

**CONTAINS NOTICE AND PAYMENT PROVISIONS REQUIRED UPON TRANSFER
OF ANY INTEREST IN THE PROPERTY LEGALLY DESCRIBED BELOW. SEE
SECTION 9.2.**

DEED OF CONSERVATION EASEMENT IN GROSS

This Conservation Easement (hereafter referred to as the "Conservation Easement" or "Easement") is made and entered into as of the ____ day of _____, 2005, between:

Christopher John Smith and Cheryl Lyn Smith

(hereafter referred to as "Grantor"), whose legal address is 4487 Clark Road, Crawford, Colorado 81415; and

**The Valley Land Conservancy, a Colorado Nonprofit Corporation,
dba Black Canyon Regional Land Trust, Inc.**

incorporated more than two years prior to the date of this document and exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereafter referred to as "Grantee"); whose legal address is 1500 E. Oak Grove Road Suite 201, Montrose, Colorado 81401.

WHEREAS:

- A. Grantor is the sole owner in fee simple of certain real property, including 100% of the real property's mineral rights, consisting of approximately 108 acres, located in Delta County, Colorado, more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference, said Property shown on the map attached hereto as "Exhibit B" and incorporated herein by this reference ("the Property"). The existing structures and improvements on the Property include two residential structures, one residential structure under construction, three accessory buildings, barn, fencing, corrals, and irrigation structures.
- B. The Property possesses the following attributes: locally important agricultural land; important wildlife habitat, open space; and scenic values as the Property is visible from Needle Rock Road a Delta County public road. These attributes are referred to as the "Conservation Values";
- C. The Colorado Department of Agriculture statutes, as codified at Colorado Revised Statutes (CRS) §35-1-101, *et seq.*, provide that "it is the declared policy of the State of Colorado to conserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products";

- D. The State of Colorado recognized the importance of private efforts to preserve land in natural, scenic or open condition, for wildlife habitat and for the protection of open land having wholesome environmental quality, by the enactment of CRS §38-30.5-101, *et seq.*;
- E. The Colorado Wildlife and Parks and Outdoor Recreation statutes, as codified at Colorado Revised Statutes (CRS) § 33-1-101 *et seq.*, provide that “it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, enhanced and managed for the use, benefit and enjoyment of the people of this state and visitors to this state”;
- F. The Property includes significant water rights and agricultural soils that make it important in Delta County’s agricultural production. Such unique agricultural lands are currently being converted to non-agricultural uses, so preservation of the Property’s agricultural use provides a significant public benefit to the community;
- G. The Property is located within the County of Delta, whose County Master Plan contains the goals of “preserving the rural character and natural environment, and protecting the unique physical resources of Delta County through programs that provide an equitable balance of preservation and respect for individual property rights” and “maintaining Delta County as an agricultural community by preserving agricultural land and enhancing the viability of agricultural operations”;
- H. Grantee has determined that accepting a Conservation Easement on the Property will enhance the long-term wildlife habitat, agricultural opportunities, and scenic values of the Property, and promote the use of sound agricultural practices and conserves valuable open space to further its charitable purposes of protecting the agricultural, wildlife habitat, and open space conservation values of Delta, County;
- I. Grantor and Grantee desire to ensure that as outlined in the purposes of this Easement as stated below, the wildlife, agricultural, scenic, and general open space characteristics of the Property will be protected for the benefit of future generations, and desire to do this by entering into this Conservation Easement pursuant to the provisions of CRS §38-30.5-101, *et seq.*;
- J. The Grantor intends to grant the property interest conveyed by this Deed to the Grantee for the exclusive purpose of protecting the wildlife, agricultural, open space, and scenic qualities of the Property, pursuant to the terms and conditions contained herein; and
- K. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein the parties hereto agree as follows:

1. GRANTEE’S REPRESENTATION.

Grantee represents and warrants that it is a Colorado non-profit corporation within the meaning of The Colorado Revised Nonprofit Corporation Act, as codified at CRS §7-121-101 *et seq.*; that it is organized for, among other purposes, conserving real property; and that it is a tax exempt and "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) (3) of the Internal Revenue Code (IRC) and Treasury Regulations;

2. GRANT OF CONSERVATION EASEMENT.

In accordance with the provisions of CRS §38-30.5-101, *et seq.*, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, this Conservation Easement upon the Property in perpetuity as defined by, for the Purposes outlined below.

