

021290/3714H

ELK VALLEY ESTATES DEED OF CONSERVATION  
EASEMENT IN GROSS

This DEED OF CONSERVATION EASEMENT, made this 2<sup>nd</sup> day of March, 1990, by JACK L. HART (hereinafter the "Grantor"), and THE STATE OF COLORADO acting by and through THE DEPARTMENT OF NATURAL RESOURCES for the use and benefit of THE COLORADO DIVISION OF WILDLIFE and THE COLORADO WILDLIFE COMMISSION (hereinafter the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that real property in Teller County, Colorado more particularly described on Exhibit A, attached hereto and incorporated herein by reference, and hereinafter referred to as the "Property"; and

WHEREAS, Uncontrolled property development would destroy the value of the Property as big game range, specifically, elk winter range, migration corridor and calving area; and

WHEREAS, the Property has been identified by the Teller County Planning Department as significant wildlife habitat, the conservation of which is important for protection of property values and quality of life in Teller County; and

WHEREAS, the Property consists of high-quality examples of native plant communities which provide habitat for native wildlife including, but not limited to, its use as a corridor for elk migrating to and from winter grazing areas and elk calving areas; and

WHEREAS, Grantor as owner in fee of the Property owns the affirmative rights to identify, preserve, and protect in perpetuity the ecosystems and other natural features and processes of the Property; and

WHEREAS, Grantor desires and intends to transfer such rights to the Grantee to preserve and maintain the condition and character of the Property as winter range and calving area for elk and as a corridor for the migration of elk by creating a Conservation Easement under Title 38, Article 30.5 of the Colorado Revised Statutes; and

WHEREAS, Grantee is organized to preserve and conserve natural areas

and ecologically significant land for scientific, charitable, and educational purposes; and;

WHEREAS, the State of Colorado has recognized the importance of private efforts towards preservation of land predominantly in a natural, scenic, or open condition or for wildlife habitat by the enactment of Section 38-30.5-101, et. seq., Colorado Revised Statutes, as amended; and

WHEREAS, the Grantee, a charitable organization exempt under Section (c)(3) of the Internal Revenue Code of 1954 as amended was created at least two years prior to the grant of this Conservation Easement, and is qualified under the provisions of Section 170(h) of the Internal Revenue Code of 1954, as amended, to acquire and hold conservation easements; and

WHEREAS, Grantor desires and intends to grant "to Grantee a conservation easement over the Property in order to preserve its significant relatively natural habitat by restricting the use of the Property to such uses and activities; hereinafter set forth, as are consistent with the conservation purposes of this easement;

NOW THEREFORE, for and in consideration of the foregoing and the mutual covenants, conditions and restrictions contained herein, and pursuant to C.R.S. 1973 Section 38-30.5-101, et seq., Grantor hereby grants and conveys to the Grantee, its successors and assigns, a non-exclusive perpetual Conservation Easement in gross over the Property, of the nature, character and extent hereinafter set forth.

1. PURPOSE. It is the purpose of this Conservation Easement to preserve and protect in perpetuity the significant relatively natural habitats of wildlife, plants, or similar ecosystems of the Property. Specifically, and without limitation of the general purposes, it is the purpose hereof to preserve and protect the native wildlife habitat and elk migration corridor, winter range and calving areas on the Property. In so doing, it is the purpose of this Conservation Easement to permit those uses of the Property by Grantor which are consistent with the conservation purposes of this easement.

2. BASELINE DATA. In order to establish the present condition of the property's natural, ecological, wildlife and aesthetic resources, so as to be able to properly monitor future uses of the property and assure compliance with the terms hereof, Grantee and Grantor have jointly prepared an inventory of the property's relevant features and conditions (the "Baseline Data"). Said Baseline Data includes but need not be limited to aerial photographs,

topographical maps, wildlife habitat and migration maps, measures of the quality of ground cover on grazing areas and wildlife photographs and reports. The parties agree that if a controversy arises with the respect to the nature and extent of Grantor's historical and present use, or the physical condition of the property subject to this easement as of the date thereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports and other evidence to assist in the resolution of the controversy.

