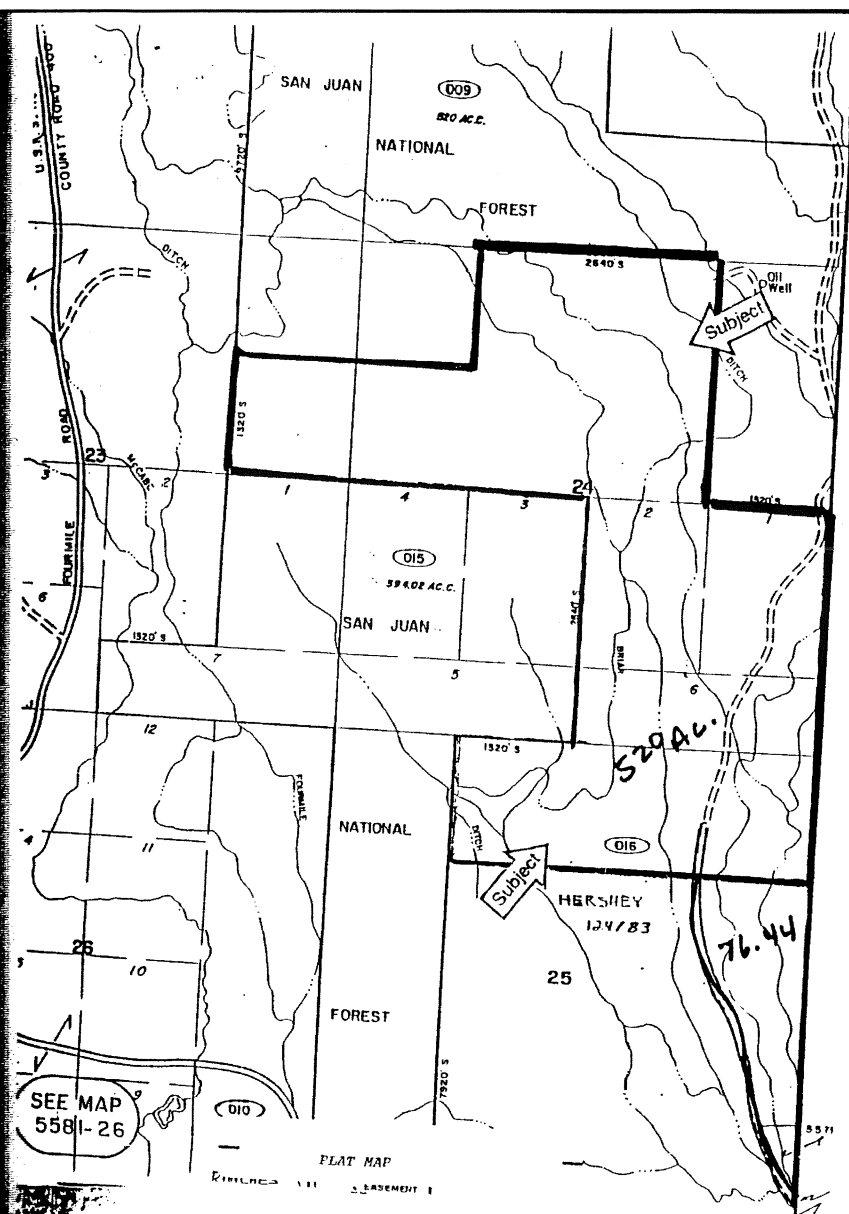
1995 Taxes
\$2,200.00 (approximately)

20107366 08/02/12/08 EPS
14 of 48 R 240.00 D 0.00 N 0.00 ARCHULETA COUNTY



RECORDERS NOTE
Some words are hard to read
and may not reproduce well

Exhibit B



20107366 08/21/2001 03:19P ERS
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Total Revised Easement
596.44 Ac

Exhibit C

West side of snowball rd. - Hershey House - Barn - Annex
East side of snowball rd, east side of snowball ditch - guest house
East side of snowball ditch - 3 shacks

Alan Farrow
3/21/01

Exhibit C

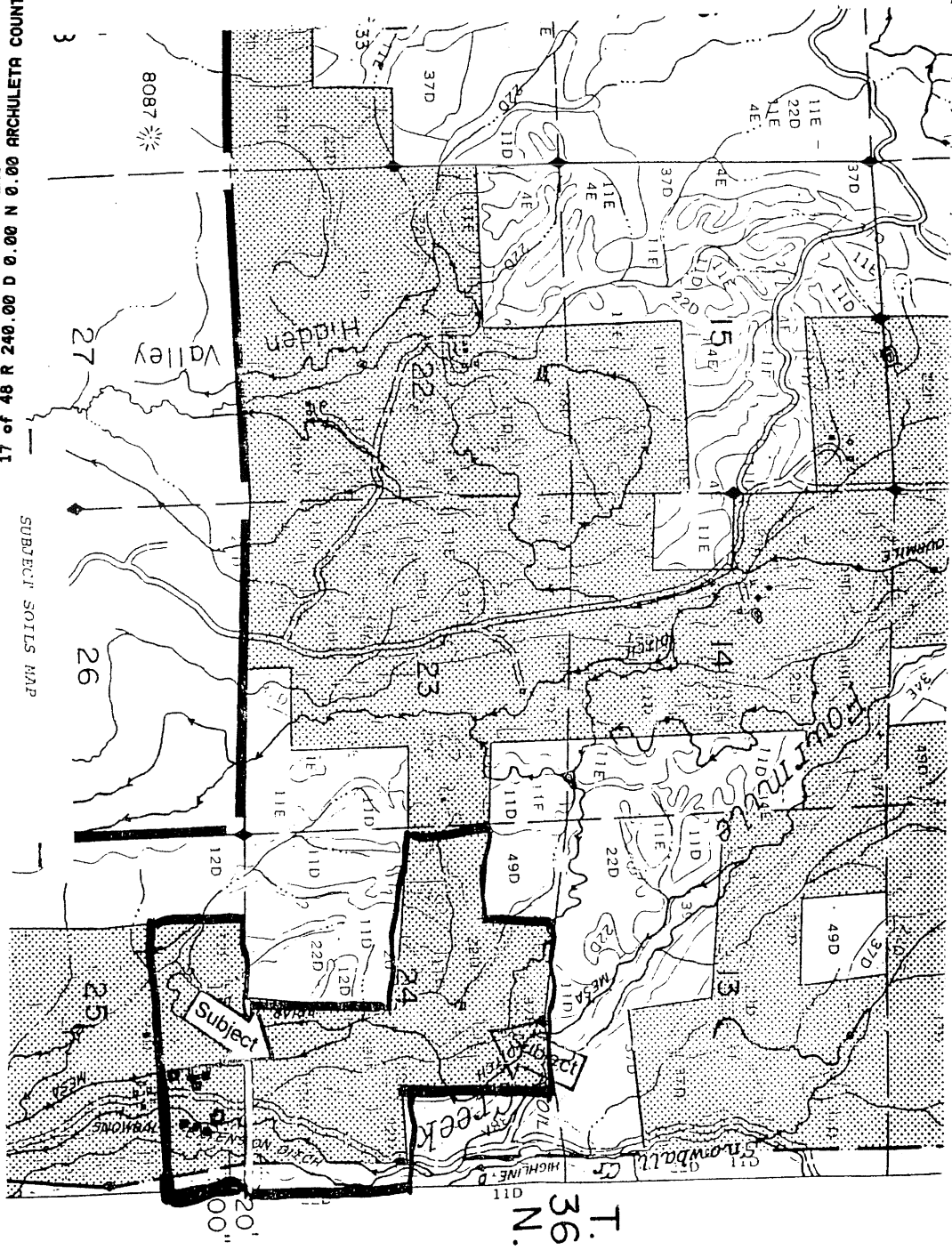


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RECORDERS NOTE
EXHIBIT C
IS TAPED to document

20107386 06/21/2001 03:19P ERS
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SUBJECT SOILS MAP



T. 36 N.
Exhibit C

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ORIGINAL

(13)

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS is made this 26th day of February, 1997, by J. W. HERSHEY and TERESE T. HERSHEY, individuals having an address at P. O. Box 130244, Houston, Texas 77219, ("Grantors"), in favor of SOUTHWEST LAND ALLIANCE, INC., a non-profit Colorado corporation qualified to do business in Colorado, having an address of P. O. Box 3447, ~~Box 1066~~, Pagosa Springs, Colorado 81147 ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Archuleta County, Colorado, more particularly described in Exhibit "A" attached hereto and incorporated by this reference ("the Property"), and

WHEREAS, the State of Colorado has recognized the importance and value of preserving wildlife habitats, and that the natural, scenic areas of the State are to be protected, preserved, and enhanced for the benefit and enjoyment of the people of the State and visitors to the State, as embodied in § 33-1-101, C.R.S. 1973, as revised; 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 and agricultural uses consistent with the protection of open land having wholesome environmental quality, by the enactment of § 38-30.5-101, et seq., C.R.S. 1973, as amended; and

WHEREAS, the County of Archuleta has stated that the preservation of agricultural lands, wildlife habitats and scenic areas through willing, voluntary, cooperative arrangements, such as conservation easements, enhances and protects the lifestyle and character of Archuleta County and furthers the policies of the County Commissioners, as stated in Resolution #1983-8, and

WHEREAS, the County of Archuleta has recognized that the habitats, feeding grounds and migration routes of deer and elk herds need to be protected if wildlife observations are to remain viable factors in Archuleta County's economy, as stated in Resolution #86-27; and

WHEREAS, the County of Archuleta has recognized by the adoption of Resolution #86-27, that agricultural land uses are valuable resources to the economy, appearance and rural atmosphere of the county, as stated in that resolution; and

WHEREAS, the County of Archuleta has recognized the integral parts of the heritage and economic base of the county played by ranching and farming, as stated in Resolution #1983-8; and

Exhibit D

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WHEREAS, The Property possesses natural, scenic, open space, agricultural, riparian and wildlife values (collectively "conservation values") of great importance to the Grantors, the town of Pagosa Springs, the people of Archuleta County, and the State of Colorado; and

WHEREAS, the Property constitutes a valuable part of the agricultural and natural resource system of the San Juan drainage, the San Juan National Forest, and the upper San Juan Basin, being nearly surrounded by U. S. Forest Service land, having outstanding water quality and including approximately one-half mile of Snowball Creek and three sections of Four Mile Creek; and

WHEREAS, the Property contains important wildlife values, including important calving, winter grazing and shelter habitat for elk and mule deer, as well as important migration routes for both species, hunting habitat for bald eagles, and habitat for black bears; and

WHEREAS, the Property contains important agricultural values, portions of the Property having been used for grazing and hay production purposes since at least 1910; and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of the Grantee and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors intend that the Property's natural elements, and its agricultural and wildlife values, be preserved by the continuation of uses, including agriculture and ranching, that have proven historically compatible with such elements and values; and

WHEREAS, Grantors further intend, as owners in unencumbered fee of the property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under ^{SS} 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in the upper San Juan River Basin in its natural, scenic, agricultural and open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of the Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

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NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado and in particular § 38-30.5-101 et seq., C.R.S.1973, as amended, Grantors hereby voluntarily grant and convey to Grantee a conservation easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to preserve and protect in perpetuity the natural, wildlife habitat, wildlife migration, water quality and agricultural features and values of the Property and to prevent any use of the Property that will materially impair or interfere with the conservation values of the Property. The parties to this agreement agree that a central component of these conservation values is the maintenance of the natural ecological processes and land health that currently exist on the Property, as well as the agricultural operations that are taking place there. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving limited residential uses and responsible agricultural practices, as are consistent with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purpose of the Easement the following rights are conveyed to the Grantee by this Easement:

- (a) To identify, preserve and protect the conservation values of the Property;
- (b) To prevent any activity on, or use of, the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent human activity or use, pursuant to paragraph 6 below;
- (c) To work in association with the Colorado Division of Wildlife ("CDOW") such that officials of CDOW may offer advice and consultation to the owner(s) of the Property and the Grantee in connection with agricultural practices that facilitate the purposes, generally, of this Easement, as well as the management of wildlife; and
- (d) To enter upon the Property at reasonable times in order to monitor Grantors' compliance with, and otherwise enforce the terms of, this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited.

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4. Reserved Rights. Grantors reserve to themselves, and to their successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) To maintain and repair, or replace, existing structures, fences, corrals, ditches and other existing improvement on the Property. Additional fencing shall be permitted as necessary to segregate livestock but only in a manner that minimizes any adverse effect of fencing on wildlife grazing or migration patterns. Any fences constructed after the date of this Easement shall be constructed in accordance with CDOW guidelines for fencing in areas of high wildlife values. In the event of the destruction, deterioration or obsolescence of any existing structure, fence, corral, or ditch, Grantors may replace same with improvements of similar size, function, capacity and location.

Grantors may use such natural materials as rocks and gravel as may be found on the Property in the construction of improvements permitted hereunder; however, no natural materials shall be taken or used in such a way as to damage, impair or endanger the natural wildlife values or the water quality of the Property.

(b) To engage in limited residential use of the Property. Limited residential use includes not more than two single family homes, said homes not to exceed 5000 square feet in size each. Designation of dwelling locations shall be subject to the consent of the Grantee, said consent not be unreasonably withheld, and shall be located consistent with the purpose of this Easement.

(c) To maintain and construct access and utility easements to the structures, improvements and dwellings allowed under subparagraphs (a) and (b) above by routes and means that are consistent with the purpose of this Easement. All construction shall utilize existing topography in a manner which minimizes impacts to wildlife and any new gates in areas of high wildlife migration use shall be kept open.

(d) To engage in any and all responsible agricultural uses of the Property, consistent with the purpose of this Easement, including the pasturing and care of livestock, irrigation of existing pastures and reasonable maintenance and construction of fence and irrigation ditch systems. Any agricultural plantings undertaken shall consist of species that are beneficial to wildlife. Snag trees shall be left standing in all forested areas of the Property. In no instance shall "responsible agricultural uses" be interpreted to include overgrazing or pollution or degradation of any surface or subsurface water on the Property

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- (e) To develop and maintain such ponds and other water resources on the Property as are necessary or convenient for the permitted agricultural and residential uses of the Property; provided, however, that such development and use of water resources shall be compatible with the purpose of this Easement;
- (f) To engage in, and permit others to engage in, non-commercial educational and recreational uses of the Property, consistent with the purpose of this Easement, including, without limitation, hiking, horseback riding, cross-country skiing, fishing, nature studies and other similar activities that require no surface alteration or other development of the land; except, however, that hunting is not to be considered an educational or recreational use of the Property;
- (g) Grantors specifically retain all right, title and interest in and to all tributary and nontributary water, water rights, and related interests in, on, under, or appurtenant to the land; however Grantors agree that they will dedicate in perpetuity the water rights identified in Exhibit "B", attached hereto and incorporated by this reference herein, to the purpose of this Easement, and
- (h) Grantors specifically retain all right, title and interest to subsurface oil, gas, coal and other minerals held by Grantors; provided, however, that exploration for, and extraction of, any such substances by Grantors shall be undertaken in a manner designed to insure the protection of the conservation values of the Property, and only by a subsurface method consistent with the provisions of Section 170^h of the Internal Revenue Code, as amended.

4.1 Rights not Reserved. It is the Grantors' intent that the reserved rights with regard to the Property shall not include the following rights:

- (a) The right to establish any non-agricultural commercial or industrial use or construction, placement, or erection of any commercial sign, except for one sign not to exceed four feet by six feet in dimension;
- (b) The right to subdivide, whether formally or de facto or otherwise develop the Property, including the right to construct any residential structure other than those identified in paragraphs 4(a) and (b) above. Sale, exchange, devise or gift of any portion of the Property shall not be considered a subdivision, provided that the Property may not be divided into more than four parcels and such transfer(s) is effected consistent with the provisions of paragraph 12 below;
- (c) The right to use herbicides, pesticides or insecticides upon the Property, except, in the context of controlling noxious weeds, herbicides may be used only as a last resort in an emergency situation and except that fertilizers which are organic and biodegradable may be employed. The opinion of the CDOW may be relied upon in the selection of any herbicides or fertilizers in order that the sensitivities of wildlife to such applications be respected and protected;

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(d) The right to use motorized vehicles off existing roadways, which would result in degradation of the land and the wildlife habitat thereon; provided, however, that reasonable use of motorized vehicles for ranch management purposes, referenced in paragraph 4 above, is not so prohibited;

(e) The right to hunt or allow others to hunt on the Property;

(f) The right to harvest wood or timber commercially; provided, however, that Grantors retain the right to collect firewood and to harvest, as necessary or desirable for agricultural purposes, for construction of fences and for repair and construction of improvements as are allowed under this Easement;

(g) The right to establish any commercial feedlot, where such feedlot is defined as any permanently constructed confined area or facility within which the property is not grazed or cropped annually, for purposes of engaging in the business of reception and feeding of livestock;

(h) The right to construct any new roadways, without consent of the Grantee, which consent shall^{not} be unreasonably withheld; provided that such roadways are constructed so as to minimize impacts to the conservation values of the Property and are not constructed within critical wildlife habitat or riparian zones; further provided that Grantee shall be deemed to have consented to the construction of the roadways identified in paragraphs 4(a), (b) and (c) above;

(i) Except as related to construction permitted hereunder or to the rights identified in paragraph 4(h) above, the right to quarry, excavate or remove rocks, minerals, gravel, sand, top soil or other similar materials from the Property; and

(j) The right to deposit or dump solid or liquid refuse or waste upon the Property, except for the effluent from buildings and structures permitted hereunder, provided that any effluent disposal shall be subject to all laws, rules and regulations of the County of Archuleta and the State of Colorado.

4.2. Current Uses. Grantee acknowledges by acceptance of this Easement that Grantors' historical and present uses of the Property are compatible with the purpose of this Easement, and acknowledges that it is familiar with the present condition of the Property's natural, water quality, wildlife grazing and wildlife habitat resources, so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof. In the event a controversy arises with respect to the nature and extent of Grantors' historical and present use of, or the physical condition of, the Property, 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.

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4.3 Inconsistent Uses. In the event that a use of the Property is either planned or initiated and such use is considered by either the Grantors or the Grantee to be inconsistent with the purpose of this Easement, the parties have an obligation to consult with each other in order to resolve the matter prior to initiating the procedures set forth in paragraph 6 below.

5. Disclaimer. Grantors, in making this grant, disclaim any reliance upon representations of the Grantee and is doing so after full opportunity to consult with tax, accounting and legal advisors.

6. Remedies. If, after undertaking the consultation required in paragraph 4.3 above, it reasonably appears to Grantee that a violation of any term, condition, covenant or restriction contained in this Easement has occurred, after thirty (30) days notice of the violation to Grantors, Grantee may bring an action in law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin any violation of this Easement, or to require restoration of the Property to the condition that existed prior to any such violation. Nothing herein contained shall be construed to preclude Grantors from exhausting their legal remedies in determining whether the activity to which the Grantee has objected is consistent with this Easement.

6.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement, shall be borne by Grantors.

6.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

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

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement. Nothing in this Easement shall be construed to preclude Grantors' right to grant limited access to third parties across the Property, provided that such access is reasonable in manner and does not result in degradation of the Property or disturbance of wildlife habitat. Grantors do hereby adopt the law of the State of Colorado with regard to public access to the Property.

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8. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8.1 Taxes Grantors shall bear the responsibility for the payment of all taxes, assessments, fees or charges levied on, or assessed against, either the Property or the Easement by competent authority. Grantee does not now, and will not in the future, have any obligation to pay said taxes, assessments, fees or charges.

8.2. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") 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 connection with:

(a) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due to the negligence of any of the indemnified Parties or related to activities of the Grantee undertaken in the normal course of its business and affairs; and

(b) The obligations specified in paragraphs 8 and 8.1 above.

9. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Donation of this Easement gives rise to a property right in the Grantee with a fair market value that is at least equal to the proportionate value represented by the appraisal value hereof, that the conservation restrictions bear to the value of the entire Property prior to the grant of the Easement. This proportionate value of the Grantors' property rights shall remain constant. On any extinguishment of the restrictions hereunder, the Grantee, on subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the conservation restrictions determined under the terms of this paragraph. Any such proceeds shall be used by the Grantee in a manner consistent with the conservation purpose of this Easement.

10. Amendment. If circumstances arise under which an amendment to, or modification of, this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided, however, that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including § 38-30.5-101 et seq., C. R.S. 1973, as amended, or § 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment



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shall be recorded in the official records of Archuleta County, Colorado.

11. Assignment. This Easement is transferable only after written notice has been provided to the Grantors. Grantee may assign its rights and obligations under this Easement only upon Agreement by the Grantors regarding a successor organization, such agreement to not be unreasonably withheld, and then, only to an organization that is a qualified organization at the time of the transfer under § 170(h) of the Internal Revenue Code of 1954, as amended, and authorized to acquire and hold conservation easements under § 38-30.5-101 et seq., C.R.S. 1973, as amended. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continues to be carried out.

12. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all, or a portion of, the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any such interest at least thirty (30) days prior to the effective date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13. Notices. Any notice, demand, request, consent, or approval that either party is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

Grantors: J. W. Hershey
P. O. Box 130244
Houston, Texas 77219

Terese T. Hershey
P. O. Box 130244
Houston, Texas 77219

Grantee: Southwest Land Alliance, Inc.
P. O. Box ~~1066~~ 3417
Pagosa Springs, Colorado 81147

or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of Archuleta County, Colorado and may re-record it at any time as may be required to preserve its rights in this Easement.