3. GRANTEE'S RIGHTS. The rights conveyed to the Grantee by this Conservation Easement are the following:

A. The right to preserve and protect in perpetuity and to restore the significant relatively natural habitat of wildlife, plants, or other natural ecosystems and native flora and fauna on the Property.

B. The right to conduct cooperative management of timber on the Property with the COLORADO STATE FOREST SERVICE and to harvest timber during times and in amounts which increase the value of the Property as habitat for elk winter range. Each purchaser of an Estate shall permit the timber on their estate to be thinned and/or area cleared for disease and/or fire control and/or the benefit of wildlife. Such timber management shall be agreed to, in advance, by a representative at the Division of Wildlife, Colorado State Forest Service and the Architectural Control Committee of Elk Valley Estates. The condition of the forested area of the Easternmost part of Estate 14 and the triangular part of Estate 17 and the western view area of the building envelope at Estate 7 shall serve as common guidance on appropriate and acceptable timber management practices. Two patch cuts per estate not to exceed 6 acres in total shall be permitted, provided that no more than 3 acres may be cut if the total wooded area of an Estate is 20 acres or less, and none can be cut if wooded area is 10 acres or less. All of the downed timber ay be retained by the estate owner if he arranges to remove the same, otherwise it shall be removed by Grantee and owned by Grantee.

C. The right to enter the Property to access the adjacent National Forest for administrative or management purposes and not as a designated public access.

D. The right to enforce the covenants contained in this Conservation Easement in any reasonable manner at reasonable times by proceedings at law or in equity including but not limited to the right to require restoration of the Property or any portions thereof to the condition required by this grant and for implementation of the purposes stated herein.

E. The right to enter the Property at all reasonable times for the purpose of enforcing the rights hereby granted and inspecting the Property to determine whether the Grantor is complying with the covenants and purposes of this Conservation Easement.

4. CONSISTENT USES. The following uses and practices by Grantor, although not exhaustive recital of such uses and activities are consistent with this Conservation Easement and may not be precluded or limited except by the requirement of Grantee's prior approval, where provided herein:

A. The right to divide the Property into no more than thirty-one 35 acre tracts and four 10 acre tracts, as generally illustrated on Exhibit B, each Estate to contain a building site for residential purposes as set forth in the Teller County Zoning. The right to construct, maintain, repair, replace, and use the underground water id sewer and under or above ground power, cable and other utility lines, roads, an exterior boundary fence, dwellings, barns and corrals within the Property and signs as limited by Colorado law. Unless Grantee has consented thereto in writing in advance, dwellings, barns, and corrals, will not be constructed during the period April 15 to June 30 of any year on Estates 1, 2, 3, 4, 5, 14, 15, 16, and/or 17. Road repair and replacement, well drilling, septic system installation, and repair, may be performed at any time including but not limited to using materials obtained from the Property (presently an area of Estate 32).

B. The right to establish and maintain the roads described on Exhibit B hereto and to establish and maintain additional hiking, nature and cross-country ski trails along such routes and in such manner as Grantee consents to, pursuant to paragraph 7 below, for use by Grantor and any owner of any division or subdivision thereof. Driveways from roads to houses and/or barns shall be considered "roads" even if not shown on Exhibit B.

C. Horseback riding by Grantor and any owner of any division or subdivision thereof.

All rights other than those granted to Grantee in paragraph 3 and those prohibited in paragraph 5 are reserved by Grantor, including the right to surface and subsurface use of the Property for all purposes not inconsistent with this Conservation Easement, provided, however, that prior to exercising any reserved right, and exercise of which may have an adverse impact on the conservation interests associated with the Property as set forth herein, Grantor shall give the Grantee written notice of such intended exercise, pursuant to paragraph 7 below.

5. PROHIBITED USES. The following uses and practices by Grantor or by any owner of any division or subdivision thereof, though not an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited upon or within the Property.