15. General Provisions.

(a) CONTROLLING LAW. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

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(b) LIBERAL CONSTRUCTION. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally constructed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) SEVERABILITY. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to this Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 9 above.

(e) SUCCESSORS. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns and shall continue as a servitude running in perpetuity with the Property.

(f) TERMINATION OF RIGHTS AND OBLIGATIONS. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) CAPTIONS. The captions in this instrument have been inserted solely for convenience or reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(h) COUNTERPARTS. The parties may execute this instrument in three or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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IN WITNESS WHEREOF, GRANTORS AND GRANTEE have executed this

Deed of Conservation Easement in Gross this 26 day of

February, 1997.

J. W. Hershey

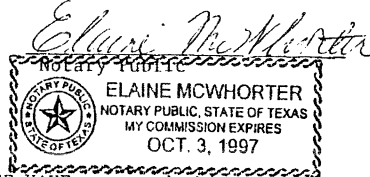
By: L. H. Hines
Authorized Signature

STATE OF TEXAS)
) ss.
County of Harris)

The foregoing Deed of Conservation Easement in Gross was signed and acknowledged before me this 24th day of FEBRUARY, 1997, by J. W. Hershey, as authorized signator, Grantor.

WITNESS MY HAND and official seal

My commission expires: 10-3-97



IN WITNESS WHEREOF, GRANTORS AND GRANTEE HAVE executed this

Deed of Conservation Easement in Gross this 26th day of February, 1997.

TERESE T. HERSHEY

By: _____
Authorized Signature

STATE OF TEXAS)
) ss.
County of Harris)

The foregoing Deed of Conservation Easement in Gross was signed

and acknowledged before me this 26th day of FEBRUARY, 1997,

by Terese T. Hershey, as authorized signator, Grantor.

WITNESS MY HAND and official seal

My commission expires: 10-3-97

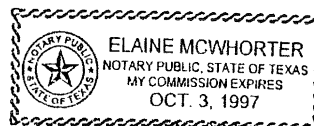


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BY THE GRANTEE:

Southwest Land Alliance, Inc.

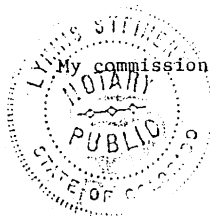
By: Barbara A. Fickett, Chairman
Authorized Signator

STATE OF COLORADO)
) ss.
County of Archuleta)

The foregoing Deed of Conservation Easement in Gross was signed and
acknowledged before me this 10th day of April 1997, by
Barbara A. Fickett, as authorized officer for Southwest Land
Alliance, Inc. Grantee.

WITNESS my hand and seal.

Lynne Steiner
Notary Public



My commission expires: 11/15/97

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EXHIBIT A

LEGAL DESCRIPTION

SE4NE4 SECTION 23, T36N, R2W, N.M.P.M.	40 ACRES
W2NE4; E2NW4; SW4NW4 SECTION 24, T36N, R2W, N.M.P.M.	200 ACRES
SE4 SECTION 24, T36N, R2W, N.M.P.M.	160 ACRES
NE4NW4 & NW4NE4 & NE4NE4 SECTION 25, T36N, R2W, N.M.P.M. All in Archuleta County, Colorado	120 ACRES
TOTAL ACREAGE UNDER APPRAISEMENT:	520 ACRES

Parcel #

A portion of Parcel
#5581-251-00-016

1995 Taxes

\$2,200.00 (approximately)



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DEED OF CONSERVATION EASEMENT IN GROSS

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 27th day of December, 1999, by J. W. HERSHEY and TERESE T. HERSHEY, individuals having an address at P. O. Box 130244, Houston, TX 77219 ("Grantors"), in favor of SOUTHWEST LAND ALLIANCE, INC., a nonprofit Colorado corporation qualified to do business in Colorado, having an address at P. O. Box 3417, Pagosa Springs, Colorado 81147 ("Grantee").

WITNESSETH:

A. WHEREAS, Grantors are the sole owners in fee simple of certain real property in Archuleta County, Colorado, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

B. WHEREAS, the State of Colorado has recognized the importance and value of preserving wildlife habitats, and that the natural, scenic areas of the State are to be protected, preserved, and enhanced for the benefit and enjoyment of the people of the State and visitors to the State, as embodied in Section 33-1-101, Colorado Revised Statutes 1973, as revised; and

C. 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 and agriculture uses consistent with 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 revised; and

D. WHEREAS, the State of Colorado has recognized the importance of encouraging the conservation of land through the use of conservation easements in its property tax laws, by the enactment of Section 39-1-102, Colorado Revised Statutes 1973, as revised; and

E. WHEREAS, the County of Archuleta has recognized the integral parts of the heritage and economic base of the county played by ranching and farming, and has stated that the preservation of agricultural lands, wildlife habitats and scenic areas through willing, voluntary, cooperative arrangements, such as conservation easements, enhances and protects the lifestyle and character of Archuleta County and furthers the policies of the County Commissioners, as stated in Resolution # 1983-8; and

F. WHEREAS, the County of Archuleta has recognized that the habitats, feeding grounds and migration routes of deer and elk herds need to be protected if wildlife observations and sport hunting activities are to remain viable factors in Archuleta County's economy, and has recognized that agricultural land uses are valuable resources to the economy, appearance and rural atmosphere of the county, as stated in Resolution # 86-27; and

G. WHEREAS, the Property possesses natural, scenic, open space, agricultural, riparian and wildlife values (collectively, "Conservation Values") of great importance to the Grantors, the people of the town of Pagosa Springs, Archuleta County, and of the State of Colorado; and

H. WHEREAS, the Property constitutes a valuable part of the agricultural and natural resource system of the San Juan Drainage, the San Juan National Forest, and the upper San Juan Basin, being nearly surrounded by the U. S. Forest Service land, having outstanding water quality and including approximately one-half mile of Snowball Creek and three sections of Four Mile Creek; and

I. WHEREAS, the Property contains important wildlife values, important grazing and shelter habitat for elk and mule deer, important migration routes for both species, hunting habitat for bald eagles, and habitat for black bears; and

J. WHEREAS, the Property contains important agricultural values, portions of the Property having been used for grazing and hay production since at least 1910; and

K. WHEREAS, the specific Conservation values of the Property are further documented in an inventory of relevant features of the Property, on file at the offices of Grantee and may be attached hereto as Exhibit B, and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and

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which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

L. WHEREAS, Grantors intend that the Conservation Values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses relating to ranching and farming existing at the time of this grant; and

M. WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

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

O. WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Section 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Internal Revenue Code"), whose primary purpose is the preservation, protection, or enhancement of land in Southwest Colorado in its natural, scenic, agricultural and open space condition; and

P. WHEREAS, Grantors intend to create a conservation easement under Article 30.5 of Title 38, Colorado Revised Statutes 1973, as revised;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of Colorado, and in particular Section 38-30.5-101, et seq., Colorado Revised Statutes 1973, as amended, Grantors hereby voluntarily grant and convey to Grantee a conservation easement, incorporated by the reference ("Easement"), in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained in perpetuity predominately in its natural, ecological, scenic, aesthetic, agricultural, wildlife habitat, forested, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. The parties to this agreement agree that a central component of the Conservation Values is the maintenance of the natural ecological processes and land health that currently exist on the property, as well as the agricultural operations that are taking place there. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitations, those involving ranching, farming, and public recreation or education, as are not inconsistent with the purposes of this Easement.

2. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of the Property; and
- (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 6, below; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case unreasonable interfere with Grantors' use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 6, below.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. When there are variances requiring advance written approval of the Grantee, it shall be in accordance with paragraphs 5.1 and 5.2. Without limiting the generality of the foregoing, and subject to the terms of paragraphs 4, 5.1, and 5.2, the following activities are expressly prohibited:

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(a) **Subdivision.** The legal or de facto division, subdivision, or partitioning of the property for any purpose, nor the separate conveyance of any previously divided or separately deeded portion of the Property, except as required by law for the uses permitted in subparagraph 3(d); and

(b) **Development Rights.** The use, exercise, or transfer of development rights on or to the Property, or any portion thereof, as it is now or hereafter may be bounded or described, or any other property within any development district that might include the Property, now or in the future, except as may be required by law for the uses permitted in subparagraph 3(d). For purposes of this subparagraph, "development rights" include, without limitation, any and all rights, however designated, now or hereafter associated with the Property or any other property that may be used, pursuant to applicable zoning laws or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property; and

(c) **Commercial Development.** Any commercial or industrial use of or activity on the Property other than those related to agriculture, recreation, or home occupations as permitted under paragraph 4 or mineral development meeting the requirements of subparagraph 3 (m); and

(d) **Construction and Improvements.** The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind (including without limitation, fences, roads, parking lots, and utility lines and related facilities) other than the following:

- (1) The maintenance, renovation, expansion, or replacement of existing agricultural, residential, and related buildings, structures, and improvements with appropriate utilities and access in substantially their present location as shown on Exhibit A, after prior written approval of the Grantee, with said approval not to be unreasonably withheld; provided that any renovation, expansion, or replacement of an existing building, structure, or improvement may not occupy more than 4000 square feet of interior area or exceed 35 feet in height without the prior approval of the Grantee; said renovation, expansion or replacement of existing buildings to be used for residential, agricultural or educational purposes; and
- (2) The placement or construction, after prior written approval of the Grantee, with said approval not to be unreasonably withheld, of additional buildings, structures, and improvements, with appropriate utilities and access, for agricultural purposes; and
- (3) The placement or construction, after prior written approval of the Grantee, with said approval not to be unreasonably withheld, of additional accessory structure and improvements, with appropriate utilities and access, for residential or agricultural purposes; and
- (4) The placement or construction, after prior notice to the Grantee, of facilities for the development and utilization of energy resources (including, without limitation, wind, solar, hydroelectric, methane, wood, alcohol, and fossil fuels), with appropriate utilities and access, for use principally on the Property; provided that the design and location of any such facilities shall be subject to the prior written approval of the Grantee, and provided further that the development of fossil fuels resources shall be subject to the provisions of subparagraph 3(m).

(e) **Surface Alteration.** Any alteration of the surface of the land (including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod), except as may be required in the course of any activity expressly permitted herein or, after notice to the appropriate state agency and with the prior approval of the Grantee, archaeological investigation; provided that construction materials, such as rock, dirt, sand, and gravel may be taken for use in connection with permitted activities on the Property only from locations approved by the Grantee; and

(f) **Soil and Water.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters; provided that this prohibition shall not be construed as extending to agricultural operations and practices (including, without limitation, the use of agrichemicals such as fertilizers, pesticides, herbicides, and fungicides) that are substantially in accordance with standard agricultural practices; and

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(g) **Ponds, Water Courses, and Wells.** The alteration or manipulation of the ponds, watercourses, and wells located on the Property as shown in Exhibit C, or the creation of new water impoundments, water courses, or wells, for any purpose other than permitted agricultural, wetland, or residential uses of the Property or the limited energy development permitted under subparagraphs 3(d)(2 through 5) and 3(g). Further, Grantors shall use their best efforts to assure the retention of any and all water rights appurtenant to the Property as are necessary to preserve and protect the Conservation Values of the Property and shall not transfer, encumber, sell, lease, or otherwise separate such rights from the Property or allow them to lapse due to nonuse or for any other reason; and

(h) **Timber Harvesting.** The harvesting, pruning, cutting down, or other destruction or removal of trees located within the forest preserve, and residential areas described in Exhibit C, except as necessary to control or prevent hazard, disease, or fire, to maintain the designated open space areas described in Exhibit C, and as is necessary in the residential area for the permitted activities, or in accordance with a Forest Stewardship Plan, funded by the Grantors, that is prepared and accepted with the mutual consent of Grantors and Grantee, and that has been reviewed and approved by the Colorado State Forest Service, which shall be designed to assure the maintenance of good quality growing stock (including mixed age and old growth Ponderosa Pine) and shall permit the cutting of healthy, mature trees only when in the vicinity of younger trees coming into their maturity, while protecting soil stability, water quality, and other Conservation Values of the Property as identified in the Baseline Documentation, including, without limitation, scenic, riparian, and wildlife habitat values; and

(i) **Commercial Feedlots.** The establishment or maintenance of any commercial feedlot, poultry sheds, or hog parlors which are defined for the purposes of this Easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market; and

(j) **Waste Dumps.** The processing, storage, dumping, or other disposal of wastes, refuse, and debris on the Property, except for non-hazardous and nontoxic materials generated by activities permitted herein; provided that only sites having prior written approval by the Grantee are used for this purpose; and

(k) **Storage Tanks and Utility Systems.** The installation of underground storage tanks or the above-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, but excluding systems for irrigating the Property, and excluding systems done with prior written approval of the Grantee, not to be unreasonably withheld, when in conjunction with permitted activities, unless prohibited by law, including, without limitation, when in conjunction with permitted activities, unless prohibited by law, including, without limitation, power lines and above ground storage tanks for fuels; and

(l) **Signs and Billboards.** The placement of any signs or billboards on the Property, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise the property for sale or rent, to post the Property to control unauthorized entry or use, and, with prior written approval of the Grantee, to advertise or regulate on-site activities permitted pursuant to paragraph 4; and

(m) **Mineral Development.** The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conservation Values of the Property. Prior to engaging in any mineral exploration, development, or extraction by any method not otherwise prohibited by this paragraph, Grantors must notify Grantee and submit a plan for Grantee's approval that provides for minimizing the adverse effects of the operation on the Conservation Values of the Property. In addition to such other measures as may be required to protect the Conservation Values of the Property, the plan must provide for: (1) preserving the quantity and quality of all surface and ground water; (2) concealing all facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and (3) restoring any altered physical features of the land to their original state; and

(n) **Off-Road Vehicles.** The use of any off-road vehicles in such a manner as will result in soil erosion or compaction or in the interference with vegetation or with the natural habitats of those animal species found on the Property; and

(o) **Weed Control.** The permitting of noxious weeds to spread and proliferate. Grantor shall bear full expense and responsibility of actively protecting the Conservation

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Values from invasion or expansion of noxious weeds, as well as shall make a reasonable, best possible effort to eradicate all noxious weeds that are on the property at the time of the deed of the Easement; and

(p) **Recreational Hunting.** Recreational hunting shall be prohibited on the property subject to this easement.

4. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. When advance written approval of the Grantee is required, it shall be in accordance with paragraphs 5.1 and 5.2, the following rights are expressly reserved:

(a) **Residential.** To reside on the Property; and

(b) **Agricultural.** To engage in any and all agricultural uses of the Property. For the purposes of this Easement, "agricultural uses" shall be defined as breeding, raising, boarding, pasturing, and grazing livestock of every nature and description; breeding and raising bees, fish, poultry and other fowl; planting, raising, harvesting, and producing agricultural, aqua-cultural, horticultural, and forestry crops and products of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the property, except as restricted in paragraph 3 (k); and

(c) **Business.** To engage in any home business that is conducted by a person residing on the Property, and in any of the dwellings, art studios, or other structures permitted in 3 (d), or that involves the provision of goods or services incidental to, and occupies structures used principally for, the agricultural uses of the property, but these permitted activities shall not in any way impair any of the Conservation Values, in particular the scenic and aesthetic; and

(d) **Recreational.** To engage in and permit others to engage in recreational uses of the Property, including, without limitation bird watching, fishing, hiking, and camping that require no surface alteration or other development of the land.

5. Notice and Approval.

5.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 3 and 4, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

5.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Paragraph 3 and 4, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

5.3 **Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and the Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(a) **Purpose.** The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended

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- to result in any express or de facto modification or amendment of the terms, conditions, or restrictions of this Easement.
- (b) **Participation.** The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.
- (c) **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.
- (d) **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- (e) **Costs.** The costs of the mediator shall be borne equally by Grantors and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

5.4 **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and mediation has either failed or been rejected, and Grantors agree not to proceed with the use or activity resolution of the dispute, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance the American Arbitration Association or a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. All matters of arbitrator selection and of settlement shall be in accordance with the laws of the State of Colorado then in effect. The decision rendered by this arbitration procedure shall be the full and final settlement of the said dispute, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. Cost and expenses shall be in accordance with paragraph 6.6 below, and any court of competent jurisdiction may be called upon to enforce the award.

6. **Grantee's Remedies.**

6.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

6.2 **Injunctive Relief.** If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

6.3 **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 **Emergency Remedies.** After due consideration of the dispute resolution procedures called for under Sections 5 and 6 above, if either party reasonably determines such procedures to be inadequate in light of an imminent threat to the Conservation Values of the Property, either

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party may pursue its remedies under this paragraph without prior consultation with the other party. Where, due to the imminent nature of the threat, time is of the utmost importance, either party may bring an action in law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin any violation of this Easement, or to require restoration of the Property to the condition that existed prior to any such violation. The emergency rights under this paragraph apply equally to the event of either actual or threatened violations of the terms of the Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.5 Scope of Relief. Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of arbitration and enforcement, litigation and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action, each party shall bear its own costs.

6.7 Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such terms or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

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

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs, Liabilities, Taxes, and Environmental Compliance.

8.1 Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage, and including Soil or Forest Stewardship Plans. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

8.2 Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.3 Representations and Warranties. Grantors represent and warrant that to the best of their knowledge, but without any independent investigation:

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(a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed, abandoned, or transported in, on, from, or across the Property;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(c) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

8.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

8.5 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on 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 ("CERCLA").

8.6 Hold Harmless. Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 8.1 through 8.5.

8.7 Disclaimer. Grantors, in granting the easement disclaim any and all reliance upon representations of the Grantee, its officers or agents, and does so after full opportunity to consult with tax and legal advisors.

9. Extinguishment and Condemnation.

9.1 Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The

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amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 9.2.

9.2 Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9.1, the parties stipulate to have a fair market value determined by multiplying (1) 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 (2) [x/y, which is] the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. [The values at the time of this grant {are or shall be } those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. 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.]

9.3 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 9.2.

9.4 Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Section 9 in a manner consistent with its conservation purposes, which are exemplified by this grant.

10. Assignment. This Easement is transferable, with the written approval of the Grantors, not to be unreasonably withheld, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Section 38-30.5-104, Colorado Revised Statutes 1973, as revised (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

10.1 Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under section 170(h) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under Section 38-30.5-104, Colorado Revised Statutes 1973, as revised, then Grantee's rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Colorado law and consistent with the requirements for an assignment pursuant to paragraph 10.

11. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within thirty (30) days of receipt of Grantors' written request therefor.

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13. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: J. W. HERSHEY
P. O. Box 130244
Houston, TX 77219

TERESE T. HERSHEY
P. O. Box 130244
Houston, TX 77219

To Grantee: SOUTHWEST LAND ALLIANCE
P. O. Box 3417
Pagosa Springs, CO 81147

or to such other address as either party from time to time shall designate by written notice to the other.

14. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Archuleta County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

15. **General Provisions.**

15.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

15.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Section 38-30.5-101, et seq., Colorado Revised Statutes 1973, as revised. 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.

15.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.4 **Entire Agreement.** 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. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15.11.

15.5 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

15.6 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee", whenever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

15.7 **Terminations of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall have no effect upon construction or interpretation.

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15.8 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

15.9 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

15.10 **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including state statute or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Archuleta County, Colorado.

15.11 **Construction.** Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

15.12 **Joint Obligation.** The obligations imposed by this Easement upon Grantors shall be joint and several.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns, forever.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on this 17th day of December 1999.

BY THE GRANTOR J. W. HERSHEY

J. W. Hershey
Authorized Signature

STATE OF TEXAS)
) SS.
County of Harris)

The foregoing instrument was acknowledged before me this 17th day of December 1999, by J. W. HERSHEY, Grantor.

WITNESS my hand and official seal.

My commission expires: 10-3-2001

Elaine McWhorter
Notary Public

BY THE GRANTOR TERESE T. HERSHEY

Terese T. Hershey
Authorized Signature

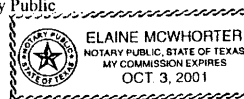


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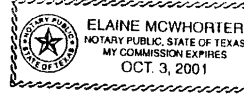
STATE OF TEXAS)
) SS.
County of Harris)

The foregoing instrument was acknowledged before me this 17 day of December
1999, by TERESE T. HERSHEY, Grantor.

WITNESS my hand and official seal.

My commission expires: 10-3-2001

Elaine McWhorter
Notary Public



BY THE GRANTEE SOUTHWEST LAND ALLIANCE

by [Signature]
its Authorized Representative

STATE OF COLORADO)
) SS.
County of ARCHULETA)

The foregoing instrument was acknowledged before me this 27th day of December
1999, by Robert L. Bigelow

WITNESS my hand and official seal.

My commission expires: 9/30/2002

Elaine McWhorter
Notary Public

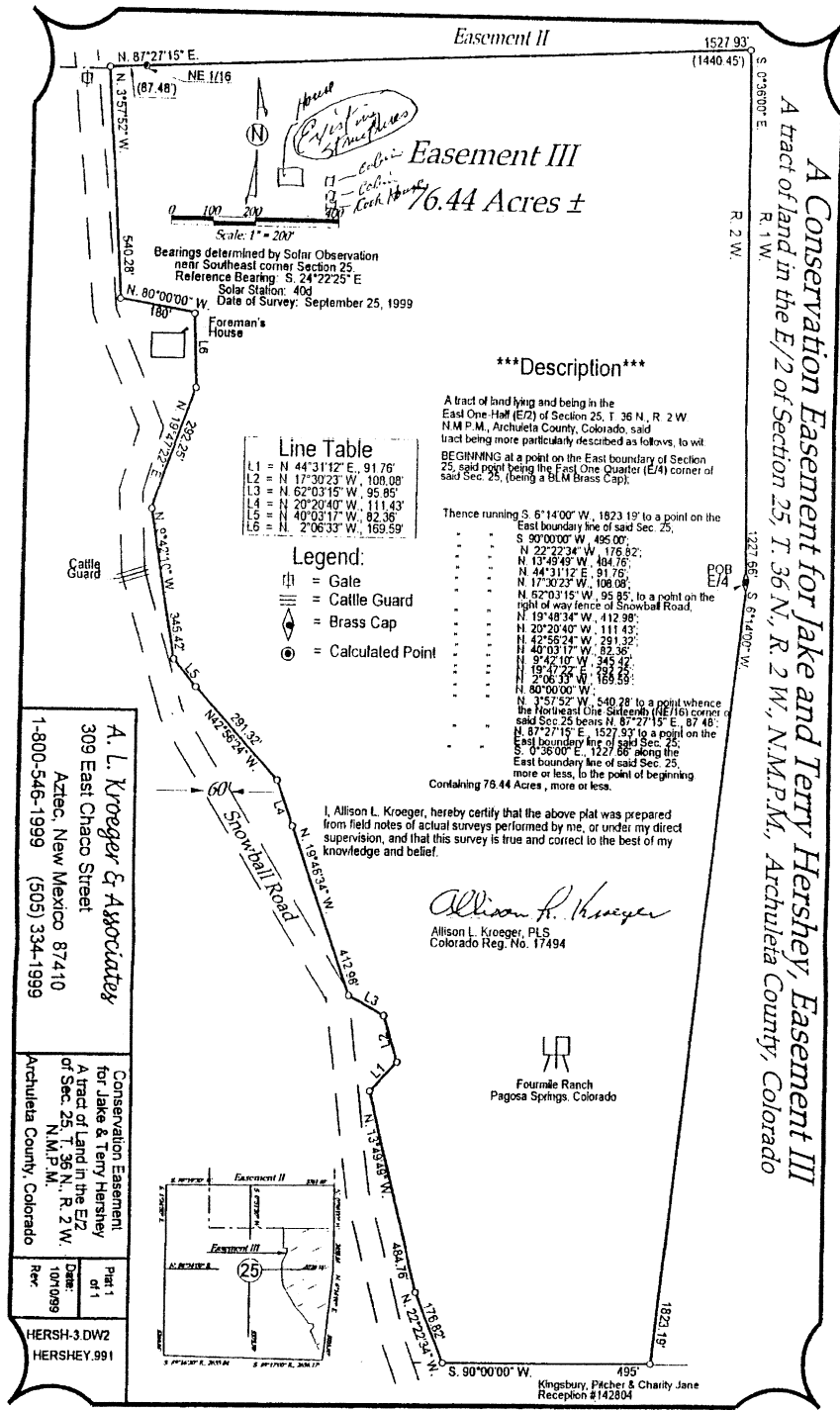


SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Water Rights
- C. Site Description/Map — SEE HERSHEY EASEMENTS I and II.

Exhibit E

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RECORDER'S NOTE
Some words are hard to read
and may not reproduce well.

Exhibit A

Exhibit E

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HERSHEY Easement
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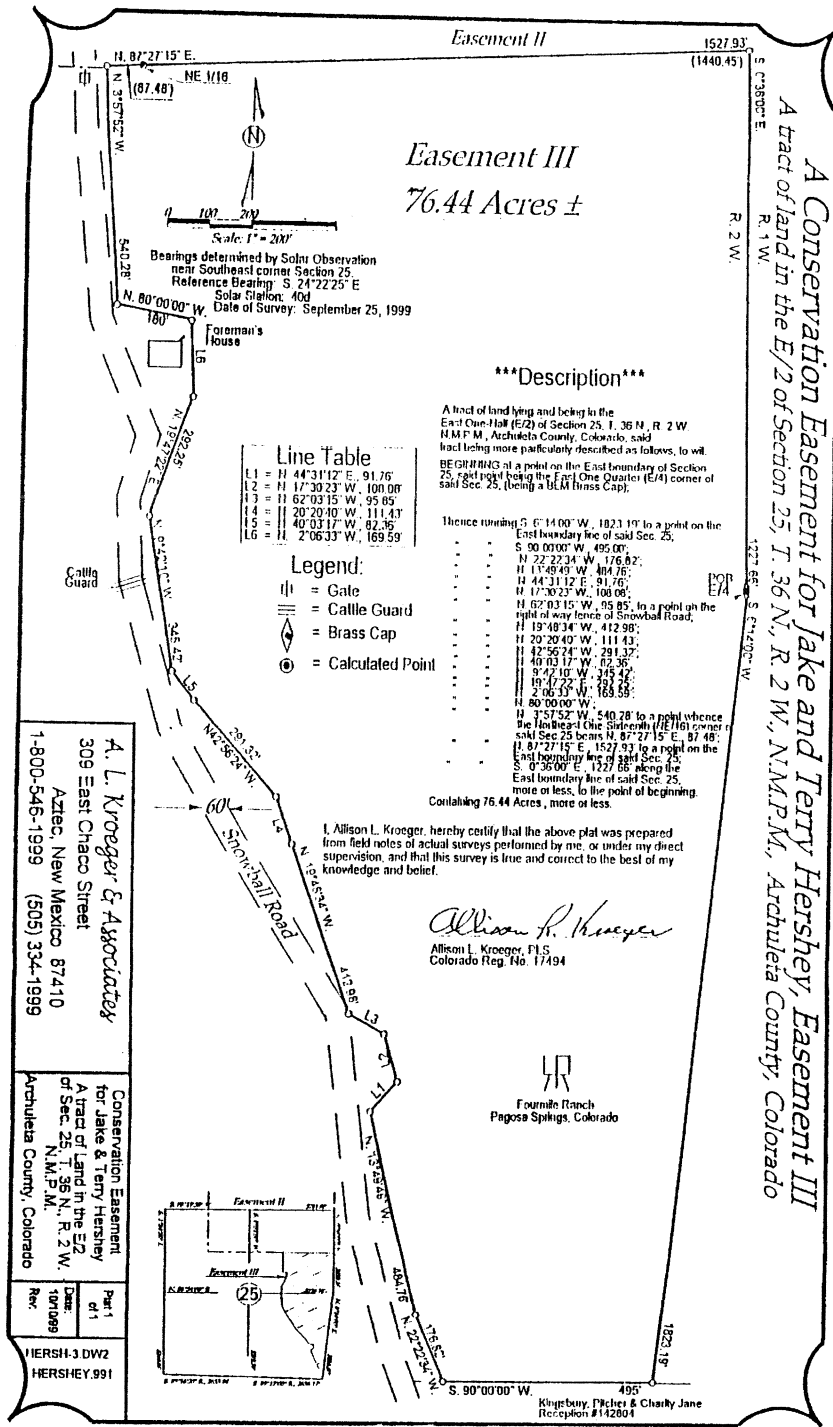
EXHIBIT B

WATER RIGHTS

The easement conveyed shall have the benefit of 5 1/2 c.f.'s adjudicated from Four Mile Creek delivered by Mesa Ditch, a corporation; and another 2 1/2 c.f.'s via Four Mile Ditch, from Four Mile Creek.

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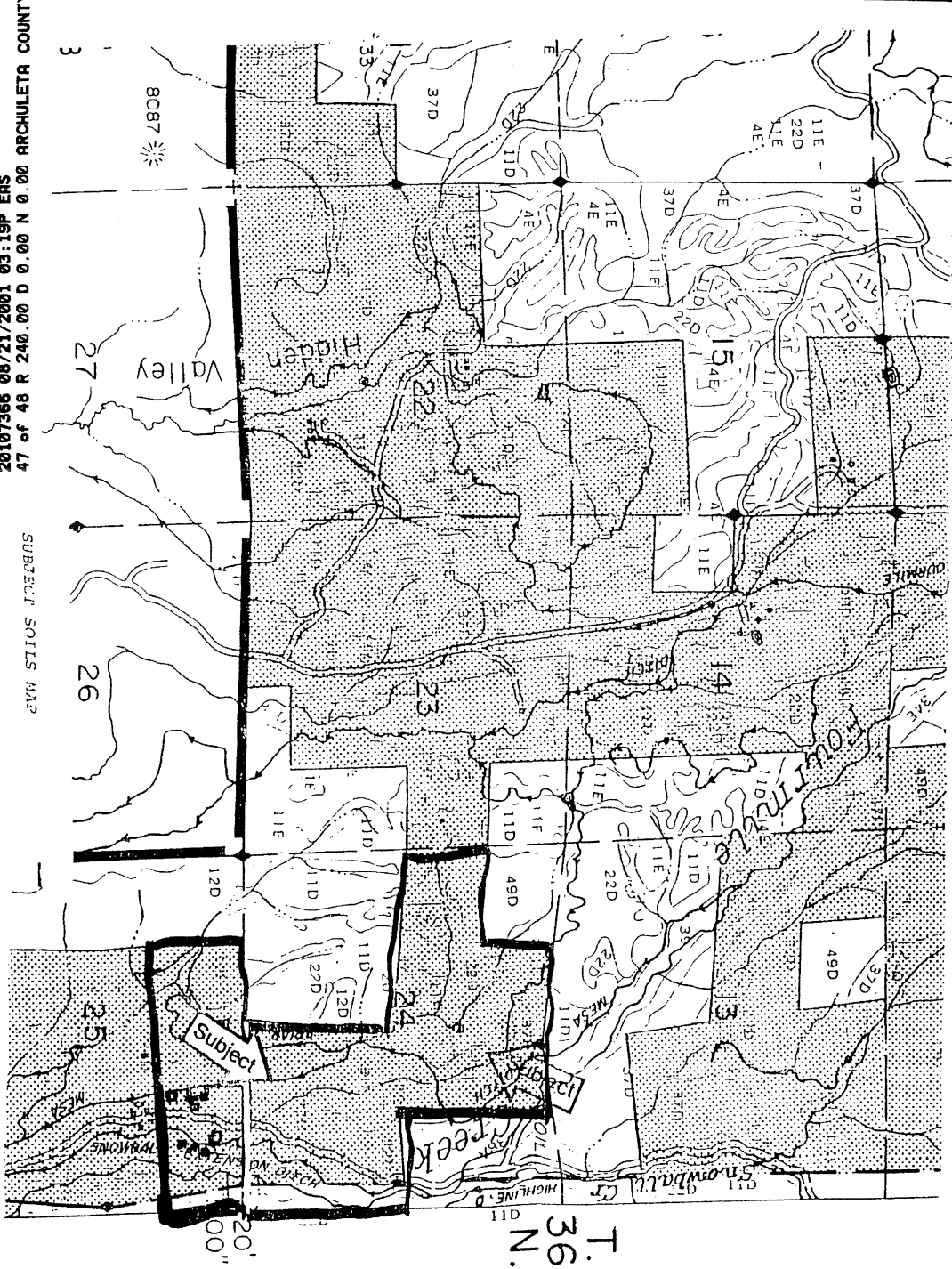
A. L. Kroeger & Associates
308 East Chaco Street
Aztec, New Mexico 87410
1-800-546-1999 (505) 334-1999

Conservation Easement
for Jake & Terry Hershey
A Tract of Land in the E/2
of Sec. 25, T. 36 N., R. 2 W.,
N.M.P.M.,
Archuleta County, Colorado

Part
of 1
Date:
10/06/99
Rev:
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SUBJECT SOILS MAP



T. 36 N.
Exhibit C



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West side of snowball rd. - Hershey House - Barn - Annex
East side of snowball rd, east side of snowball ditch - guest house
East side of snowball ditch - 3 shacks

Alan Farrow
3/20/01

Exhibit C

(15) ✓

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS is made this 18th day of December, 1993, by J. W. HERSHEY, an individual having an address at P.O. Box 130244, Houston, Texas 77219, and NATIONAL AUDUBON SOCIETY, a non-profit organization, having an address at 700 Broadway, New York, New York 10003 ("Grantors"), in favor of SOUTHWEST LAND ALLIANCE, INC., a non-profit Colorado corporation qualified to do business in Colorado, having an address of P.O. Box 1066, Pagosa Springs, Colorado 81147 ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Archuleta County, Colorado, more particularly described in Exhibit "A" attached hereto and incorporated by this reference ("the Property"); and

WHEREAS, the State of Colorado has recognized the importance and value of preserving wildlife habitats, and that the natural, scenic areas of the State are to be protected, preserved, and enhanced for the benefit and enjoyment of the people of the State and visitors to the State, as embodied in § 33-1-101, C.R.S. 1973, as revised; 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 and agricultural uses consistent with the protection of open land having wholesome environmental quality, by the enactment of § 38-30.5-101, et seq., C.R.S. 1973, as amended; and

WHEREAS, the County of Archuleta has stated that the preservation of agricultural lands, wildlife habitats and scenic areas through willing, voluntary, cooperative arrangements, such as conservation easements, enhances and protects the lifestyle and character of Archuleta County and furthers the policies of the County Commissioners, as stated in Resolution #1983-8; and

WHEREAS, the County of Archuleta has recognized that the habitats, feeding grounds and migration routes of deer and elk herds need to be protected if wildlife observations are to remain viable factors in Archuleta County's economy, as stated in Resolution #86-27; and

WHEREAS, the County of Archuleta has recognized by the adoption of Resolution #86-27 that agricultural land uses are valuable resources to the economy,

STATE DOCUMENTARY FEE
DATE 12-29-93
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appearance and rural atmosphere of the county, as stated in that resolution; and

WHEREAS, the County of Archuleta has recognized the integral parts of the heritage and economic base of the county played by ranching and farming, as stated in Resolution #1983-8; and

WHEREAS, the Property possesses natural, scenic, open space, agricultural, riparian and wildlife values (collectively "conservation values") of great importance to the Grantors, the town of Pagosa Springs, the people of Archuleta County, and the State of Colorado; and

WHEREAS, the Property constitutes a valuable part of the agricultural and natural resource system of the San Juan drainage, the San Juan National Forest, and the upper San Juan Basin, being nearly surrounded by U.S. Forest Service land, having outstanding water quality and including approximately one-half mile of Snowball Creek and three sections of Four Mile Creek; and

WHEREAS, the Property contains important wildlife values, including important calving, winter grazing and shelter habitat for elk and mule deer, as well as important migration routes for both species, hunting habitat for bald eagles, and habitat for black bears; and

WHEREAS, the Property contains important agricultural values, portions of the Property having been used for grazing and hay production purposes since at least 1910; and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of the Grantee and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors intend that the Property's natural elements, and its agricultural and wildlife values, be preserved by the continuation of uses, including agriculture and ranching, that have proven historically compatible with such elements and values; and

WHEREAS, Grantors further intend, as owners in unencumbered fee of the property, to convey to Grantee the right to preserve and protect the conservation values

of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under §§ 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in the upper San Juan River Basin in its natural, scenic, agricultural and open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of the Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado and in particular § 38-30.5-101 et seq., C.R.S. 1973, as amended, Grantors hereby voluntarily grant and convey to Grantee a conservation easement ("Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to preserve and protect in perpetuity the natural, wildlife habitat, wildlife migration, water quality and agricultural features and values of the Property and to prevent any use of the Property that will materially impair or interfere with the conservation values of the Property. The parties to this agreement agree that a central component of these conservation values is the maintenance of the natural ecological processes and land health that currently exist on the Property, as well as the agricultural operations that are taking place there. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving limited residential uses and responsible agricultural practices, as are consistent with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to the Grantee by this Easement:

- (a) To identify, preserve and protect the conservation values of the Property;
- (b) To prevent any activity on, or use of, the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent human activity or use, pursuant to paragraph 6 below;
- (c) To work in association with the Colorado Division of Wildlife ("CDOW"), such that officials of CDOW may offer advice and consultation to the owner(s) of the

Property and the Grantee in connection with agricultural practices that facilitate the purposes, generally, of this Easement, as well as the management of wildlife; and

(d) To enter upon the Property at reasonable times in order to monitor Grantors' compliance with, and otherwise enforce the terms of, this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited.

4. Reserved Rights. Grantors reserve to themselves, and to their successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) To maintain and repair, or replace, existing structures, fences, corrals, ditches and other existing improvements on the Property. Additional fencing shall be permitted as necessary to segregate livestock but only in a manner that minimizes any adverse effect of fencing on wildlife grazing or migration patterns. Any fences constructed after the date of this Easement shall be constructed in accordance with CDOW guidelines for fencing in areas of high wildlife values. In the event of the destruction, deterioration or obsolescence of any existing structure, fence, corral, or ditch, Grantors may replace same with improvements of similar size, function, capacity and location.

Grantors may use such natural materials as rocks and gravel as may be found on the Property in the construction of improvements permitted hereunder; however, no natural materials shall be taken or used in such a way as to damage, impair or endanger the natural wildlife values or the water quality of the Property;

(b) To engage in limited residential use of the Property. Limited residential use includes construction of a dwelling on the north half of the property, not to exceed 5000 square feet in size, and construction of not more than two single family homes on the south half of the Property, said homes not to exceed 5000 square feet in size each. Designation of dwelling locations shall be subject to the consent of the Grantee, said consent not to be unreasonably withheld, and

shall be located consistent with the purpose of the Easement.

(c) To maintain and construct access and utility easements to the structures, improvements and dwellings allowed under subparagraphs (a) and (b) above by routes and means that are consistent with the purpose of this Easement. All construction shall utilize existing topography in a manner which minimizes impacts to wildlife and any new gates in areas of high wildlife migration use shall be kept open.

(d) To engage in any and all responsible agricultural uses of the Property, consistent with the purpose of this Easement, including the pasturing and care of livestock, irrigation of existing pastures and reasonable maintenance and construction of fence and irrigation ditch systems. Any agricultural plantings undertaken shall consist of species that are beneficial to wildlife. Snag trees shall be left standing in all forested areas of the Property. In no instance shall "responsible agricultural uses" be interpreted to include overgrazing or pollution or degradation of any surface or subsurface water on the Property;

(e) To develop and maintain such ponds and other water resources on the Property as are necessary or convenient for the permitted agricultural and residential uses of the Property; provided, however, that such development and use of water resources shall be compatible with the purpose of this Easement;

(f) To engage in, and permit others to engage in, non-commercial educational and recreational uses of the Property, consistent with the purpose of this Easement, including, without limitation, hiking, horseback riding, cross-country skiing, fishing, nature studies and other similar activities that require no surface alteration or other development of the land; except, however, that hunting is not to be considered an educational or recreational use of the Property;

(g) Grantors specifically retain all right, title and interest in and to all tributary and nontributary water, water rights, and related interests in, on, under, or appurtenant to the land; however, Grantors agree that they will dedicate in perpetuity the water rights identified in Exhibit "B", attached hereto and incorporated by this reference herein, to the purpose of this Easement; and

(h) Grantors specifically retain all right, title and interest to subsurface oil, gas, coal and other minerals held by Grantors; provided, however, that exploration for, and extraction of, any such substances by Grantors shall be undertaken in a manner designed to insure the protection of the conservation values of the Property, and only by a subsurface method consistent with the provisions of

Section 170 of the Internal Revenue Code, as amended.

4.1 Rights Not Reserved. It is the Grantors' intent that the reserved rights with regard to the Property shall not include the following rights:

- (a) The right to establish any non-agricultural commercial or industrial use or construction, placement, or erection of any commercial sign, except for one sign not to exceed four feet by six feet in dimension;
- (b) The right to subdivide, whether formally or de facto, or otherwise develop the Property, including the right to construct any residential structure other than those identified in paragraphs 4(a) and (b) above. Sale, exchange, devise or gift of any portion of the Property shall not be considered a subdivision, provided that the Property may not be divided into more than four parcels and such transfer(s) is effected consistent with the provisions of paragraph 12 below;
- (c) The right to use herbicides, pesticides or insecticides upon the Property, except, in the context of controlling noxious weeds, herbicides may be used only as a last resort in an emergency situation and except that fertilizers which are organic and biodegradable may be employed. The opinion of the CDOW may be relied upon in the selection of any herbicides or fertilizers in order that the sensitivities of wildlife to such applications be respected and protected;
- (d) The right to use motorized vehicles off existing roadways, which would result in degradation of the land and the wildlife habitat thereon; provided, however, that reasonable use of motorized vehicles for ranch management purposes, referenced in paragraph 4 above, is not so prohibited;
- (e) The right to hunt or allow others to hunt on the Property;
- (f) The right to harvest wood or timber commercially; provided, however, that Grantors retain the right to collect firewood and to harvest, as necessary or desirable for agricultural purposes, for construction of fences and for repair and construction of improvements as are allowed under this Easement;
- (g) The right to establish any commercial feedlot, where such feedlot is defined as any permanently constructed confined area or facility within which the property is not grazed or cropped annually, for purposes of engaging in the business of reception and feeding of livestock;
- (h) The right to construct any new roadways, without consent of the Grantee,

which consent shall not be unreasonably withheld; provided that such roadways are constructed so as to minimize impacts to the conservation values of the Property and are not constructed within critical wildlife habitat or riparian zones; further provided that Grantee shall be deemed to have consented to the construction of the roadways identified in paragraphs 4(a), (b) and (c) above;

(i) Except as related to construction permitted hereunder or to the rights identified in paragraph 4(h) above, the right to quarry, excavate or remove rocks, minerals, gravel, sand, top soil or other similar materials from the Property; and

(j) The right to deposit or dump solid or liquid refuse or waste upon the Property, except for the effluent from buildings and structures permitted hereunder, provided that any effluent disposal shall be subject to all laws, rules and regulations of the County of Archuleta and the State of Colorado.