A. The construction or placement of any buildings, camping accommodations, mobile homes, fences, signs, billboards or other device for advertising or other structures or utilities on the Property except as expressly provided for in paragraph 4(A) above, corrals and barns shall not occupy more than 1 acre of space per Estate

B. The operation of any recreation business venture.

C. The dumping of ashes, trash, garbage or other unsightly or offensive materials, and the changing of the topography by placing soil, landfill, or other substances on the Property.

D. The operation of any motorized vehicles and/or the riding of bicycles except on those roadways which are described on Exhibit B or otherwise permitted hereunder.

E. Filling, excavating, dredging, mining, drilling, removal of topsoil, sand, gravel, rock or other materials, and the exploration for or extraction of oil, gas, other hydrocarbons, and other minerals, on or below the surface of the Property, except on the roads. Water wells may be drilled as and when needed without Grantee's consent. Necessary earthmoving for residences, corrals and barns shall be without Grantee's consent except as set forth in paragraph 4(A).

F. The removal, cutting or destruction of trees or native plants, or the introduction of exotic vegetation, except as consented to by Grantee. This provision shall not apply in building envelopes and adjacent solar easement, and view easement, areas of each Estate, and each Estate owner may designate not to exceed 2 acres wherein he may do all things necessary or desirable to construct residences barns, corrals, and other useful things.

G. Hunting or trapping; except such live trapping, kill trapping or controlled harvest as required to manage the animal population in accordance with sound wildlife management practices and maintenance of the ecological balance of the area, as consented to by the Grantee.

H. The grazing of livestock, except when confined to corrals.

I. The use of biocides, except as consented to by Grantee.

J. The feeding, enticement, or harassment of any wildlife, except emergency feeding by Grantee as necessary to manage the animal population in accordance with sound wildlife management practices but not precluding hummingbird feeders, suet or birdseed.

K. The division, subdivision or de facto subdivision of the Property; into any parcels smaller than 35 acres without the prior written consent of Grantee.

L. The construction of any roads or trails, except as expressly provided herein, without the prior consent of Grantee. Driveways within Estates to residences, barns and/or corrals are not prohibited.

M. Any use of the Property by dogs unless the dog is on a leash and under the direct control of its owner.

N. Establishment of any commercial or industrial uses on the Property except for the initial sale of lots within the Property.

O. The change, disturbance, alteration or impairment of the natural, ecological or wildlife features and values within and upon the Property, except as provided herein.

6. ENFORCEMENT RIGHTS OF GRANTEE AND RESTORATION. the Grantor agrees to notify the Grantee in writing before exercising any right reserved hereunder which may have an adverse impact on the conservation interests associated with the property. Upon the violation of any term, condition, covenant or restriction contained in this easement, after notice of violation

to the Grantor, the Grantee may institute a suit to enjoin by temporary and/or permanent injunction such action as it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant or purpose of this easement in the future.

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

7. NOTICE

A. Whenever express agreement or consent of Grantee is required by this document, Grantor shall give written notice and detailed information to Grantee by first class mail. Grantee shall have sixty(60) days from the receipt of such notice or until one day after the next Colorado Wildlife Commission meeting, whichever is later but in any event not more than sixty(60) days, to review the proposed activity and to notify the initiating part of any objections thereto. Any objections by the Grantee shall be based upon its opinion that the proposed activity is inconsistent with the terms of the Easement. Failure to respond within sixty(60) days of the receipt of said notice shall constitute consent to the proposed activity.

B. Permission to carry out, or failure to object to, any proposed use or activity shall be for that particular occurrence only, and, unless otherwise stated, shall not constitute consent for any subsequent use or activity of the same or any different nature.

C. Any written notice called for in the Easement shall be sent by hand delivery or by first class mail to the Grantee at the headquarters of the Colorado Division of Wildlife, 6060 Broadway, Denver, Colorado 80216, Attn: Director, and to Grantors at Jack L. Hart, Post Office Box 8, Divide, Colorado 80814-0008 or to such other

address of which a party informs the other parties from time to time. The notice shall be deemed to be received within five(5) days after mailing of same.