4.2. Current Uses. Grantee acknowledges by acceptance of this Easement that Grantors' historical and present uses of the Property are compatible with the purpose of this Easement, and acknowledges that it is familiar with the present condition of the Property's natural, water quality, wildlife grazing and wildlife habitat resources, so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof. In the event a controversy arises with respect to the nature and extent of Grantors' historical and present use of, or the physical condition of, the Property, 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.

4.3. Inconsistent Uses. In the event that a use of the Property is either planned or initiated and such use is considered by either the Grantors or the Grantee to be inconsistent with the purpose of this Easement, the parties have an obligation to consult with each other in order to resolve the matter prior to initiating the procedures set forth in paragraph 6 below.

5. Disclaimer. Grantors, in making this grant, disclaim any reliance upon representations of the Grantee and is doing so after full opportunity to consult with tax, accounting and legal advisors.

6. Remedies. If, after undertaking the consultation required in paragraph 4.3 above, it reasonably appears to Grantee that a violation of any term, condition, covenant or restriction contained in this Easement has occurred, after thirty (30) days notice of the violation to Grantors, Grantee may bring an action in law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin any violation of this Easement, or to require restoration of the Property to the condition that

existed prior to any such violation. Nothing herein contained shall be construed to preclude Grantors from exhausting their legal remedies in determining whether the activity to which the Grantee has objected is consistent with this Easement.

6.1. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement, shall be borne by Grantors.

6.2. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

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

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement. Nothing in this Easement shall be construed to preclude Grantors' right to grant limited access to third parties across the Property, provided that such access is reasonable in manner and does not result in degradation of the Property or disturbance of wildlife habitat. Grantors do hereby adopt the law of the State of Colorado with regard to public access to the Property.

8. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8.1. Taxes. Grantors shall bear the responsibility for the payment of all taxes, assessments, fees or charges levied on, or assessed against, either the Property or the Easement by competent authority. Grantee does not now, and will not in the future, have any obligation to pay said taxes, assessments, fees or charges.

8.2. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") 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:

- (a) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, unless due to the negligence of any of the Indemnified Parties or related to activities of the Grantee undertaken in the normal course of its business and affairs; and
- (b) The obligations specified in paragraphs 8 and 8.1 above.

9. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Donation of this Easement gives rise to a property right in the Grantee with a fair market value that is at least equal to the proportionate value represented by the appraisal value hereof, that the conservation restrictions bear to the value of the entire Property prior to the grant of the Easement. This proportionate value of the Grantors' property rights shall remain constant. On any extinguishment of the restrictions hereunder, the Grantee, on subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the conservation restrictions determined under the terms of this paragraph. Any such proceeds shall be used by the Grantee in a manner consistent with the conservation purpose of this Easement.

10. Amendment. If circumstances arise under which an amendment to, or modification of, this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided, however, that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including § 38-30.5-101 et seq., C.R.S. 1973, as amended, or § 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Archuleta County, Colorado.

11. Assignment. This Easement is transferable only after written notice has been provided to the Grantors. Grantee may assign its rights and obligations under this Easement only upon agreement by the Grantors regarding a successor organization,

such agreement to not be unreasonably withheld, and then, only to an organization that is a qualified organization at the time of the transfer under § 170(h) of the Internal Revenue Code of 1954, as amended, and authorized to acquire and hold conservation easements under § 38-30.5-101 et seq., C.R.S. 1973, as amended. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continues to be carried out.

12. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all, or a portion of, the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any such interest at least thirty (30) days prior to the effective date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13. Notices. Any notice, demand, request, consent, or approval that either party is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

Grantors: J.W. Hershey
P.O. Box 130244
Houston, TX 77219

National Audubon Society
700 Broadway
New York, NY 10003

Grantee: Southwest Land Alliance, Inc.
P.O. Box 1066
Pagosa Springs, CO 81147

or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of Archuleta County, Colorado and may re-record it at any time as may be required to preserve its rights in this Easement.

15. General Provisions.

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

(b) *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally constructed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 9 above.

(e) *Successors.* The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns and shall continue as a servitude running in perpetuity with the Property.

(f) *Termination of Rights and Obligations.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) *Captions.* The captions in this instrument have been inserted solely for convenience or reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(h) *Counterparts.* The parties may execute this instrument in three or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, GRANTORS AND GRANTEE have executed this
Deed of Conservation Easement in Gross this 18 day of
Dec., 1993.

By: *[Signature]*
Authorized Signator

The foregoing Deed of Conservation Easement in Gross was signed and acknowledged before me this 18 day of December, 1993, by J.W. Hershey, as authorized signator, Grantor.

Mano C. Izquierdo
Notary Public

A circular notary seal for Alan C. Scott, a Notary Public in the State of Texas. The seal features a five-pointed star in the center. The text around the star reads "ALAN C. SCOTT", "NOTARY PUBLIC", and "STATE OF TEXAS". Below the star, it says "COMMISSION EXPIRES 11-17-97". The entire seal is enclosed in a double-lined circular border.

By: James B. Henry
Authorized Signator

JOAN G. ADAMS
NOTARY PUBLIC
STATE OF NEW YORK
acknowledged
My comm

AD The foregoing Deed of Conservation Easement in Gross was signed and
acknowledged before me this 22nd day of December, 1993, by
ARK James A. Cumich as authorized signator for National Audubon Society, Grantor.

John D. Allen
Notary Public

JOAN G. ADAM
Notary Public, State of New York
No. 41-4779618
Qualified In Queens County
Commission Expires Dec. 31, 1995

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BY THE GRANTEE:

Southwest Land Alliance, Inc.

By: John R. Eyre
Authorized Signator

STATE OF COLORADO)
County of Archuleta) ss.

The foregoing Deed of Conservation Easement in Gross was signed and acknowledged before me this 17th day of December, 1993, by Glen R. Eyre, as authorized officer for Southwest Land Alliance, Inc., Grantee.

WITNESS my hand and seal.

Gloria Duman
Notary Public

My commission expires: June 4, 1994

EXHIBIT A

All of Section 12, T36N, R2W, N.M.P.M.	-	640 acres
N1/2 SE1/4 Section 11, T36N, R2W, N.M.P.M.	-	80 acres
SE1/4 SE1/4 Section 11, T36N, R2W, N.M.P.M.	-	40 acres
NE1/4 NE1/4 Section 14, T36N, R2W, N.M.P.M.	-	40 acres
W1/2 NW1/4 Section 13, T36N, R2W, N.M.P.M.	-	80 acres
SE1/4 NW1/4 Section 13, T36N, R2W, N.M.P.M.	-	40 acres
NE1/4 Section 13, T36N, R2W, N.M.P.M.	-	160 acres
N1/2 SE1/4 Section 13, T36N, R2W, N.M.P.M.	-	<u>80 acres</u>
		1160 acres

Hershey Easement
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EXHIBIT B

SNOWBALL DITCH WATER diverted at Snowball Ranch and delivered at the north-east boundary of this Easement - 2 1/2 cubic feet per second

QUIEN SABE CREEK WATER delivered via Mountain Park ditch to Skunk Creek - 1 1/2 cubic feet per second

Recording requested by and return to:
Southwest Land Alliance, Inc.
P.O. Box 3417
Pagosa Springs, CO 81147

**DEED OF CONSERVATION EASEMENT
FOR THE
HERSHEY/FOUR MILE RANCH**

STATE DOCUMENTARY FEE
DATE: 12-26-07
\$ 0

TRANSFER NOTIFICATION

Grantors agree to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer along with a \$250 transfer fee pursuant to the requirements of Paragraph 33 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective as of December 26, 2007, by Terese T. Hershey and The Estate of J. W. Hershey whose address is 2121 San Felipe, Suite 124, Houston, TX 77019 ("Grantors"), to SOUTHWEST LAND ALLIANCE, INC., a Colorado nonprofit corporation ("Grantee") having its principal office at P.O. Box 3417, Pagosa Springs, Colorado 81147, for the purpose of forever conserving the open space character, agricultural productivity, wildlife habitat, scenic qualities and other Conservation Values of the subject property.

WITNESS THAT:

A. Grantors are the sole owners in fee simple of the ranch property ("Property") legally described in **Exhibit A** and as depicted in a survey map as **Exhibit B**, both attached hereto and made a part of this Deed, which consists of approximately 479.54 acres of land, together with buildings, fences, and a portion of the Water Rights as defined herein and attached as **Exhibit E**, located in Archuleta County, State of Colorado.

B. Grantee is a "qualified conservation organization," as defined in § 170(h) of the United States Internal Revenue Code, and a charitable organization as required under §§ 38-30.5-104 (2), Colorado Revised Statutes (C.R.S.), is in good standing with the State of Colorado, and accepts the responsibility of enforcing the terms of this Deed and upholding its Conservation Purposes forever.

C. The Property lies between 7,520 and 7,720 feet elevation on the southern foothills of the San Juan Mountains. The Property is located within the Upper San Juan River watershed, and is an important part of the natural resource system of the upper San Juan River Basin, the San Juan National Forest and the San Juan River drainage. The Property is primarily open ranchland with irrigated hay meadows, and includes forested areas in the western portion of the Property, and is an important agricultural property in Archuleta County. The Property supports

**NO REAL PROPERTY TRANSFER
DECLARATION ACCOMPANIED
DOCUMENT AT TIME OF RECORDING
ARCHULETA COUNTY
CLERK & RECORDER**



vegetation communities that consist of irrigated pasture/lower montane meadows, mixed conifer forests, ponderosa pine woodlands, aspen, and open water in the form of stock ponds. The structural diversity of the montane forests and woodlands, and pastures/meadows with open water supply quality habitat important to wildlife and especially to resident and migratory songbirds for cover, feeding, nesting, and foraging particularly in the fall and winter. The diverse topography and vegetation, along with surrounding large tracts of protected open land provide for rich wildlife habitat and migration corridors for elk (*Cervus elaphus*), mule deer (*Odocoileus hemionus*), black bear (*Ursus americanus*), mountain lion (*Felis concolor*), and bobcat (*Lynx rufus*). The Property provides an important buffer zone for game and non-game wildlife beyond the boundaries of the public land system. Its protection from development will alleviate fragmentation of productive agricultural lands and wildlife habitat. The Property's proximity to public lands, to existing conservation easements on other portions of the Hershey/Four Mile Ranch, and to neighboring ranches that are encumbered by conservation easements provide great expanses of open space and natural habitat which all contribute to its importance to wildlife for cover, food, and travel. The Property is adjacent to and highly visible from Archuleta County Road 200 (Snowball Road). There are scenic vistas of and across the open meadows, hillsides and forested areas of the Property from Archuleta County Road 200 to the South San Juan Mountains, the San Juan National Forest, and adjoining and/or nearby properties that have been protected by conservation easements. Protection of the Property as described in this Conservation Easement will preserve these scenic vistas for the public, which will provide significant public benefit.

D. The following conservation purpose, in accordance with Treasury Regulations §1.70A-14(d)(4) is furthered by this Conservation Easement, "The preservation of certain open space (including farmland and forest land) for the scenic enjoyment of the general public and will yield a significant public benefit." The Property, which can be viewed by the general public from Archuleta County Road 200 (Snowball Road), includes natural forested hillsides and broad, open meadows in agricultural use. There is a strong likelihood that, if the Property were to be developed instead of preserved, it would contribute to the degradation of the scenic, rural and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values. The preservation of the Property pursuant to this Conservation Easement will yield significant public benefit, for at least the following reasons: The Property includes significant wildlife and bird habitat; the Property has significant areas in agricultural production in an area that is experiencing substantial development that has reduced open and scenic vistas available to the public; preservation of the Property is consistent with Federal, State and local public conservation programs and with conservation efforts underway on adjoining or nearby properties; and development of the Property will contribute to the degradation of the scenic vistas available to the public, resulting in a loss of tourism and commerce to the area.

E. The following conservation purpose, in accordance with Treasury Regulations §1.70A-14(d)(3) is furthered by this Conservation Easement, "To protect significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives." The Property is in the Upper San Juan River watershed and has significant natural areas which including mixed conifer and ponderosa pine forests, open meadows, and aspen groves which provide habitat for a wide variety of birds and mammals, as described above and in the Baseline Documentation Report, the Attestation Page of which is attached herein as **Exhibit C**.

F. The above-described scenic, ecological and other conservation values or purposes and other characteristics of the Property ("Conservation Values" or "Conservation Purposes"), its current use, and its state of improvement, are described in a Baseline Documentation Report prepared on behalf of Grantors, the Attestation Page of which is attached herein as **Exhibit C**, which report describes the present condition of the Property, and has been approved by both Grantors and Grantee. The Baseline Documentation Report will be used by Grantee to assure that any future use of the Property will be consistent with the terms of this Deed.

G. The Grantors' intent in granting this Conservation Easement is to make a charitable gift of the property interest conveyed by this Deed to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the open space character, wildlife habitat, scenic qualities and other Conservation Values of the Property identified in the Baseline Documentation Report, the Attestation Page of which is attached herein as **Exhibit C**, will be conserved and maintained forever, by only permitting uses of the Property that do not significantly impair or interfere with the identified Conservation Values. The parties agree, however, that the use of, and improvements to, the Property as of the date of the Baseline Documentation Report are consistent with the Conservation Purposes of this Deed.

H. The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

- 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;"
- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-3-101, *et seq.*, which provide in part that "the resources and fertility of the land . . . and the prosperity of the farming population . . . and the waters of the rivers are matters affected with a public interest."
- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-3-101, *et seq.*, provide in part that the "welfare of this state has been impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful . . . use of its soil resources."
- Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."
- The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, *et seq.*, which provide that "it is the policy of the State of Colorado that

the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

- The Colorado Department of Transportation statutes, Colorado Revised Statutes §43-1-401, *et seq.*, provide that the preservation and enhancement of the natural and scenic beauty of this state is a matter of substantial state interest.
- The Western Governors' Association Policy Resolution 05-19 supports "voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife, and other values."
- The County of Archuleta has recognized the integral parts of the heritage and economic base of the county played by ranching and farming, and has stated that the preservation of agricultural lands, wildlife habitats and scenic areas through willing, voluntary, cooperative arrangements, such as conservation easements, enhances and protects the lifestyle and character of Archuleta County and furthers the policies of the County Commissioners, as stated in Resolution #1983-8.
- The County of Archuleta has recognized that the habitats, feeding grounds and migration routes of deer and elk herds need to be protected if wildlife observations and sport hunting activities are to remain viable factors in Archuleta County's economy, and has recognized that agricultural land uses are valuable resources to the economy, appearance and rural atmosphere of the county, as stated in Resolution #86-27.
- The voters of the State of Colorado by adoption of Amendment 27 to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the State Board of the Great Outdoors Colorado Trust Fund (the "**Board**"), by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantors voluntarily grant and convey to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the Conservation Values of the Property.

1. Purpose; Use of Property. It is the intention of Grantors to preserve the ability of the Property to be agriculturally productive, including continuing farming and ranching activities, to engage in future ranching activities, to preserve the agricultural values, open space character, wildlife habitat, and scenic qualities of the Property. It is the purpose of this Conservation Easement to preserve the Conservation Values of the Property in perpetuity and to

prevent any use of or activity on the Property that will significantly impair or interfere with its Conservation Values. The Property may not be used for commercial or industrial activities, but may be used for other activities which are not prohibited by the terms of this Deed, so long as those uses and activities do not significantly impair or interfere with the Conservation Values of the Property, as further specified in this Conservation Easement.

2. Affirmative Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

2.1. To identify, preserve, protect and enhance the Conservation Values of the Property, in accordance with the terms of this Easement;

2.2. To enter upon the Property at reasonable times and upon seventy-two (72) hours notice to Grantors in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement

2.3. To enjoin or prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration by Grantors of such areas or features of the Property that may be damaged by any inconsistent activity or use, except that Grantors shall not be required to restore any damage caused by the acts of trespassers, provided that Grantors shall take reasonable steps to prevent such trespass and damage, and provided that Grantors shall promptly notify Primary Grantee of any such damage, pursuant to Paragraphs 26 and 27 below.

3. Prohibited Acts. Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Grantors hereby authorize Grantee to enforce these covenants in the manner described below. However, unless otherwise specified, nothing in this Deed shall require Grantors to take any action to restore the condition of the Property after any fire, Act of God or other event outside of the control of Grantors. Grantors understand that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

4. Construction of Buildings and Other Structures. The placement and/or construction of any building, structure, or improvements of any kind, except those existing on the date of this Deed or those approved in writing by Grantee subsequent to the date hereof but prior to construction, are prohibited except in accordance with Subparagraphs A through D below. Before undertaking any action that requires advance permission, Grantors shall notify Grantee of such request and seek permission in the manner specified in Paragraph 26.

A. Fences. Existing fences may be repaired, replaced, or removed, and new fences may be built anywhere on the Property for purposes of reasonable management of livestock in a manner as is customary in the region, without any further permission of Grantee. Rigid perimeter fences will be earth-tones blending with surroundings. No white fences are permitted. Grantors 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.

- B. Exterior Lighting. No new exterior lighting is permitted on the Property, except exterior lighting that is incidental to early morning or late night agricultural activities.
- C. Agricultural Structures and Improvements. There are six (6) pre-existing agricultural structures on the Property as described in the Baseline Documentation Report, the Attestation Page of which is attached as **Exhibit C** of this Deed. No agricultural structures may be modified or altered for residential use or human habitation. Additional barns and agricultural structures may be constructed on the Property to be used solely for agricultural purposes, including storage of farm or ranch equipment, but only with the consent of Grantee, which shall not be unreasonably withheld, and so long as those structures, uses and activities do not significantly impair or interfere with the Conservation Values of the Property. No construction of any other new agricultural buildings or improvements other than those covered by the preceding two sentences shall be constructed.
- D. Repair and Replacement. All agricultural buildings which are permitted to be constructed hereunder may be repaired, and replaced at their permitted location without further permission from Grantee, provided that any renovation, expansion, or replacement of an existing building may not substantially alter its size, character or function. At the time that construction is to commence, Grantee shall be notified so that its records may be updated.
- E. Residential Structures and Accessory Structures. There is one (1) pre-existing residential structure (the "Ranch Manager's House") on the Property as described in the Baseline Documentation Report, the Attestation Page of which is attached as **Exhibit C** of this Deed. The Ranch Manager's House, the location of which is specified in the Baseline Documentation Report, may be replaced or renovated in its present location (**Building Envelope B** within **Parcel B**), and enlarged to no more 2,400 total square feet of living space.

One (1) additional Residential Structure, and one related non-residential accessory structure, such as a detached garage, may be constructed on the Property, only within the building envelope designated as **Building Envelope A**, within **Parcel A**. This additional residential structure, its related accessory structure, and access road, shall be designed, constructed, and located to minimize their impact on the Conservation Values of the Property.

No other residential structures are permitted on the Property. No residential construction shall be permitted without prior written notice to the Grantee. Residential structures shall not be used for any commercial purpose, other than those specified in Paragraph 15.

5. Subdivision. The division or subdivision of the Property into more than two parcels, whether by physical or legal process, including but not limited to the partition of undivided interests, is prohibited, except as provided in Subparagraphs A and B below. Any parcels so subdivided from the Property shall remain subject to the terms and conditions of this Deed.

- A. Subdivision and Building Envelope(s). Original Grantors may subdivide the Property into two (2) separate parcels as designated in the Survey and in the Baseline Documentation Report as **Parcel A** and **Parcel B**. The Property may only be subdivided into two (2) parcels by the original Grantors. Upon any sale of the Property from the original Grantors, the reserved right to subdivide the Property into two (2) parcels is extinguished. Any and all subdivided Parcels and Building Envelopes remain subject to the terms and restrictions set forth in this Deed of Conservation Easement.
- i. Parcel A: Parcel A consists of approximately 374.54 acres. One Residential Structure may be constructed within a designated building envelope (**Building Envelope A**) encompassing approximately four-and-one-half (4.5) acres, and defined by a two-hundred-and-fifty foot (250') radius from the Building Envelope A Center Point, the location of which is identified in the Baseline Documentation Report.
- ii. Parcel B: Parcel B consists of approximately 105 acres. The repair, remodel, or replacement of the current Residential Structure (the Ranch Manager's House) is permitted only in its current location (i.e., **Building Envelope B**), and is subject to the restrictions specified in Paragraph 4 of this Deed.
- B. Agricultural Subdivision. Grantors may request written approval from Grantee for a subdivision of a parcel from the Property that is done only for agricultural purposes or in connection with agricultural operations of both the Property and of adjoining properties. Approval or denial of such a request shall be in Grantee's discretion and may be based on any policies of Grantee at the time the request is made, and any such subdivided parcel remains subject to the terms and restrictions set forth in this Conservation Easement.
6. Development Rights. The use, exercise or transfer of any development rights associated with the Property or any portion thereof, except as specifically reserved herein, are prohibited. Any such rights existing now or that may exist in the future, are terminated and extinguished.
7. Conservation Practices. Grantors recognize the importance of good resource management and stewardship to maintain the Conservation Values for present and future generations. To this end, all agricultural uses of the Property shall be conducted using generally accepted stewardship and management practices. Grantors shall comply with the Colorado Noxious Weed Act and any other governmental noxious weed control regulations. The permitting of noxious weeds to spread and proliferate is prohibited. Grantors shall bear full expense and responsibility of actively protecting the Conservation Values from invasion or expansion of noxious weeds, and shall make a reasonable, best possible effort to eradicate noxious weeds that are on the Property at the time of the deeding of the Conservation Easement.
8. Timber Harvesting. Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including



construction of permitted buildings and fences on the Property. All other harvesting, pruning, cutting down, or other destruction or removal of trees located within the Property is prohibited, except in accordance with a Forest Stewardship Plan designed to assure the maintenance of good quality growing stock (including mixed age and old-growth ponderosa pine) and which permits the cutting of healthy, mature trees only when in the vicinity of younger trees coming into their maturity, while protecting soil stability, water quality, and other conservation Values of the Property. To qualify for the exception, said Forest Stewardship Plan must be funded by the Grantors, and drafted and submitted to the Grantee no less than fifteen (15) days prior to any proposed harvest. The Forest Stewardship Plan must be accepted with the mutual consent of Grantors and Grantee.

9. Mineral Development. To the extent that Grantors have control of the Mineral Rights on the Property, they agree to the following: the exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conservation Values of the Property is prohibited. Prior to engaging in any mineral exploration, development, or extraction by any method not otherwise prohibited by this Paragraph, Grantors must notify Grantee and submit a written plan for Grantee's written approval that provides for minimizing the adverse effects of the operation on the Conservation Values of the Property. In addition to such other measures as may be required to protect the Conservation Values of the Property, the plan must provide for: (1) preserving the quantity and quality of all surface and ground water; (2) concealing all facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and (3) restoring any altered physical features of the land to their original state. See also Paragraph 24, Leases.

10. Grantor Extractions. Notwithstanding anything to the contrary in the Paragraph 9 (Mineral Development), soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is solely for use on the Property for non-commercial purposes, is in conjunction with activities permitted herein, it is taken from locations having prior written approval by the Grantee, is accomplished in a manner which is consistent with the purpose of this Deed and does not significantly impair or interfere with the Conservation Values, and has a limited and localized impact on the Property. This provision shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

11. Paving, Road Construction and Utilities. No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material. Nor shall any road be constructed for access within the Property, for access to other adjacent properties, or for other purposes, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property or any road reasonably required for agricultural operations. After reasonable notice to Grantee, any such road permitted by this Paragraph shall be constructed in a manner that does not significantly impair or interfere with the Conservation Values of the Property. Grantors may install only underground utilities for serving those uses permitted on the Property Deed for the Property. To the extent practicable, such utilities shall be installed within or adjacent to roadways permitted by this Paragraph.

12. Trash. The processing, storage, dumping, or other disposal of wastes, refuse, and debris on the Property is prohibited; except for nonhazardous, nontoxic materials generated by activities permitted in this Deed, provided that only sites having prior written approval by the Grantee may be used for this purpose, as specified in the Baseline Documentation Report. Storage of household trash in receptacles designed for such purposes shall be permitted for weekly pick-up or removal.

13. Motorized Vehicles. The use of vehicles off-road, in any manner that will result in soil erosion or compaction or in the interference with vegetation or with the natural habitats of those animal species found on the Property is prohibited, except as noted below in this Paragraph. There shall be no off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles. Nothing in this Paragraph is intended to prohibit the use of motorized vehicles for any agricultural or other use that is permitted under this Deed; except that the use of motorized vehicles for other permitted uses shall be confined to permitted roads.

14. Feed Lot. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Deed, "commercial feed lot" is defined as a confined area or facility within the Property which is not grazed or cropped annually, and which is used to receive livestock that has been raised off the Property for feeding and fattening for market. Nothing in this Paragraph shall prevent Grantors from seasonally confining their own livestock into an area for feeding and from leasing pasture for the grazing of livestock owned by others.

*15. Commercial Uses. No industrial uses shall be allowed on the Property. No commercial uses are allowed except as provided in this Paragraph 15. Use of the Property for more than "de minimus" commercial recreational activity is prohibited. The term "de minimus" shall have the meaning set forth in § 2031 (c) (8) (B) of the United States Internal Revenue Code and the Treasury Regulations adopted thereto. Provided that they comply with all of the terms of this Conservation Easement, applicable IRS Codes, and Treasury Regulations, the following uses are allowed: processing or sale of farm or ranch products predominantly grown or raised on the Property; home occupations conducted by and in the home of a person residing on the Property.

16. Signage or Billboards. No signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing or other recreational uses permitted under the Deed, signs promoting agricultural products available or produced on the Property, temporary signs promoting special events on the Property, and signs informing the public of the status of ownership. The placement, number, and design of signs and billboards shall not significantly diminish the scenic character of the Property or significantly impair or interfere with the Conservation Values of the Property.

17. Water Rights. Grantors shall retain and reserve the right to use any and all water and water rights beneficially used on the Property and all ditches, headgates, springs, reservoirs, water allotments, water shares and stock certificates, contracts, wells, easements and rights of way associated therewith, for use in present or future agricultural production on the Property and the Ranch as a whole, and shall not transfer, lease, sell, abandon, or otherwise separate the Water

Rights from title to the Property or the Ranch itself. Water Rights appurtenant to the Property are attached hereto as **Exhibit E** made a part of this Deed.

- a. The Property is irrigated with water rights from the Mesa Ditch, operated and maintained by the Mesa Ditch Company established August 23, 1982, and whose Articles and Bylaws of May 3, 1994 allotted 240 shares (9.5 CFS) to J. W. Hershey.
- b. The Property is irrigated using 4/5^{ths} of the allotment, or 192 shares equaling 7.6 CFS.

18. Surface Alteration. Any alteration of the surface of the land is prohibited, except as may be required in the course of any activity expressly permitted in this Deed or, after notice to the appropriate state agency and with the prior written approval of the Grantee, archaeological investigation; provided that construction materials, such as rock, dirt, sand and gravel may be taken for use in connection with permitted activities on the Property only from locations having prior written approval of the Grantee.

19. Soil and Water. Any use or activity that causes or is likely to cause significant soil degradation or erosion, such as overgrazing, or significant depletion or pollution of any surface or subsurface waters is prohibited; provided that this prohibition shall not be construed as extending to agricultural operations and practices (including, without limitation, the use of agrochemical such as fertilizers, pesticides, herbicides, and fungicides) that are substantially in accordance with standard agricultural practices.

20. Wetlands and Stream Buffer. The draining, filling, dredging, or diking of the wetland areas described in the Baseline Documentation Report, including any enlargements thereof, or the cultivation or other disturbance of the soil within seventy-five (75) feet of the thread of rivers and creeks identified in the Baseline Documentation Report, are prohibited; except that Grantors may engage in wildlife, stream, or wetland habitat enhancement projects, the creation and enhancement of wetland and aquatic habitats, and the maintenance, improvement or enhancement of wildlife habitat on the Property, provided that any such projects or activities are consistent with the purposes of this Conservation Easement and are conducted with prior written approval of the Grantee.

21. Ponds, Water Courses, and Wells. The alteration or manipulation of the ponds, watercourses, and wells located within the Property as shown in the Baseline Documentation Report, or the creation of new impoundments, water courses, or wells for any purpose other than the agricultural, residential, and wetland habitat enhancement permitted under this Deed, is prohibited. Any new water impoundment, water course, or well for said uses shall require prior written approval of the Grantee.

22. Storage Tanks and Utility systems. The installation of underground storage tanks or the above-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited; except that systems for irrigating the Property, and systems done with prior written approval of the Grantee, when in conjunction with permitted activities, are not prohibited by this Conservation Easement, unless prohibited by law.

23. Hunting. No recreational or commercial hunting is permitted on the Property.
X Culling of elk and deer is permitted in conjunction with a written policy or recommendation, and

management plan provided by the Colorado Division of Wildlife (CDOW), subject to review and written approval by the Grantee, not to be unreasonably withheld.

24. Leases. Grantors agree not to enter into any new or additional lease or other agreement for all or a portion of the Property (including for the exploration or development of the interests in oil or gas), unless such lease or other agreement includes reference to this Conservation Easement, and unless such lessee or other party agrees in writing to comply with the terms of this Conservation Easement. Nonetheless, the Grantors shall remain liable for compliance with all of the terms and conditions of this Conservation Easement. Grantors shall notify Grantee in advance and in writing of any leasing of the Property.

25. Rights Retained by Grantors.

A. General. Grantors retain the right to perform any act not specifically prohibited or limited by this Deed and that is not inconsistent with the purpose of this Conservation Easement. These ownership rights include, but are not limited to ranching and other agricultural production, and 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, subject to the rights and interest conveyed to Grantee by this Conservation Easement.

26. Notice and Approval Procedures.

26.1 Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Conservation Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than thirty (30) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement.

26.2 Grantee's Approval. Where Grantee's approval is required anywhere in this Conservation Easement, Grantors shall make the approval request in writing. Grantee shall grant or withhold its approval within thirty (30) days of receipt of Grantors' written request. Grantee's approval in writing may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Conservation Easement. If Grantee fails to either grant or withhold approval within thirty (30) days of receipt of Grantors' written request, it shall be deemed that consent has been granted.

26.3 Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within

fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(a) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Conservation Easement.

(b) Participation. The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute,

(e) Costs. The costs of the mediator shall be borne equally by Grantors and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

26.4 Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and mediation has either failed or been rejected, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance the American Arbitration Association or a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. All matters of arbitrator selection and of settlement shall be in accordance with the laws of the State of Colorado then in effect. The decision rendered by this arbitration procedure shall be the full and final settlement of the said dispute, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. Cost and expenses shall be in accordance with Paragraph 27.6 below, and any court of competent jurisdiction may be called upon to enforce the award.

27. Grantee's Remedies.

27.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is imminent, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

27.2 Injunctive Relief. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

27.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefore, damages shall be applied to the cost of undertaking any corrective action on the Property.

27.4. Emergency Remedies. If Grantee, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Paragraph 27 without prior notice to Grantors or without waiting for the period provided for cure to expire.

27.5 Scope of Relief. Grantee's rights under this Paragraph 27 apply in the event of violations of the terms of this Conservation Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Paragraph 27.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph 27 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

27.6 Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantors, including, without limitation, costs and expenses of arbitration and enforcement, litigation and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Conservation Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

27.7 Forbearance. Forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantors shall

not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

27.8 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription. Grantors also hereby waive all rights concerning the one (1) year limit on building stops.

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

28. Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

29. Costs, Liabilities, Taxes, and Environmental Compliance.

29.1 Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage, and including Soil or Forest Stewardship Plans. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors; except,

29.2 Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request; except,

29.3 Representations and Warranties. Grantors represent and warrant that, to the best of their knowledge:

- A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

- B. There are not now any underground storage tanks located on the Property, whether presently in service or dosed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- C. Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- D. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- E. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

29.4 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

29.5 Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on 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 ("CERCLA").

29.6 Hold Harmless. Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any



substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of Paragraphs 29.1 through 29.5.

29.7 Disclaimer. Grantors, in granting the Conservation Easement, disclaim any and all reliance upon representations of the Grantee, its officers or agents, and does so after full opportunity to consult with tax and legal advisers.

30. Extinguishment and Condemnation.

30.1 Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Conservation Easement, or proportionate part thereof, as determined in accordance with Paragraph 30.2.

30.2 Valuation. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraph 30.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this grant. [The values at the time of this grant are those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this Paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.]

30.3 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Paragraph 30.2.

30.4 Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Paragraph 30 in a manner consistent with its conservation purposes, which are exemplified by this grant.

31. Assignment. This Conservation Easement is transferable, but Grantee may assign its

rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Section 38-30.5-104(2), Colorado Revised Statutes 1973, as revised (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

32. Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under Section 38-30.5-104(2), Colorado Revised Statutes 1973, as revised, then Grantee's rights and obligations under this Conservation Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Colorado law and consistent with the requirements for an assignment pursuant to Paragraph 31.

33. Subsequent Transfers. Grantors agree to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer along with a \$250 transfer fee. Said notice shall include the following information: (a) Name of the transferor; (b) Name, address and telephone number of the transferee; and (c) Written verification that the transferee has been notified of the existence and contents of the Deed of Conservation Easement in Gross. The failure of Grantors to perform any act required by this Paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

34. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Conservation Easement or otherwise evidences the status of this Conservation Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within thirty (30) days of receipt of Grantors' written request therefore.

35. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: **Terese T. Hershey and The Estate of J.W. Hershey**
2121 San Felipe, Suite 124
Houston, TX 77019



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Archuleta County

To Grantee: **SOUTHWEST LAND ALLIANCE**
PO Box 3417
Pagosa Springs, CO 81147

or to such other address as either party from time to time shall designate by written notice to the other.

36. Recordation. Grantee shall record this instrument in timely fashion in the official records of Archuleta County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement. The Grantors are responsible for the costs of this recordation.

37. General Provisions.

37.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Colorado.

37.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Section 38-30.5-101, et seq., Colorado Revised Statutes 1973, as revised. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

37.3 Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

37.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the terms of this Conservation Easement.

37.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

37.6 Joint Obligation. The obligations imposed by this Conservation Easement upon Grantors shall be joint and several.

37.7 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the

above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

37.8 Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

37.9 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

37.10 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

37.11 Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantors and Grantee are free to jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including state statute or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Archuleta County, Colorado.

37.12 Construction. Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.




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Archuleta County

TO HAVE AND TO HOLD, This Deed of Conservation Easement unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

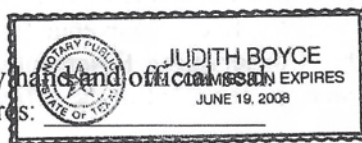
BY THE GRANTORS: Terese T. Hershey and the Estate of J. W. Hershey

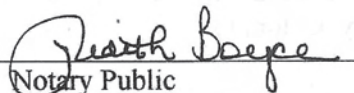

By: TERESE T. HERSHEY, Grantor and Independent Executor of the ESTATE OF J. W. HERSHEY

STATE OF TEXAS)
) SS.
County of HARRIS)

The foregoing instrument was acknowledged before me this 20 day of December, 2007, by Terese T. Hershey, Grantor and Independent Executor of the Estate of J. W. Hershey.

WITNESS my hand and official seal.
My commission expires:




Notary Public

BY THE GRANTEE: SOUTHWEST LAND ALLIANCE

by Linda Newberry, VP
its Authorized Representative

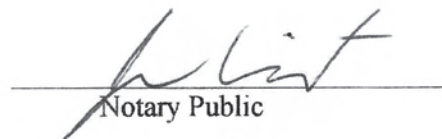
STATE OF COLORADO)
) SS.
County of ARCHULETA)

The foregoing instrument was acknowledged before me this 27th day of December, 2007, by Linda Newberry, VP, as authorized representative of SOUTHWEST LAND ALLIANCE, a qualified non-profit organization.

WITNESS my hand and official seal.
My commission expires: 5/17/09



My Commission Expires 05/17/2009 20


Notary Public



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SCHEDULE OF EXHIBITS

- A. Legal Description (Survey) of Property Subject to Conservation Easement
- B. Map of Property Subject to Conservation Easement
- C. Baseline Documentation Report Attestation Page
- D. Mineral Assessment Letter
- E. Water Rights



DAVIS
ENGINEERING
SERVICE, INC.

EXHIBIT A

Four Mile Ranch Conservation Easement No. 4 Legal Description

A parcel of land located in GLO Lot 4, Section 30 and GLO Lot 1, Section 31, T. 36 N., R. 1 W. and in Section 25 and the N1/2 of Section 36, T. 36 N., R. 2 W., all in the N.M.P.M., Archuleta County, Colorado, which parcel is more particularly described by metes and bounds as follows, to-wit:

Beginning at the northwest corner of the parcel herein described which corner is identical with the northwest corner of the SE1/4 NW1/4 of said Section 25; thence N. 87°25'08" E., 1414.16 feet along the north line of said SE1/4 NW1/4 Section 25 to the northeast corner thereof; thence N. 87°27'09" E., 1387.88 feet along the north line of the SW1/4 NE1/4 of said Section 25 to the northwest corner of Conservation Easement III for Jake and Terry Hershey, which corner is identical with the northeast corner of the parcel herein described; thence along the west boundary of said Conservation Easement III, the following courses and distances: S. 03°57'52" E., 540.28 feet; S. 80°00'00" E., 180.00 feet; S. 02°06'33" E., 169.59 feet; S. 19°47'22" W., 292.25 feet; and S. 09°42'10" E., 229.80 feet along said west boundary to its point of intersection with the east-west centerline of said Section 25; thence S. 86°32'56" W., 52.73 feet along said east-west centerline of Section 25 to its point of intersection with the centerline of Archuleta County Road No. 200 (a.k.a. Snowball Road); thence along the centerline of said County Road the following courses and distances: 178.23 feet on the arc of a curve to the left, having a radius of 650.00 feet and a central angle of 15°42'39", the long chord of which curve bears S. 26°18'46" E., 177.67 feet; S. 34°10'06" E., 89.42 feet; 366.22 feet on the arc of a curve to the right, having a radius of 2440.00 feet and a central angle of 08°35'58", the long chord of which curve bears S. 29°52'07" E., 365.87 feet; S. 25°34'08" E., 264.61 feet; 283.32 feet on the arc of a curve to the right, having a radius of 1400.00 feet and a central angle of 11°35'42", the long chord of which curve bears S. 19°46'17" E., 282.84 feet; S. 13°58'26" E., 493.13 feet; 718.28 feet on the arc of a curve to the left, having a radius of 2550.00 feet and a central angle of 16°08'20", the long chord of which curve bears S. 22°02'36" E., 715.90 feet; S. 30°06'46" E., 234.77 feet; 360.04 feet on the arc of a curve to the left, having a radius of 1900.00 feet and a central angle of 10°51'26", the long chord of which curve bears S. 35°32'29" E., 359.50 feet; S. 40°58'12" E., 123.38 feet; 484.27 feet on the arc of a curve to the left, having a radius of 6500.00 feet and a central angle of 04°16'07", the long chord of which curve bears S. 43°06'16" E., 484.16 feet; S. 45°14'19" E., 269.94 feet; and S. 44°18'45" E., 298.96 feet along the centerline of said County Road to its point of intersection with the east boundary of said GLO Lot 1 of Section 31; thence S. 00°51'14" E., 23.72 feet to a point on the northeasterly boundary of Tract A of the "Division of a Portion of Hershey Ranch", the plat of which is deposited in the Survey Plat File under Number S794 of the records in the office of the Archuleta County Clerk and Recorder; thence N. 47°32'41" W., 301.04 feet along the northeasterly boundary of said Tract A; thence



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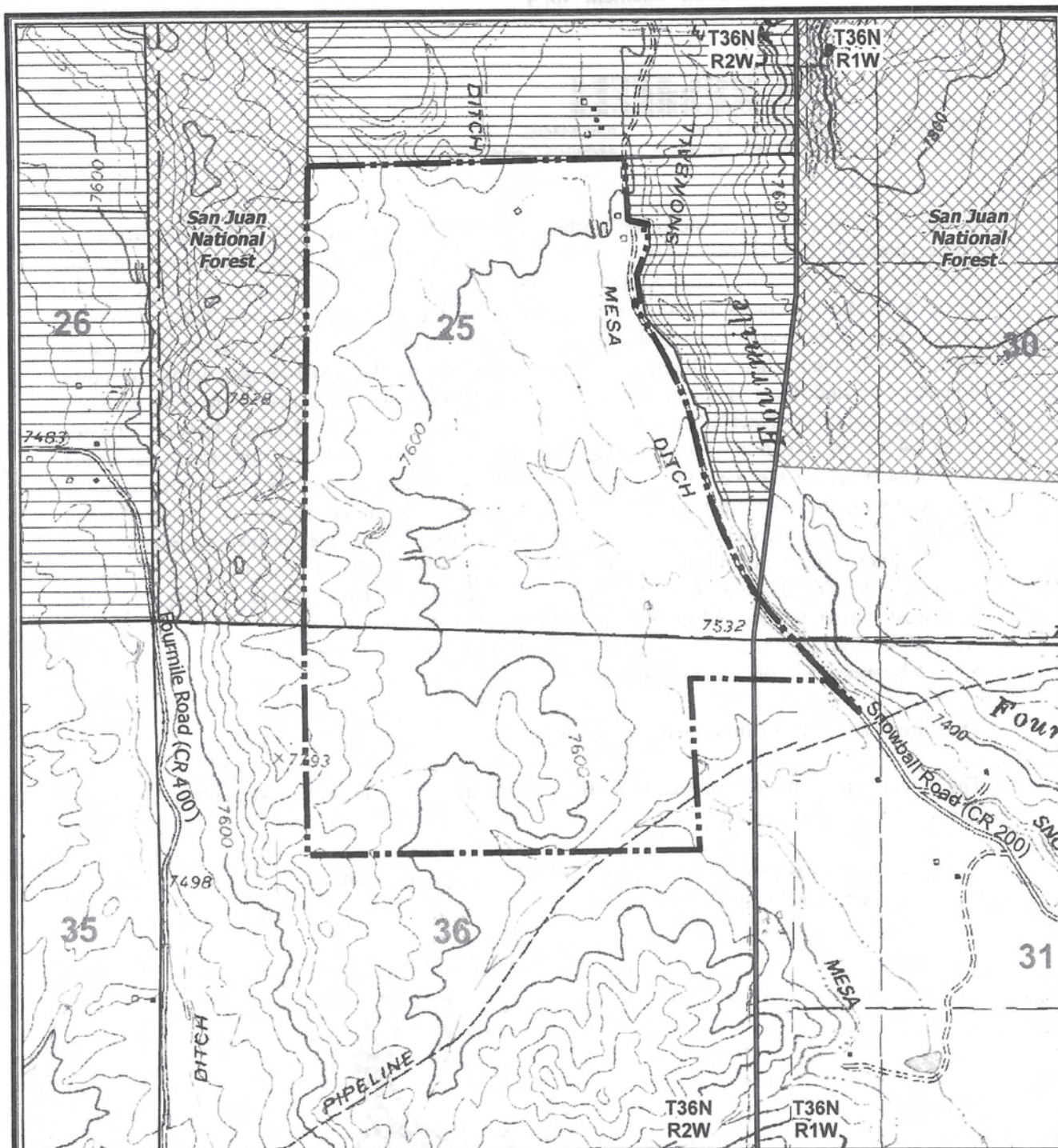
N. 46°25'22" W., 97.79 feet along the northeasterly boundary of said Tract A to the northeast corner thereof; thence West 1210.07 feet along the north boundary of said Tract A to the northwest corner thereof; thence S. 04°19'12" E., 1515.97 feet along the west boundary of said Tract A to the southwest corner thereof, a point on the north boundary of Tract B of said "Division of a Portion of the Hershey Ranch" and which corner is identical with the southeast corner of the parcel herein described; thence S. 88°05'16" W., 1519.48 feet along the north boundary of said Tract B to the northwest corner thereof, which corner is identical with the northeast corner of Tract C of said "Division of a Portion of the Hershey Ranch"; thence S. 88°04'12" W., 1946.90 feet along the north boundary of said Tract C to the northwest corner thereof, a point on the west line of the E1/2 NW1/4 of said Section 36 and which corner is identical with the southwest corner of the parcel herein described; thence N. 02°01'43" W., 2021.50 feet along the west line of said E1/2 NW1/4 Section 36 to the northwest corner thereof, which corner is identical with the southwest corner of the E1/2 SW1/4 of said Section 25; thence N. 00°21'05" W., 2730.00 feet along the west line of said E1/2 SW1/4 Section 25 to the northwest corner thereof, which corner is identical with the southwest corner of said SE1/4 NW1/4 Section 25; thence N. 00°22'45" W., 1293.84 feet along the west line of said SE1/4 NW1/4 Section 25 to the point of beginning.