8. COSTS. Grantor agrees to bear all cost of operation, upkeep, and maintenance of the Property arising from Grantor's use thereof; but not including the cost of any maintenance, improvement, or management of the native habitat or wildlife population thereupon. Grantor shall pay all taxes associated with the Property.

9. ASSIGNMENT. The parties hereto covenant and agree that the Grantee may assign its interest in this Conservation Easement provided that (1) any assignment shall be to a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code of 1954, and (2) the Grantee requires, as a condition of such transfer, that the conservation purposes of this easement continue to be carried out in perpetuity.

10. CHANGED CONDITIONS. It is the intention of the parties that the conservation purposed of this easement shall be carried out in perpetuity. In the event that a later unexpected change in the conditions of or surrounding the Property makes impossible or impractical the continued use of the property for the conservation purposes described herein, the restrictions are extinguished by judicial proceeding, the Grantee will return the Property to the then owner or owners of the servient Estate.

11. ACCESS. Nothing set forth in this Deed of Conservation Easement shall be interpreted or construed either to (a) grant or create any right of access to or across the Property to the general public or anyone in particular for any purpose (other than the right granted above for the Grantee via its authorized agents to enter on the Property at reasonable times to determine whether the Grantor or any successor or assign is complying with the conditions, covenants, and restrictions set forth above) or (b) to prohibit the Grantor, its successors and assigns from or require the Grantor, its successors and assigns to grant the right of access across the Property to anyone, so long as such grant, if any, of access is not inconsistent with any of the conditions, covenants or restrictions set forth above or with the purpose and intent of this Conservation Easement.

12. WAIVER. Enforcement of the terms and provisions of the Conservations Easement shall be at the discretion of the Grantee, and except as provided in paragraph 7(A), any forbearance on behalf of the Grantee to



exercise its rights hereunder in the event of any breach hereof shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

13. WILDLIFE DAMAGE. Grantor hereby waives its rights to hold Grantee liable pursuant to C.R.S. 1973 Section 33-3-101 et seq., for any damage caused by wildlife.

14. BINDING COVENANT. The Conservation Easement herein granted shall be burden upon and shall run with the Property and the Adjacent Property in perpetuity and shall bind the Grantor, its successors and assigns forever.

15. SEVERABILITY. If any provisions of this Deed of Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. DEFINITIONS. The terms "Grantor" and "Grantee" wherever used herein, and any pronouns used in their place, shall mean and include, respectively, the above named Grantor, its successors and assigns, and the Grantee, its successors and assigns.

This Grant is subject to existing easements, reservations, and right-of-way of record.



STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup>  
day of MARCH, 1990 by

Witness my hand and official seal.



My commission expires: June 24, 1990.

James C. Callahan  
Notary Public

EXHIBIT A

The following property located in Township 13 South, Range 69 West of the 6th P.M., Teller County, Colorado:

In Section 7:

Southeast Quarter of Southwest Quarter  
(SE1/4SW1/4);

In Section 8:

Southwest Quarter (SW1/4), East Half of Southeast Quarter (E1/2SE1/4);

Southwest Quarter of Northeast Quarter  
(SW1/4NE1/4); and

Southeast Quarter of Northwest Quarter  
(SE1/4NW1/4);

In Section 17:

Northwest Quarter (NW1/4);

Southwest Quarter (SW1/4); and

Northwest Quarter of Northeast Quarter  
(NW1/4NE1/4);