The parcel herein above described contains 479.54 acres, more or less.

The parcel herein above described is SUBJECT TO any and all existing easements and/or rights of way of whatsoever nature.

This description was prepared by David L. Maley, a duly registered land surveyor in the State of Colorado, Certificate Number 23894.





Legend

- Hershey Ranch Phase IV Easement
- Other Existing Conservation Easements
- National Forest Lands
- Township/Range Line
- Section Line

USGS 7.5-Minute Topographic Quadrangles: Pagosa Springs, Colo. 1991 and Jackson Mountain, Colo. 1984.



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EXHIBIT B HERSHEY RANCH IV CONSERVATION EASEMENT Archuleta County, Colorado




Conservation Easement Boundaries, Property Boundaries & all other Easements shown are approximate and are for illustrative purposes only. For an accurate description of the boundaries, please refer to the Legal Description.

Exhibit C

ATTESTATION

BASELINE DOCUMENTATION REPORT
HERSHEY RANCH PHASE IV CONSERVATION EASEMENT
ARCHULETA COUNTY, COLORADO

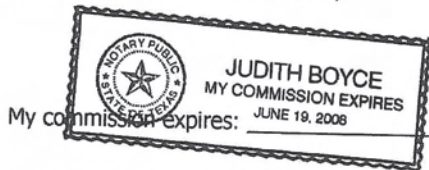
In compliance with Section 1.170a-14(q)(5) of the federal tax regulations, the undersigned hereby acknowledge and agree that this Baseline Documentation Report for the **479.54-acre HERSHEY RANCH PHASE IV Conservation Easement** prepared by **Karin Freeman of the Southwest Land Alliance**, dated **December 19, 2007**, is an accurate representation of the physical conditions of the **HERSHEY RANCH PHASE IV Conservation Easement Property** as of the date of the conveyance of the Conservation Easement. All of the undersigned parties have received copies of the Baseline Documentation Report. The original Baseline Documentation Report is and shall remain on file with the Grantee, Southwest Land Alliance, until or unless the Easement is conveyed to another organization qualified to hold this Conservation Easement, at which time the original Baseline Documentation Report shall also be conveyed to that organization.


By: **TERESE T. HERSHEY**, Grantor and Independent Executor of the ESTATE OF J. W. HERSHEY

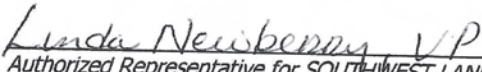
State of **Texas**)
) ss.
County of **Harris**)

Personally appeared before me this 20 day of December, 2007, the above named Terese T. Hershey, and swore that the foregoing statements are subscribed by him/her and are true.

Witness my hand and official seal,




Notary Public

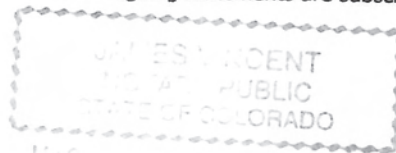

Authorized Representative for **SOUTHWEST LAND ALLIANCE**, Grantee

State of **Colorado**)
) ss.
County of **Archuleta**)

Personally appeared before me this 27th day of December, 2007, the above named Linda Newberry VP, and swore that the foregoing statements are subscribed by him/her and are true.

Witness my hand and official seal,

My commission expires: 5/17/09




Notary Public



ATTESTATION
HERSHEY RANCH PHASE IV CONSERVATION EASEMENT
(continued)

Karin Freeman
Karin Freeman, Baseline Documentation Report Provider (Author)

State of **Colorado**)
County of **Archuleta**) ss.

Personally appeared before me this 27th day of December, 2007, the above named Karin Freeman, and swore that the foregoing statements are subscribed by him/her and are true.

Witness my hand and official seal,

[Signature]
Notary Public

My commission expires: 5/17/09



EXHIBIT D

Mary L. Gillam, Ph.D.

Consulting Geologist

115 Meadow Road East
Durango, CO 81301
970-259-0966, 970-259-6064 fax
gillam@rmi.net

December 10, 2007

Mr. Michael Whiting, Executive Director
Southwest Land Alliance
450 Lewis Street
P.O. Box 3417
Pagosa Springs, CO 81147

Re: *Potential for Mineral Resource Development, Hershey Property Easement, Phase IV, approx. 390 acres in Sections 25 and 36, T36N, R2W, and Sections 30 and 31, T36N, R1W, Archuleta County, Colorado*

Dear Mr. Whiting:

The following summarizes my investigation into the mineral resource potential of a part of the Hershey property (proposed conservation easement phase IV). This area lies approximately 3 miles north of downtown Pagosa Springs in Archuleta County, Colorado. Based upon a review of available geologic information, a brief visit to the site, mineral development activity in the region, and 25 years of professional experience in Colorado, I conclude that the probability of surface extraction or removal of coal, uranium, or precious metals is so remote as to be negligible. Scattered wildcat oil and gas wells in the region have been essentially dry so future drilling seems unlikely.

Sandy gravel alluvium, suitable for surface mining, exists on roughly half of the proposed easement area. Therefore the easement should be written to legally prevent mining of sand or gravel within this area in the future.

These conclusions are valid at the time of writing of this report but could be affected by future economic changes or technological innovations. The next pages give supporting information.

Thank you for the opportunity to perform this investigation. Please contact me if you have questions or need additional documentation.

Sincerely,



Mary L. Gillam, Geologist, Ph.D.



Deed of Conservation Easement
for the Hershey/Four Mile Ranch

EXHIBIT E

WATER RIGHTS

The Conservation Easement Property on the Hershey/Four Mile Ranch as legally described in **Exhibit A** of this Deed is irrigated with water rights adjudicated from Four Mile Creek and delivered by Mesa Ditch, which is operated and maintained by the Mesa Ditch Company, established August 23, 1982, and whose Articles and Bylaws of May 3, 1994 allotted a total of 240 shares (9.5 cfs) to J. W. Hershey.

The Easement conveyed under this Deed of Conservation Easement for the Hershey Ranch shall have the benefit of $\frac{4}{5}$ ^{ths} of the J. W. Hershey allotment from the Mesa Ditch, or
192 shares equaling 7.6 cfs.

The Mesa Ditch Company is confirmed as Certified in Good Standing with the Colorado Secretary of State as a Nonprofit Corporation in Perpetual Duration as of December 26, 2007, the date of this Deed of Conservation Easement.

The Articles and Bylaws of the Mesa Ditch Company dated May 3, 1994, which describe the allotment of shares in the Mesa Ditch Company, are on file with the Registered Agent for the Mesa Ditch Company, who at the date of this Deed of Conservation Easement is:

The Honorable Bert E. Hyde
PO Box 804
Pagosa Springs, CO 81147

A copy of said Articles and Bylaws of the Mesa Ditch Company are also on file with the Grantee (Southwest Land Alliance).

BARGAIN AND SALE DEED

Doc Fee 0

THIS BARGAIN AND SALE DEED, is made to be effective as of this 27th day of October, 2022, between **JTHF Four Mile Ranch LLC**, a Texas limited liability company, whose address is 4306 Yoakum Blvd., Ste. 520, Houston, TX 77006 (hereinafter referred to as "Grantor"), and **FourMile Ranch, LLC**, a Texas limited liability company, whose address is 1785 Terra Bella Dr., Westlake TX, 76262 (hereinafter referred to as "Grantee"):

WITNESSETH, that Grantor, for and in consideration of the sum of ten dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, conveys unto the Grantee, and Grantee's successors and assigns forever, all water and water rights, ditches and ditch rights, wells and groundwater rights, and storage rights, whether decreed or undecreed, permitted or unpermitted, registered or unregistered, tributary or non-tributary, and appurtenant to or historically used on the following described real property:

TRACT I:

Township 36 North, Range 1 West, N.M.P.M., Archuleta County, Colorado:

Section 30: Lot No. Four (4)

Section 31: Lot No. One (1)

LESS AND EXCEPT that tract of land conveyed to Kingsbury Pitcher and Charity Jane Pitcher by Warranty Deed recorded February 19, 1985 as Reception No. 129584, and that tract of land conveyed to Mark E. Wilsey and Linda T. Wilsey by Quit Claim Deed recorded December 1, 1987 as Reception No. 0152045.

ALSO LESS AND EXCEPT that tract of land conveyed to Alan Farrow and Joyce Farrow by Warranty Deed recorded February 14, 2008 as Reception No. 20801107.

-and-

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 24: SE1/4

Section 25: E1/2 and E1/2W1/2

LESS AND EXCEPT that tract of land conveyed to Kingsbury Pitcher and Charity Jane Pitcher by Warranty Deed recorded February 19, 1985 as Reception No. 129584.

TRACT II:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

Section 23: SE1/4NE1/4

Section 24: W1/2NE1/4; E1/2NW1/4 and SW1/4NW1/4

- 1 -



AR22203226

TRACT III:

**Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:
Section 36: NE1/4 and E1/2NW1/4**

TOGETHER WITH that tract of land conveyed to Jacob W. Hershey by Warranty Deed recorded April 10, 1981 in Book 179 at Page 123.

LESS AND EXCEPT that tract of land conveyed to Alan Farrow and Joyce Farrow by Warranty Deed recorded February 14, 2008 as Reception No. 20801107.

ALSO LESS AND EXCEPT that tract of land conveyed to Amie Rodnick and Lawrence Mark Smith pursuant to Agreement recorded December 28, 2007 as Reception No. 20711758.

ALSO LESS AND EXCEPT that tract of land conveyed to Bert E. Hyde and Elaine R. Hyde by Warranty Deed recorded April 10, 1981 in Book 179 at Page 124 and conveyed to Elaine R. Hyde Revocable Trust dated December 4, 1987 by Bargain and Sale Deed recorded August 23, 2022 as Reception No. 22205117.

ALSO LESS AND EXCEPT that parcel labeled TRACT C which legal description is as follows:

A tract of land located in the SE1/4NW1/4, SW1/4NE1/4, NW1/4SE1/4 and the NE1/4SW1/4 Section 36, Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado, which tract is more particularly described by metes and bounds as follows, to-wit:

Assuming that the North line of said NE1/4 Section 36 bears North 89° 17' 30" West, then beginning at the Northeast corner of the tract herein described, whence the Northeast Corner of said Section 36 bears North 45° 49' 46" East, 2734.24 feet distant;

Thence South 00° 07' 35" West, 921.75 feet to the Southeast corner of the tract herein described, a point on the South boundary of that certain tract of land described in Book 179 at Page 123 of the records in the office of the Archuleta County Clerk and Recorder;

“ along the South boundary of said tract (Book 179 at Page 123) the following courses and distances:

North 85° 54' 09" West, 364.58 feet;

North 83° 33' 57" West, 1418.88 feet;

North 00° 06' 36" East, 57.15 feet;

North 88° 52' 37" West, 147.07 feet to a point on the West line of said SE1/4NW1/4 Section 36, which point is the Southwest corner of the tract herein described;

“ North 02° 10' 43" West, 611.53 feet along the West line of said SE1/4NW1/4 Section 36, to the Northwest corner of the tract herein described;

“ North 88° 04' 12" East, 1946.90 feet to the point of beginning.

TRACT IV:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

**Section 11: N1/2SE1/4
Section 12: N1/2 and N1/2S1/2**

TRACT V:

Township 36 North, Range 2 West, N.M.P.M., Archuleta County, Colorado:

**Section 11: SE1/4SE1/4
Section 12: S1/2S1/2
Section 13: S1/2NW1/4; NW1/4NW1/4; NE1/4 and N1/2SE1/4
Section 14: NE1/4NE1/4**

Including, but not limited to, the following which Grantor received by Personal Representative Deed dated July 28, 2022:

The Mountain Park Ditch, together with the entire 1.25 cfs decreed as Priority 48 in Civil Action 73, District Court, Archuleta County, on January 20, 1902 (subsequently renumbered Priority 83), and together with the entire 5.00 cfs decreed as Priority 90 in Civil Action 308, District Court, Archuleta County, on November 13, 1912 (subsequently renumbered Priority 150).

2.5 cfs from the Snowball Ditch, pursuant to that certain Deed from H. Ray Macht and Genelle Macht to Jacob W. Hershey recorded January 4, 1972, at Reception No. 75296, subject to the effect of that certain Agreement Regarding Snowball Ditch Lateral Water Rights and Maintenance dated September 20, 2005, between Terese T. Hershey, Southwest Land Alliance, Macht Ranch, Inc., Jean M. Taylor, Genelle Macht, and John Taylor; together with Grantor's interest in the Agricultural Irrigation and Livestock Watering System Easement for the McGirr Lateral of the Snowball Ditch recorded January 31, 2008, at Reception No. 20800756.

Any water rights associated with the structure that is the subject of the application Erosion Control Dam Hershey #1-85, assigned number 16380.

1.5 shares (a 1/10 interest) in the Four Mile Ditch Association, formerly the Four Mile Ditch Company, and a proportionate 1/10 interest in the water rights and ditch rights represented by such shares; together with Grantor's interest in the Agricultural Irrigation and Livestock Watering System Easement for the Four Mile Ditch Laterals recorded January 31, 2008, at Reception No. 20800757.

An undivided 1/3 interest in the Mesa Ditch, and all of the water rights decreed thereto, including the following water rights decreed by the District Court, Archuleta County, Colorado:

Priority	Original Priority	Case Number	Decree Rate (Absolute) (cfs)
58	34	CA-73	6
93	53-c	CA-73	4
107	62-b	CA-73	6
122	69-d	CA-73	4.5
148	89	CA-308	8
		Total:	28.5

Together with 240 shares (a 1/3 interest) in the Mesa Ditch Company

The H.J. Wright & R.L. Briar Ditch No. 1, together with the entire 2.0 cfs decreed as Priority 343 in Case No. 308, District Court, Archuleta County, April 19, 1962, for irrigation; together with Grantor's interest in the Agricultural Irrigation and Livestock Watering System Easement for the "Briar Ditch" recorded January 31, 2008, at Reception No. 20800755.

Well Permit No. 295853

Livestock Water Tank Gordon Saville #1-66

Livestock Water Tank Gordon Saville #2-66

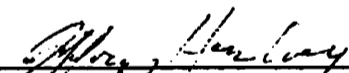
With all appurtenances.

TO HAVE AND TO HOLD the said premise above bargained and described, unto Grantees, and Grantees' successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this deed on the day and year set forth above.

JTHF Four Mile Ranch LLC,
a Texas limited liability company

By: The Jacob and Terese Hershey Foundation, its sole
member and manager

By: 
Jeffrey Hershey as President

STATE OF Texas)
) ss.
COUNTY OF Harris)

The foregoing Bargain and Sale Deed (Water Rights) was acknowledged before me this 25 day of October, 2022 by Jeffrey Hershey as President of the Jacob and Terese Hersey Foundation, the sole member and manager of JTHF Four Mile Ranch LLC, a Texas limited liability company.

Witness my hand and official seal.

My commission expires: 04/12/26



[Signature]
Notary Public

Board Agenda Summary Sheet

	To	Action	Signature, Date		To	Action	Signature, Date
1	PAWSD Board			6			
2				7			
3				8			
4				9			
5				10			

Name of Action Official:

Phone:

Board Meeting Date:

September 14, 2023

Priority

☐ High

☐ Medium

☐ Low

Subject: Consideration of Annual Inclusion Date Cutoff of September 1st

Due to the December 31st deadline for filing District map updates with DOLA, it is being requested that PAWSD implement an annual cutoff date of September 1st for inclusions to allow enough time for Davis Engineering to make the necessary changes. This would mean that any potential inclusions that are requested after September 1st would have to wait until the next calendar year to petition for inclusion (January of the next year). Any inclusions that had begun the process prior to September 1st would be able to continue the process completely, this cutoff date would only limit new potential inclusions brought to PAWSD after September 1st.

Weber Sand & Gravel, Inc.

September 7, 2023

To The Pagosa Area Water & Sanitation District Board of Directors

We would like to add two amendments to the Running Iron Ranch Lease Extension, under #6 the Mining Limitation, item "e" to read:

6e. Amendment: All mining and gravel operations (exclusive of reclamation work) shall end no later than December 31, 2023 regardless of available materials. Pagosa Area Water and Sanitation District shall purchase all remaining processed gravel at this time. Tenant shall process the material in a gradation requested by Pagosa Area Water and Sanitation District. All gravel produced for the PAWS project will be completed this year, subject to weather and breakdowns.

And item "g" to read:

6g. Amendment: Tenants will have the right of access to the property for a full year to perform their reclamation activities from January 4, 2024 through January 3, 2025.

Gravel Prices for Snowball Project:

1 ½" Minus	\$13.00 per ton
¾" Minus	13.75 per ton
1 ½" Screened	24.00 per ton
Crusher Fines	10.00 per ton

We might have an abundance of these materials left over:

4" Minus	\$12.25 per ton
¾" Screened	28.00 per ton

Running Iron Ranch Lease Extension

This Running Iron Ranch Lease Extension (“Extension”) is entered into as of January 4, 2023 (the “Effective Date”) by and between San Juan Water Conservancy District, a quasi-municipal corporation and political subdivision of the State of Colorado, and Pagosa Area Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado acting by, through, and on behalf of its Water Activity Enterprise (collectively “Landlord”), and Running Iron Ranch, LLC, a Colorado limited liability company, Donald L. Weber a/k/a Donald Weber a/k/a Don Weber, Kathryn L. Weber a/k/a Kathryn Weber a/k/a Kathy Weber, Donald L. Weber Trust Dated August 5, 1999, Kathryn L. Weber Trust Dated August 5, 1999, and Donald Andrew Weber (collectively “Tenants”). Landlord and Tenant are sometimes collectively referred to herein as the “Parties.”

Recitals.

- A. Landlord has entered into the following four lease agreements with one or more of the Tenants set forth above:
- i. Running Iron Ranch Occupancy and Agricultural Agreement, dated January 3, 2008 (the “RIR Lease”) with Running Iron Ranch, LLC, a Colorado limited liability company as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of an “Eastern Parcel” of approximately 600.88 acres, and a “Western Parcel” of approximately 20.02 acres, together with certain water rights, all as further described in the RIR Lease.
 - ii. The 40-Acre Parcel Occupancy and Agricultural Lease, dated January 3, 2008 (the “40-Acre Lease”) with Donald L. Weber Trust dated August 5, 1999, Kathryn L. Weber Trust dated August 5, 1999, and Donald Andrew Weber as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of approximately 40 acres of land, together with certain water rights, all as further described in the 40-Acre Lease.
 - iii. The 5-Acre Parcel Occupancy and Agricultural Lease, dated January 3, 2008 (the “5-Acre Lease”) with Kathy Weber a/k/a Kathryn L. Weber, Don Weber a/k/a Donald L. Weber, Donald L. Weber Trust dated August 5, 1999, and Kathryn L. Weber Trust dated August 5, 1999 as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of approximately 5 acres of land, together with certain water rights, all as further described in the 5-Acre Lease.
 - iv. The Sand and Gravel Lease, dated January 3, 2008 (the “Sand and Gravel Lease”) with Donald Weber, Kathryn Weber, and Donald Andrew Weber as the tenant thereunder. This lease gives the tenant thereunder the right to mine sand, gravel,

and other related materials from the land subject to the foregoing leases pursuant to the terms and conditions set forth in the Sand and Gravel Lease.

The RIR Lease, the 40-Acre Lease, the 5-Acre Lease, and the Sand and Gravel Lease are collectively referred to herein as the "Leases."

B. All of the Leases expire on January 3, 2023.

C. The Parties desire to extend the Leases for one year, from January 4, 2023, through January 3, 2024, pursuant to the terms and conditions set forth herein.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of Landlord and Tenant, as well as the covenants contained herein, Landlord and Tenant agree as follows:

Terms and Conditions.

1. Extension. Except as modified in this Extension, each of the Leases shall continue in full force and effect from January 4, 2023, through January 3, 2024. In the event of any conflict between any of the Leases and this Extension, this Extension shall control. The Parties may agree to additional extensions by entering into a written amendment to this Extension no later than the expiration of this Extension.
2. Tenant. A tenant under any of the Leases shall be a tenant under all of the Leases.
3. Exclusion of Western Parcel. The "Premises" leased pursuant to this Extension shall be the real property and water rights described in each of the Leases, provided however, that the premises leased herein shall not include the Western Parcel described in Exhibit B of the RIR Lease.
4. Lease Payment. Prior to the commencement of this Extension, Tenant shall pay Landlord \$48,137.78 in good funds.
5. Agricultural Activities. During the term of this Extension, Tenant shall use reasonable ranching and agricultural practices and shall be solely responsible for maintaining and repairing all agricultural improvements as needed for tenants' operation on the Premises, including but not limited to fencing, corrals, roads, irrigation ditches, and utility pipes and lines. Tenant shall also continue to irrigate the Premises consistent with historical irrigation practices utilized thereon.
6. Mining Limitation.
 - a. Tenant may remove no more than 20,000 tons of sand, gravel, topsoil, and all similar and related materials from the Premises during the term of the Extension, exclusive of any such materials provided to Landlord at Landlord's request, which

Tenant shall be provided at a reasonable market rate as agreed upon by both parties. Tenant shall not import, or process materials brought from off site after the above 20,000 tons have been processed and removed.

- b. Tenant shall at all times remain in compliance with the terms and conditions of Mining Permit Nos. and M-1995-056 (the "Permits"), as well as all other laws applicable to the use of the Premises, including but not limited to zoning, land use, environmental laws, and all rules and regulations promulgated pursuant to such laws.
- c. Gravel sales shall be limited to Pagosa Area Water and Sanitation District and A&M Construction and Excavation.
- d. All mining operations including crushing and equipment startup will not extend prior to 7:00 am and after 5:00 pm.
- e. All mining and gravel operations (exclusive of reclamation work) shall end no later than September 1, 2023 regardless of available materials. Pagosa Area Water and Sanitation District shall purchase all remaining processed gravel at this time. Tenant shall process the material in a gradation requested by Pagosa Area Water and Sanitation District.

6e. Amendment: All mining and gravel operations (exclusive of reclamation work) shall end no later than December 31, 2023 regardless of available materials. Pagosa Area Water and Sanitation District shall purchase all remaining processed gravel at this time. Tenant shall process the material in a gradation requested by Pagosa Area Water and Sanitation District. All gravel produced for the PAWS project will be completed this year, subject to weather and breakdowns.

- f. Tenant shall restore and reclaim the Premises in accordance with the terms and conditions of the Permits. Tenant shall use best efforts to complete all of Tenant's restoration and reclamation obligations prior to the expiration of this Extension, Tenant will inform Landlord if restoration work will extend beyond the permit date. All structural restoration work and earthwork required by the Permits shall be completed prior to the expiration of this Extension, including but not limited any and all restoration or reclamation work that requires the use of heavy equipment.
- g. In the event Tenant cannot satisfy the revegetation requirements of the Permits prior to the expiration of this Extension due to weather or other circumstances beyond the control of Tenant, Landlord hereby grants Tenant a license revocable at the sole discretion of Landlord to access the Premises subsequent to the expiration of this Extension for the sole purpose of completing such revegetation obligations, which shall be completed with reasonable diligence and continuous effort as weather conditions and other circumstances beyond Tenant's control permit.

6g. Amendment: Tenants will have the right of access to the property for a full year to perform their reclamation activities from January 4, 2024 through January 3, 2025.

7. Improvements, Personal Property, Cleanup. Unless further extended by mutual agreement of the Parties, Tenant shall remove all Improvements and personal property belonging to Tenant prior to the expiration of this Extension. Any Improvements or personal property belonging to Tenant that remain on the Premises following the expiration of this Extension shall be deemed abandoned and shall become the property of Landlord to do with as it chooses in its sole and absolute discretion. Prior to the expiration of this Extension, Tenant, at Tenant's sole cost and expense, shall remove and properly dispose of all construction materials, trash, debris, junk, and other waste associated with the mining activities.
8. Noxious Weeds. During the term of this Extension, Tenant shall be solely responsible for controlling noxious weeds on the Premises. Landlord shall provide the Tenant with applicable herbicides as recommended by Tenant shall allow periodic inspections of the Premises by the Archuleta County Weed and Pest Control Department. Tenant shall apply the herbicides as recommended to control noxious weeds.
9. Demolition of Existing Structures. Tenant agrees to coordinate and cooperate with Landlord regarding the demolition and removal of certain structures on the Premises during the term of this Extension that Landlord deems, in Landlord's sole discretion, to be hazardous, a nuisance, or otherwise warranting removal from the Premises. Tenant's coordination and cooperation under this paragraph shall not be at Tenant's expense.
10. Liability Insurance. Tenant shall from and after Extension Date, maintain general liability insurance with respect to Tenant's occupancy and activities on the Premises with liability limits not less than \$1,000,000.00 with Landlord named as an additional insured.
11. Tenant's Default and Landlord's Remedies. An "Event of Default" by Tenant of this Extension shall be defined according to the Leases, and Landlord's remedies upon the occurrence of any Event of Default shall be as set forth in the Leases.
12. Notices.

12.1 All notices provided for herein shall be in writing and shall be deemed given when a copy of the notice, addressed to the receiving party in the manner provided in this Section 12.1, is actually delivered (or when delivery of the notice is refused) by personal delivery, by commercial courier, by successful and confirmed facsimile transmission, or by certified or registered mail, return receipt requested, to the addresses for such party provided in this Section 12.1 or to such other addresses of which such party gives the other party notice under this Section 12.1.

If to Tenant:

Donald A. and Kathryn L. Weber
2980 E. Highway 160
Pagosa Springs, Colorado 81147
Tel: 970-507-0541
Fax: None

If to Landlord:

San Juan Water Conservancy District
46 Easton Drive, Suite 5
Pagosa Springs, Colorado 81157
Tel: 970-985-5764

Pagosa Area Water and Sanitation District P.O. Box 4610
100 Lynn Avenue
Pagosa Springs, Colorado 81157
Tel: 970-731-2691
Fax: 970-731-2693

13. Authority; Personal Obligations.

13.1 Landlord hereby covenants that it has good and lawful authority to enter into this Extension and that the person executing this Extension on behalf of Landlord has the authority to act for Landlord.

13.2 Each individual executing this Extension on behalf of Landlord represents and warrants that he/she is duly authorized to execute and deliver this Extension on behalf of Landlord.

13.3 Tenant hereby covenants that it has good and lawful authority to enter into this Extension and that the person executing this Extension on behalf of Tenant has the authority on behalf of Tenant.

13.4 Each individual executing this Extension on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Extension on behalf of Tenant.

14. Miscellaneous.

14.1 No Partnership. Nothing contained in this Extension shall create any relationship between the parties hereto other than that of Landlord and Tenant. Landlord and Tenant do not in any way or for any purpose become partners, joint venturers or members of a joint or common enterprise as a result of entering into this Extension.

14.2 Amendment in Writing. No amendment, modification, or supplement to this Extension shall be valid or binding unless set out in writing and executed by both of the Parties hereto.

14.3 No Waiver. No provisions of this Extension shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing signed by the party to be bound thereby. No waiver of any breach or any term or condition of this Extension in any instance shall be a waiver of any breach or any term or condition in any other instance. Landlord's receipt of Rent with knowledge of a breach by Tenant of any term or condition of this Extension shall not be deemed a waiver of such breach. Any waiver of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Extension.

14.4 Inurement. Except as otherwise specifically provided, the covenants, terms, and conditions contained in this Extension shall inure to the benefit of and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

14.5 Governing Law and Venue. The validity and effect of this Extension shall be governed by the laws of the State of Colorado. Any action arising out of or related to this Extension shall be brought exclusively in the state district court in and for the County of Archuleta, Colorado.

14.6 Time of Essence. Time is of the essence of each provision of this Extension.

14.7 Validity of Provisions. If any provision of this Extension is invalid under present or future laws, the remainder of this Extension shall not be affected and in lieu of each provision that is invalid, there will be added as part of this Extension a provision which is valid and enforceable and which is as similar to such invalid provision as possible.

14.8 Construction. The Parties waive any rule of construction that ambiguities are to be resolved against the drafting party. Any words following the words "include," "including," "such as," "for example," or similar words or phrases shall be illustrative only and are not intended to be exclusive, whether or not language of non-limitation is used.

14.9 Annual Appropriation. Any financial obligations of Landlord hereunder are subject to the annual appropriation of funds for the performance thereof, which annual appropriation shall be made in the sole discretion of Landlord's Boards of Directors.

14.10 Joint and Several. The obligations of Landlord hereunder are the joint and several obligations of both parties comprising Landlord. The obligations of Tenant hereunder are the joint and several obligations of all parties comprising Tenant.

14.11 Attorneys' Fees. In the event of any action arising out of or related to this Extension, the prevailing parties shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing parties.

14.12 Electronic Signatures and Counterparts. The Parties agree to accept electronic signatures on this Extension as original signatures. This Extension may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

15. Entire Agreement. This instrument represents the entire and only agreement between the parties with respect to the subject matter hereof and no oral statements or representations or prior written matter not contained herein shall have any force or effect, and this Extension shall not be modified in any way except by a writing subscribed by both parties with the same formalities as this instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendments of the Effective Date:

[THE SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGE]

TENANT:

Kathryn L. Weber a/k/a Kathryn Weber a/k/a Kathy Weber

Donald Andrew Weber a/k/a Andy Weber

LANDLORD:

San Juan Water Conservancy District,
a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
Allan Pfister, President

Attest:

, Secretary

Pagosa Area Water and Sanitation District,
a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
, President

Attest:

, Secretary

Running Iron Ranch Lease Extension

This Running Iron Ranch Lease Extension ("Extension") is entered into as of January 4, 2024 (the "Effective Date") by and between San Juan Water Conservancy District, a quasi-municipal corporation and political subdivision of the State of Colorado, and Pagosa Area Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado acting by, through, and on behalf of its Water Activity Enterprise (collectively "Landlord"), and Kathryn L. Weber a/k/a Kathryn Weber a/k/a Kathy Weber, (collectively "Tenant"). Landlord and Tenant are sometimes collectively referred to herein as the "Parties."

Recitals.

A. Landlord has entered into the following three lease agreements with one of the Tenants set forth above:

- i. Running Iron Ranch Occupancy and Agricultural Agreement, dated January 3, 2008 (the "RIR Lease") with Running Iron Ranch, LLC, a Colorado limited liability company as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of an "Eastern Parcel" of approximately 600.88 acres, with certain water rights, all as further described in the RIR Lease.
- ii. The 40-Acre Parcel Occupancy and Agricultural Lease, dated January 3, 2008 (the "40-Acre Lease") with Donald L. Weber Trust dated August 5, 1999, Kathryn L. Weber Trust dated August 5, 1999, and Donald Andrew Weber as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of approximately 40 acres of land, together with certain water rights, all as further described in the 40-Acre Lease.
- iii. The 5-Acre Parcel Occupancy and Agricultural Lease, dated January 3, 2008 (the "5-Acre Lease") with Kathy Weber a/k/a Kathryn L. Weber, Don Weber a/k/a Donald L. Weber, Donald L. Weber Trust dated August 5, 1999, and Kathryn L. Weber Trust dated August 5, 1999 as the tenant thereunder. This lease is for certain real property located in Archuleta County, Colorado consisting of approximately 5 acres of land, together with certain water rights, all as further described in the 5-Acre Lease.

The RIR Lease, the 40-Acre Lease, and the 5-Acre Lease, are collectively referred to herein as the "Leases."

B. All of the Leases expire on January 3, 2024.

- C. The Parties desire to extend the Leases for two years, from January 4, 2024, through January 3, 2026, pursuant to the terms and conditions set forth herein with the option to further extend the lease extension.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of Landlord and Tenant, as well as the covenants contained herein, Landlord and Tenant agree as follows:

Terms and Conditions.

1. Extension. Except as modified in this Extension, each of the Leases shall continue in full force and effect from January 4, 2024, through January 3, 2026. In the event of any conflict between any of the Leases and this Extension, this Extension shall control. The Parties may agree to additional extensions by entering into a written amendment to this Extension no later than the expiration of this Extension.
2. Tenant. A tenant under any of the Leases shall be a tenant under all of the Leases.
3. Exclusion of Western Parcel. The "Premises" leased pursuant to this Extension shall be the real property and water rights described in each of the Leases, provided however, that the premises leased herein shall not include the Western Parcel described in Exhibit B of the RIR Lease.
4. Lease Payment. Prior to the commencement of this Extension, Tenant shall pay Landlord one-half of the five (5) month grazing lease in May of each year and one-half when the cattle are removed at the end of the season. The lease will be for 40 to 60 pairs (cow & calf) depending on the grass available at \$15.00 per month per cow-calf pair. If the grass is good, Tenant may bring cows in one week early the end of May. Payment will be in good funds.
5. Agricultural Activities. During the term of this Extension, Tenant shall use reasonable ranching and agricultural practices and shall be solely responsible for maintaining and repairing all agricultural improvements as needed for tenants' operation on the Premises, including but not limited to fencing, corrals, roads, irrigation ditches, and utility pipes and lines. Tenant shall also continue to irrigate the Premises consistent with historical irrigation practices utilized thereon.

Improvements, Personal Property. Unless further extended by mutual agreement of the Parties, Tenant shall remove all Improvements and personal property belonging to Tenant prior to the expiration of this Extension. Tenant reserves the right to remove the pipe corrals which her youngest son, now deceased, built for her at the end of this lease, along with all her fence panels, gates, working cattle chute, alley, cattle guard, propane tank, water heater for water tank, and any other miscellaneous cattle equipment. Any Improvements or personal property belonging to Tenant that remain on the Premises following the expiration of this Extension shall be deemed abandoned and shall become the property of Landlord to do with as it chooses in its sole and absolute discretion

6. Noxious Weeds. During the term of this Extension, Tenant shall be solely responsible for controlling noxious weeds on the Premises. Landlord shall provide the Tenant with applicable herbicides as recommended. Tenant shall allow periodic inspections of the Premises by the Archuleta County Weed and Pest Control Department. Tenant shall apply the herbicides as recommended to control noxious weeds.
7. Liability Insurance. Tenant shall from and after Extension Date, maintain general liability insurance with respect to Tenant's occupancy and activities on the Premises with liability limits not less than \$1,000,000.00 with Landlord named as an additional insured.
8. Tenant's Default and Landlord's Remedies. An "Event of Default" by Tenant of this Extension shall be defined according to the Leases, and Landlord's remedies upon the occurrence of any Event of Default shall be as set forth in the Leases.
9. Notices.

12.1 All notices provided for herein shall be in writing and shall be deemed given when a copy of the notice, addressed to the receiving party in the manner provided in this Section 12.1, is actually delivered (or when delivery of the notice is refused) by personal delivery, by commercial courier, by successful and confirmed facsimile transmission, or by certified or registered mail, return receipt requested, to the addresses for such party provided in this Section 12.1 or to such other addresses of which such party gives the other party notice under this Section 12.1.

If to Tenant:

Kathryn L. Weber
7101 E. Highway 160
Pagosa Springs, Colorado 81147
Tel: 970-749-4668
Fax: None

If to Landlord:

San Juan Water Conservancy District
46 Easton Drive, Suite 5
Pagosa Springs, Colorado 81157
Tel: 970-985-5764

Pagosa Area Water and Sanitation District
P.O. Box 4610
100 Lynn Avenue
Pagosa Springs, Colorado 81157
Tel: 970-731-2691
Fax: 970-731-2693

10. Authority; Personal Obligations.

13.1 Landlord hereby covenants that it has good and lawful authority to enter into this Extension and that the person executing this Extension on behalf of Landlord has the authority to act for Landlord.

13.2 Each individual executing this Extension on behalf of Landlord represents and warrants that he/she is duly authorized to execute and deliver this Extension on behalf of Landlord.

13.3 Tenant hereby covenants that it has good and lawful authority to enter into this Extension and that the person executing this Extension on behalf of Tenant has the authority on behalf of Tenant.

13.4 Each individual executing this Extension on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Extension on behalf of Tenant.

11. Miscellaneous.

14.1 No Partnership. Nothing contained in this Extension shall create any relationship between the parties hereto other than that of Landlord and Tenant. Landlord and Tenant do not in any way or for any purpose become partners, joint venturers or members of a joint or common enterprise as a result of entering into this Extension.

14.2 Amendment in Writing. No amendment, modification, or supplement to this Extension shall be valid or binding unless set out in writing and executed by both of the Parties hereto.

14.3 No Waiver. No provisions of this Extension shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing signed by the party to be bound thereby. No waiver of any breach or any term or condition of this Extension in any instance shall be a waiver of any breach or any term or condition in any other instance. Landlord's receipt of Rent with knowledge of a breach by Tenant of any term or condition of this Extension shall not be deemed a waiver of such breach. Any waiver of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Extension.

14.4 Inurement. Except as otherwise specifically provided, the covenants, terms, and conditions contained in this Extension shall inure to the benefit of and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

14.5 Governing Law and Venue. The validity and effect of this Extension shall be governed by the laws of the State of Colorado. Any action arising out of or related to this Extension shall be brought exclusively in the state district court in and for the County of Archuleta, Colorado.

14.6 Time of Essence. Time is of the essence of each provision of this Extension.

14.7 Validity of Provisions. If any provision of this Extension is invalid under present or future laws, the remainder of this Extension shall not be affected and in lieu of each provision that is invalid, there will be added as part of this Extension a provision which is valid and enforceable and which is as similar to such invalid provision as possible.

14.8 Construction. The Parties waive any rule of construction that ambiguities are to be resolved against the drafting party. Any words following the words "include," "including," "such as," "for example," or similar words or phrases shall be illustrative only and are not intended to be exclusive, whether or not language of non-limitation is used.

14.9 Annual Appropriation. Any financial obligations of Landlord hereunder are subject to the annual appropriation of funds for the performance thereof, which annual appropriation shall be made in the sole discretion of Landlord's Boards of Directors.

14.10 Joint and Several. The obligations of Landlord hereunder are the joint and several obligations of both parties comprising Landlord. The obligations of Tenant hereunder are the joint and several obligations of all parties comprising Tenant.

14.11 Attorneys' Fees. In the event of any action arising out of or related to this Extension, the prevailing parties shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing parties.

14.12 Electronic Signatures and Counterparts. The Parties agree to accept electronic signatures on this Extension as original signatures. This Extension may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

12. Entire Agreement. This instrument represents the entire and only agreement between the parties with respect to the subject matter hereof and no oral statements or representations or prior written matter not contained herein shall have any force or effect, and this Extension shall not be modified in any way except by a writing subscribed by both parties with the same formalities as this instrument.

IN WITNESS WHEREOF, the Parties have executed this Extension as of the Effective Date:

[THE SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGE]

TENANT:

Kathryn Weber a/k/a Kathy Weber

LANDLORD:

San Juan Water Conservancy District,
a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
Allan Pfister, President

Attest:

, Secretary

Pagosa Area Water and Sanitation District,
a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
, President

Attest:

, Secretary

Board Agenda Summary Sheet

	To	Action	Signature, Date		To	Action	Signature, Date
1	PAWSD Board			6			
2				7			
3				8			
4				9			
5				10			

Name of Action Official:

Director Smith

Phone:

Board Meeting Date:

September 14, 2023

Priority

☐ High

☐ Medium

☐ Low

Subject:

Agenda Item # 12: Consideration of Running Iron Ranch 5 Acres

Agenda Item # 13: Consideration of 21-Acre Running Iron Western Parcel

- Consideration of Running Iron Ranch 5 Acres

To set aside approximately 5 acres of property near the existing 1950 residence on the Running Iron Ranch (a portion of parcel 570108100001) to be developed into employee and/or contractor RV housing. This will require removing this portion of the property from the previously requested lease extension.