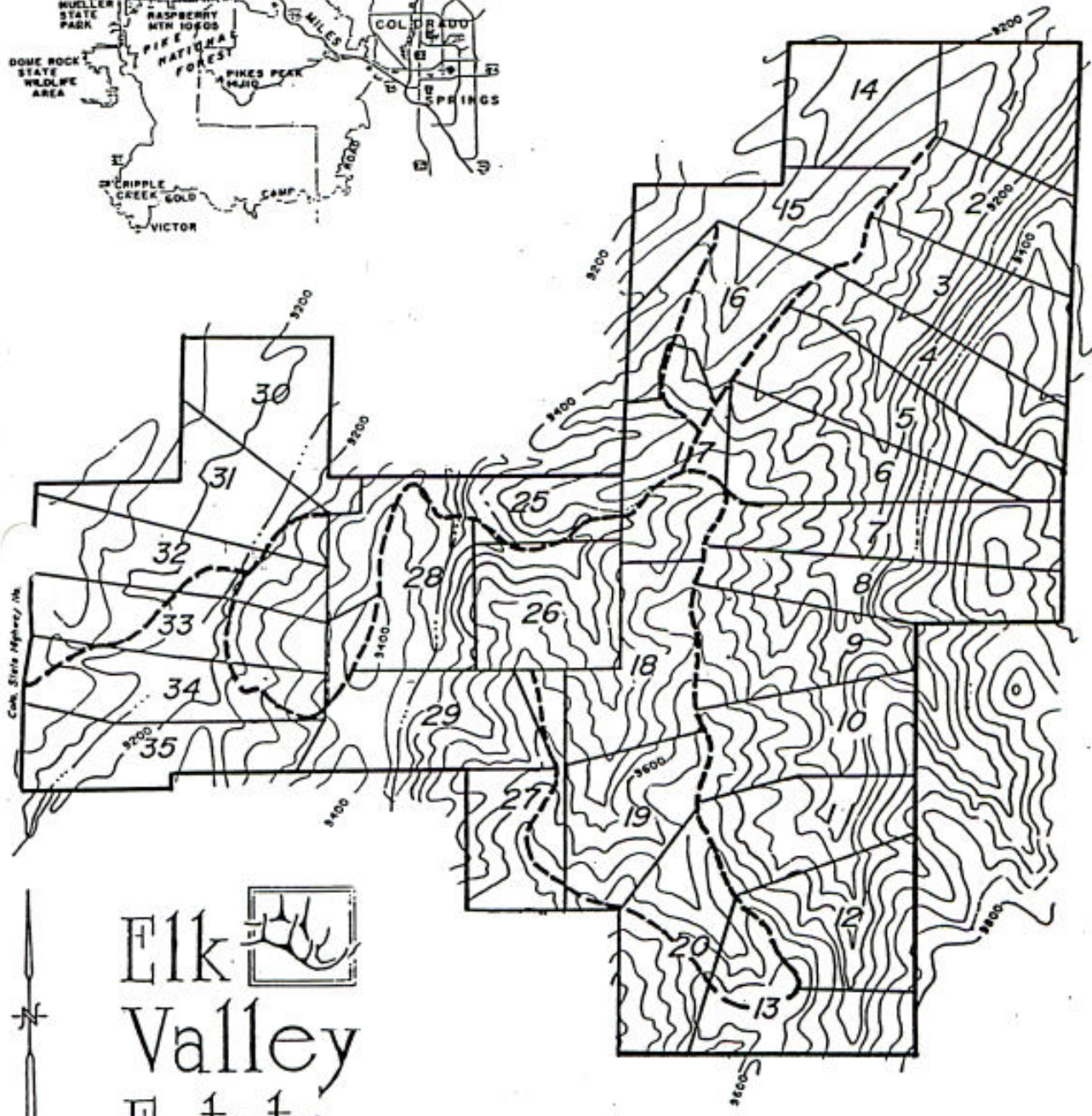
In Section 18: -Northeast Quarter (NE1/4);

Northwest Quarter (NW1/4) (including Government Lots 1 and 2, Section 18);

Northeast Quarter of Southeast Quarter  
(NE1/4SE1/4); and

That part of the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) (also known as Government Lot 3, Section 18), lying North of that land deeded to Michael H. Smith and Lisa Smith in Book 423, Page 28, Teller County Records;

EXHIBIT "B"



Elk Valley Estates