- Consideration of 21-Acre Running Iron Western Parcel

The 21-acre Running Iron Western parcel (the riverfront property, a portion of parcel 570105400019) be set aside for PAWSD employee recreation to aid in employee retention, reduced PAWSD construction costs, and to be used in conjunction with item above.

From: Kyle Tjelmeland <kyle@PAWSD.org>

Sent: Tuesday, September 5, 2023 11:44 AM

To: Cyndi Foster <cyndi@PAWSD.org>

Subject: FW: PAWSD Lake Hatcher Tower Lease, Pagosa Springs, CO

The amendment basically says: in exchange for 6 strands of PAWSD provided fiber into the SkyWerx office on Hopi (PAWSD has 36 strands available). Visionary will upgrade and maintain internet service at the best possible speeds at the PAWSD main office, Hatcher WTP & Snowball WTP. The original contract is unchanged.

Kyle Tjelmeland

IT, GIS & Cityworks Manager

Pagosa Area Water and Sanitation District

970-731-7651

970-507-1201 cell

kyle@pawsd.org -email

First Amendment to Antenna Tower Space Lease Agreement

THIS **FIRST AMENDMENT TO THE ANTENNA TOWER SPACE LEASE AGREEMENT** ("Amendment") is made and entered into on June 21, 2023 by and between Pagosa Area Water & Sanitation District ("PAWSD"), referred to as "Lessor" and Visionary Communications LLC, referred to as "Lessee."

Recitals

The parties hereto recite, declare and agree as follows:

A. LESSOR and LESSEE entered into an Antenna Tower Space Lease Agreement ("Agreement") dated August 4, 2021 with respect to a Tower located at: Parcel 558336312036, off Horseshoe Cir., Pagosa Springs, CO 81147, GPS Coordinates: 37.309357, -107.118625, NWSE of Section 36, Township 36 North, Range 2-1/2 West.

B. LESSOR and LESSEE desire to enter into this First Amendment in order to modify and amend certain provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of sufficiency of which are hereby acknowledged, LESSOR and LESSEE covenant and agree as follows:

Section 1(a)(ii) shall be AMENDED as follows:

ii. a trade for three (3) business internet connections of the fastest standard speed offering available in Lessor's area, un-throttled at no cost to the customer for running fiber into the SkyWerx office located at 218 Hopi Dr. #214, Pagosa Springs, CO 81147, to be installed at the following business locations: Pagosa Area Water & Sanitation District ("PAWSD"), 100 Lyn Ave., Pagosa Springs, CO 81147 (Plat ID 63311); Snowball Water Treatment Plant, 3286 Snowball Road, Pagosa Springs, CO 81147 (Plat ID 84855); and Hatcher Water Treatment Plant, 504A Hatcher Circle, Pagosa Springs, CO 81147 (Plat ID 84857); so long as the location can be serviced by internet service from Lessee during the term of the lease. Lessor owns fiber that is utilized by Lessee to service Lessor's location(s) as well as Lessee's customers. Lessor grants Lessee access to six (6) strands of fiber on the existing and future fiber infrastructure in order to provide these services.

All other terms and provisions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date of the execution by the last party to sign.

Lessor:

Jim Smith, PAWSD Board President
Pagosa Area Water & Sanitation District
100 Lyn Avenue
Pagosa Springs, CO 81147
(970) 731-7651
kyle@pawsd.org

Signature

Jim Smith, PAWSD Board President
Print Name & Title

Date

STATE OF COLORADO }
 } ss.
County of Archuleta }

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by:

Jim Smith, PAWSD Board President, Pagosa Area Water & Sanitation District.
(Lessee Name - Print) (Title) (Company)

WITNESS my hand and official seal.

(SEAL)

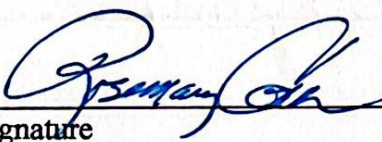
Notary Public

My Commission expires: _____

ACKNOWLEDGEMENT

Lessee:

Rosemary Corbin
Visionary Communications, LLC
P.O. Box 2799 – 82717
1001 S. Douglas Hwy., Suite 201
Gillette, WY 82716
307.682.1884 office
307.682.2519 fax
contractadmin@visionarybroadband.com



Signature

Rosemary Corbin, PMO Director

Print Name & Title

6/19/23

Date

STATE OF WYOMING }
 } ss.
County of CAMPBELL }

The foregoing instrument was acknowledged before me this 22nd day of June, 2023 by:

Rosemary Corbin, PMO Director, Visionary Communications, LLC.
(Lessor Name - Print) (Title) (Company)

WITNESS my hand and official seal.

Mariann Nicole Wood

Notary Public

My Commission expires: 1-19-2025



ANTENNA TOWER SPACE LEASE

This lease is made and entered into on August 4, 2021 ("Effective Date") between Pagosa Area Water & Sanitation District ("PAWSD") hereinafter referred to as "Lessor", and Visionary Communications Inc., a Wyoming corporation, hereinafter referred to as "Lessee".

Lessee is an Internet service provider and offers high-speed wireless Internet services to the surrounding area. Toward this end, Lessee needs to locate telecommunications equipment on the tower and in the building located at the base of the tower (hereafter referred to as the "leased premises"). Specifically, it needs:

1. to have 24/7 access to the leased premises for maintenance of the equipment, including access to gates and paths to the leased premises. If Lessor requests escorted access only inside the building, then equipment can be placed outside the building in an enclosure provided by Lessee for unescorted 24/7 access.
2. to at its sole cost install radio equipment and antennas on the tower (tower equipment) and use the same in a manner which does not interfere with other Lessees.
3. to house radios and affiliated equipment inside the building (building equipment), and
4. to install wiring to interconnect its tower and building equipment and have power to the same.

It is therefore agreed as follows:

1. Lessee shall compensate Lessor as set forth in Exhibit A.
2. Subject to the terms of this lease, Lessee may locate antennas and affiliated equipment on the leased premises for purposes of receiving and transmitting data and voice traffic.
 - (a) Lessee may not sublet, nor assign this Lease nor sublet all or any part of its rights without the prior written consent of the Lessor (not unreasonably withheld). This lease shall transfer to all assignees, successors, and heirs. Any assignment by Lessor shall not be binding on Lessee until Lessee is provided with written notice thereof showing a legal assignment.
 - (b) Lessor shall have the right at all times to inspect any equipment placed on the leased premises by Lessee.
 - (c) Lessor reserves the right to require supervised access to the site. If notice is given to Lessee of such a request, Lessee will be required to notify the Lessor (by phone) of the need for access to the site. Upon request, Lessor shall then provide it in a timely fashion commensurate with the situation, i.e. within 24 hours if an emergency repair needs performed.
3. Lessee shall give full cooperation in placing and securing equipment so as not to be hazard or nuisance to Lessor and to place it where Lessor reasonably desires.
 - (a) Lessee shall comply with all applicable laws and ordinances in installing and maintaining its equipment and warrants that its equipment shall not cause interference with any other communications equipment existing and operating on the leased premises at the time Lessee installs it. It shall cooperate with Lessor to the extent necessary to determine the source of any interference that may be caused by or emitted from its equipment and, in the event Lessee's equipment causes interference to other equipment located on the leased premises prior to the date Lessee installs its equipment, Lessee shall, within fifteen (15) days, take all steps and precautions necessary to correct and eliminate the interference. Lessor represents and warrants that others permitted to have equipment on the leased premises shall be similarly constrained and that Lessee is an intended beneficiary of such constraints.
 - (b) At the termination of this Lease Lessee shall remove all equipment from the leased premises. Any holding over shall be an unlawful detainer and Lessor may institute such proceedings against Lessee and shall receive any past due rent and the remaining rent for the year as liquidated damages.
 - (c) If Lessee's equipment or the tower is destroyed or damaged without fault or negligence by Lessee and it cannot be repaired at a reasonable cost in a reasonable time, Lessee at its discretion may elect to terminate this Lease as of the date of the damage or destruction by written notice given to Lessor no more than ten (10) days following the date of determination of cost of the damage or destruction.

Lake Hatcher Tower Lease

4. Each party shall conduct its business, and control its agents, employees, invitees, and visitors in such a manner as is lawful and reputable and shall not create any nuisance or otherwise interfere with the other's use.
5. Lessee agrees to save Lessor harmless from all liability, loss, damage, costs, or expenses on account of any claim of any nature whatsoever for work performed on or materials or supplies furnished to the leased premises for Lessee or persons claiming under Lessee, and shall promptly discharge or bond the amount required by a court if a claim for a lien should arise. If Lessee shall be in default Lessor may, but is not required to, pay the uncontested amount of any lien or claim and any costs. If it does so the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Lessee to Lessor.
6. Each party shall hold the other harmless from any loss it may incur for any damage or injury to persons rightfully upon the leased premises for any purpose or for any damage to property or said party where the injuries or other damage are caused by the negligence or misconduct of the indemnifying (at fault) party, its agents, servants, employees, or any other person entering upon the leased premises under express or implied invitation of that party. Lessee shall obtain and maintain throughout the term of this Lease a comprehensive general liability policy, including protection against personal injury and property damage, issued by an insurance company qualified to do business in the State of Colorado in amounts not less than \$1,000,000 per occurrence naming Lessor as an additional insured.
7. Lessor warrants that as long as Lessee is not in breach of the lease, Lessee shall have quiet enjoyment of the property and Lessor shall indemnify and hold Lessee harmless and defend Lessee against anyone challenging Lessee's quiet enjoyment at its expense paying all expenses damages and attorney fees which may arise from any claim of another.
8. The following shall be deemed to be events of default by Lessee under this lease: if
 - (a) Lessee shall abandon its operations on the leased premises;
 - (b) Lessee shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of rent, and the failure is not cured within thirty (30) days after written notice by Lessee;
 - (c) Lessee shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws for the United States or under any insolvency act of any state, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall be dissolved.
9. Upon the occurrence of any default set forth in this lease agreement Lessor may terminate this Lease, in which event Lessee shall immediately remove its equipment from the leased premises. If Lessee fails to remove its equipment Lessor may avail itself of the forcible entry and detainer statutes of the state and seek damages.
10. Any notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set out below.

Jim Smith – PAWSD Board President Pagosa Area Water & Sanitation District 100 Lyn Ave. P.O. Box 4610 Pagosa Springs, CO 81147	Visionary Communications, Inc. P.O. Box 2799 Gillette, WY 82731
---	---
11. Entire Agreement, Severability & Waiver. This Lease contains all agreements, promises, and understandings between the Lessor and Lessee and no verbal or oral agreements, promises, or understandings shall be binding upon either the Lessor and Lessee in any dispute, controversy, or legal proceeding, and any addition, variation, or modification to this Lease shall be void and ineffective, unless made in writing signed by the Parties. In the event any provision of the Lease is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of the Lease. The failure of either Party to insist upon strict performance of any of the terms or conditions of this lease or to exercise any of its rights under the Lease shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Lease.


Initials: 

EXHIBIT A

Lessor owns a Tower, hereinafter referred to as "Tower", located at:

Address: Parcel 558336312036, off Horseshoe Cir., Pagosa Springs, CO 81147

GPS Coordinates: latitude 37.309357, longitude -107.118625

NWSE Section 36, Township 36 North, Range 2-1/2 West

It is therefore agreed as follows:

Lessor grants nonexclusive rights to Lessee for the leased premises as described and on the following terms:

- (a) Lessee shall be allowed to place said equipment on leased premises and have access in exchange for:
- i. a trade for 3/1Mbps Business internet connection and Dialup Toll Free service for the lift stations (and future lift stations as may be agreed upon by the parties provided by written Amendment) listed in **Exhibit B – List of Tower Sites** for monitoring purposes; and
 - ii. a trade for three (3) business internet connections up to 20 Mbps un-throttled at no cost to the customer for running fiber into the SkyWerx office located at 218 Hopi Dr. #214, Pagosa Springs, CO 81147 to be installed at the following business locations: Pagosa Area Water & Sanitation District ("PAWSD"), 100 Lyn Ave., Pagosa Springs, CO 81147 (Plat ID 63311); Snowball Water Treatment Plant, 3286 Snowball Road, Pagosa Springs, CO 81147 (Plat ID 84855); and Hatcher Water Treatment Plant, 504A Hatcher Circle, Pagosa Springs, CO 81147 (Plat ID 84857); so long as the location can be serviced by internet service from Lessee during the term of the lease. Lessor owns fiber that is utilized by Lessee to service Lessor's location(s) as well as Lessee's customers. Lessor grants Lessee access to six (6) strands of fiber on the existing and future fiber infrastructure in order to provide these services.

A router will be provided by Lessor. Lessee shall notify Lessor with the planned date and location of the installation of any equipment, which location(s) will be mutually agreed upon by the parties prior to installation.

(b) Term. The Lease Commencement Date shall be **September 1, 2021** (the "Commencement Date"). This Lease shall start on the Commencement Date and shall continue for ten (10) years. After ten (10) years have passed from the beginning of the term of the lease, if either party determines that it does not wish to continue this lease, either party may terminate this lease and its obligations hereunder by providing one hundred eighty (180) days written notice to the non-terminating party.

(c) Renewal. Lessee is hereby given the option to renew this agreement for two successive 5-year terms. This lease shall automatically renew for each successive Renewal term unless either of the PARTIES sends a written one hundred eighty-day (180) notice of its intentions to terminate the agreement.

(d) Lessee may use the electrical service on leased premises at no additional cost, but Lessor shall not be liable for any interruption of electrical service, and rental payments under this Lease shall continue notwithstanding any interruption of power or other required utility facility that is not caused by the gross negligence or willful misconduct of Lessor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Lake Hatcher Tower Lease

Lessor:

Jim Smith, PAWSD Board President
100 Lyn Ave.
Pagosa Springs, CO 81147
(970) 731-7651
kyle@pawsd.org

Jim Smith
Signature

Jim Smith, PAWSD Board President
Print Name & Title

10/13/2021
Date

STATE OF COLORADO }
 } ss.
County of Archuleta }

The foregoing instrument was acknowledged before me this 13 day of October, 2021 by:

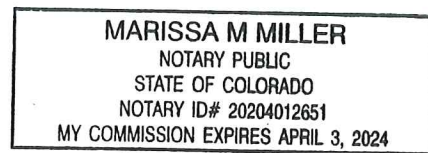
Jim Smith, PAWSD Board President, PAWSD
(Grantor - Print) (Title) (Company)

WITNESS my hand and official seal.

(SEAL)

mi mill
Notary Public

My Commission expires: April 3, 2024



Lake Hatcher Tower Lease

Lessee:

Visionary Communications, Inc.
ATTN: Greg Worthen
1001 S. Douglas Hwy., Suite 201
P.O. Box 2799 – 82717
Gillette, WY 82716
307.685.5510 office
307.680.4503 cell
307.682.2519 fax
contractadmin@visionarybroadband.com



Signature

Greg Worthen, Secretary
Print Name & Title

11-4-2021
Date

STATE OF WYOMING }
 } ss.
County of CAMPBELL }

The foregoing instrument was acknowledged before me this 4th day of November, 2021 by:

Greg Worthen, Secretary, Visionary Communications, Inc.
(Grantor - Print) (Title) (Company)

WITNESS my hand and official seal.



Notary Public

My Commission expires: 1-19-2025



Initials:

Lake Hatcher Tower Lease

EXHIBIT B
List of Tower Sites

Plat ID	Description	Latitude	Longitude	Address / Location
63311	PAWSD Admin Building	-107.1020000	37.2550000	100 Lyn Ave., Pagosa Springs, CO 81147
84855	Snowball WTP	-106.9890910	37.3076350	3286 Snowball Rd., Pagosa Springs, CO 81147
84857	Hatcher WTP	-107.1149760	37.3131750	504A Hatcher Cir., Pagosa Springs, CO 81147
64240	Lift Station 1	-107.1080000	37.2490000	Trails Blvd & Bonita Dr., Pagosa Springs, CO 81147
64242	Lift Station 3	-107.0910000	37.2610000	509 Lakeside Dr., Pagosa Springs, CO 81147
64243	Lift Station 4	-107.0840000	37.2610000	114 Eagles Loft Cir., Pagosa Springs, CO 81147 (at Lake)
64244	Lift Station 5	107.0810000	37.2640000	394 Eagles Loft Cir. (behind Rec Center)
64246	Lift Station 6	-107.0870000	37.2820000	1256 Cloud Cap Ave. (at Lake)
64247	Lift Station 7	-107.0820000	37.2800000	286 Butte Dr. (behind house at Lake)
64249	Lift Station 8	-107.0770000	37.2780000	30 Tor Ct.
64250	Lift Station 9	-107.0870000	37.2870000	2417 Piedra Rd
64252	Lift Station 10	-107.1200000	37.3180000	179 Saturn Dr.
64253	Lift Station 11	-107.0960000	37.2840000	293 Sweetwater Dr
64255	Lift Station 12	-107.0790000	37.2830000	1805 Piedra Rd
64256	Lift Station 13	-107.0890000	37.2500000	105 Park Ave.
64260	Lift Station 14	-107.0870000	37.2650000	237 Northshore Cir. - behind house
84874	Lift Station 15	-107.0820000	37.2700000	57 Peninsula Pl.
84875	Lift Station 16	-107.0690000	37.2470000	100 Bristlecone Dr.
84877	Lift Station 21	-107.0940000	37.2500000	38 Port Ave. (Port & Settler)
84878	Lift Station 22	-107.0870000	37.2480000	35 Meadows Dr.
84879	Lift Station 23	-107.0480000	37.2450000	576 Shooting Star Dr.
84880	Lift Station 24	-107.0620000	37.2600000	1470 Park Ave. (Park & Eagles Loft Cir.)
84881	Cemetery Hill Tank	-107.0231000	37.2701000	Water Tank Rd. (in Cemetery)
84882	Cloman Booster Pump Station	-107.0660000	37.2860000	895 Industrial Cir.
84883	Cloman Lift Station	-107.0660000	37.2870000	865 Industrial Cir.
84884	Eagle Peak Booster Pump Station	-107.1080000	37.3170000	4457 Piedra Rd.
84886	Eagle Peak Tank	-107.0900000	37.3308000	Unknown
84912	Elk Park Booster Pump Station	-107.1350000	37.2470000	32 Caraway Ct.
84913	Elk Park Tank	-107.0430000	37.2723000	off of Alta Ct.
84914	Elk Run Booster Pump Station	-106.9892600	37.3068200	3222 Snowball Rd. (Snowball WTP)
84915	Elk Run Tank	-107.0113000	37.3055000	Unknown (off of Royal Elk Pl)
84917	Hatcher Tank	-107.1188000	37.3093000	access at end of Horseshoe Cir. (@ Hatcher Cir.)

Lake Hatcher Tower Lease

EXHIBIT B
List of Tower Sites

84919	Walmart Liftstation	-107.0619480	37.2598250	283 Aspen Village Dr.
84949	Loma Linda Booster Pump Station	-106.9860000	37.2230000	105 River Forest Dr.
84933	Loma Linda Tank	-106.9784000	37.1797000	access at 2108 Loma Linda Dr.
84935	Meadows Tank	-107.0738000	37.2304000	260 Cameron Pl.
84936	Mockingbird Lift Station	-107.1060000	37.2920000	3289 N. Pagosa Blvd.
84937	Reserve Booster Pump Station	-107.1180000	37.3260000	5592 Piedra Rd. (@ Dylan Dr.)
	Reserve Tank	-107.1207000	37.3378000	access at 321 Clint Cir.
84938	Reservoir Tank	-107.0051000	37.2654000	Reservoir Hill Park
	River Pump Station	-107.0180000	37.2200000	Unknown
84939	San Juan WTP	-107.1025000	37.2539900	100 Lyn Ave.
84940	Snowball Tank	-106.9890000	37.3070000	3233 Snowball Rd. (@ Snowball WTP)
	Stevens Tank 1	-107.0737000	37.2973000	204 Paws Ct.
	Stevens Tank 2	-107.0739000	37.2975000	204 Paws Ct.
84941	Trujillo Pump Station	-107.0370000	37.2350000	5328 County Road 500 (Trujillo Rd)
84942	Oak Brush Tower	-107.1171300	37.1970700	Access @ 2788 Ranchland Dr.
84943	Reservoir Hill Cell Tower	-107.0033300	37.2613900	Reservoir Hill Park
84946	PSMC (Hospital)	-107.0792200	37.2524400	81 S. Pagosa Blvd.
	Visionary Tower Repeater R.H.	-107.0030000	37.2620000	Reservoir Hill Park
84947	Putt Hill Tank	-107.0430000	37.2723000	2001 Eagle Dr.
84948	Log Park Tank	-106.9571000	37.3095000	407 W. Log Hill Rd.
	4 Mile Diversion	-107.0482500	37.3948400	San Juan National Forest
	West Fork Diversion	-106.8995300	37.3782500	San Juan National Forest
	San Juan Diversion	-107.0149600	37.2199200	San Juan National Forest