3. PURPOSES.

It is the purpose of this Conservation Easement to: a) preserve the ability of the Property to be agriculturally productive, b) preserve the wildlife habitat on the Property, c) prevent any use of the Property that would significantly impair or interfere with its current or potential agricultural viability and wildlife habitat; and d) conserve and protect the Property's open space resources and scenic value.

Grantor and Grantee intend that the Property will be forever retained predominantly in its undeveloped condition conserving the rural, agricultural, open space, and wildlife habitat values and resources by the conveyance of this Conservation Easement. Grantor and Grantee further intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving agricultural maintenance and improvements, wildlife habitat maintenance, and the provision of no more than three residential structures, as are consistent with the Purposes of this Easement.

4. DEFINITIONS.

The following terms and definitions shall apply:

"Grantor" or "Owner" includes the original Grantor, its heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.

"Grantee" shall mean the original Grantee and its successors and assigns.

"Sound agricultural practices" is defined as those practices necessary for agricultural production, and the preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the Property,

represent good resource management and stewardship of the land for the present and future generations, and achieve the intended results in a reasonable and supportable way.

“Acceptable Development Area” (ADA) shall be the area identified on Exhibit B in which three single-family dwellings, farm support housing, associated accessory buildings, and buildings and improvements for home occupations, or small-scale businesses may be placed to the extent provided.

“Accessory structures” shall be structures associated with a single-family dwelling within the ADA and which do not provide any human habitation or commercial uses. Accessory structures may include, but are not limited to, storage, sheds, greenhouses, and garages

“Agricultural accessory structures” shall be structures limited to agricultural support uses and shall not provide any human habitation. Accessory structures associated with agricultural uses may include, but are not limited to barns, sheds and storage facilities.

5. RESERVED RIGHTS.

Subject to the restrictions and covenants set forth in this Conservation Easement, Grantor reserves for himself and his successors in interest with respect to the Property, all rights with respect to the Property except as provided herein, including, without limitation, the right of exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property, as well as the right to exclude any member of the public from trespassing on the Property. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

6. CONSISTENT USES.

Without limiting the generality of the foregoing reserved rights, consistent uses are those uses that are consistent with the purposes of this Conservation Easement and are permitted. While these uses represent allowable uses pursuant to this Conservation Easement, the provisions herein do not constitute an express grant of authority or vesting of any particular right or use that may otherwise be subject to applicable local and State laws. The following, although not an exhaustive recital of consistent uses, are uses specifically determined to be consistent with the terms of this Conservation Easement:

6.1. Agricultural Practices. Grantor may produce crops, pasture, livestock and livestock products in accordance with sound agricultural practices as defined in Section 4 of this Easement, which includes but is not limited to, the right to establish, reestablish, maintain, and use orchards, vineyards, fields, irrigation systems, and pastures. Agricultural uses shall use stewardship and management goals and methods that preserve the natural resources which sustain agriculture. Stewardship and management goals include preserving soil productivity, preventing soil erosion, minimizing invasive plant species, and preventing unsustainable livestock grazing practices.

6.2. Agricultural Accessory Structures & Improvements. Grantor may construct, maintain, repair, and remove agricultural accessory structures. New unenclosed agricultural accessory structures and improvements including but not limited to, corrals, loafing sheds, hayracks, ditches, culverts, stock tanks, stream crossings and irrigation structures may be constructed on the Property without notice to Grantee. Construction of new, enclosed agricultural accessory structures of 2,500 square feet or more shall be subject to the Notice of Construction provisions in Section 8.1. These improvements shall only be used for agricultural purposes and shall not provide any residential use. All agricultural enterprises shall be subject to applicable local laws and regulations.

6.3. Fences. Grantor may maintain, repair, remove, and replace existing fences, and new fences may be constructed or installed, anywhere on the Property for purposes of managing livestock, public safety and to prevent trespassing on the Property. No fences shall be of a type of construction that would exclude wildlife from all of the Property.

6.4. Roads. Grantor may maintain, remove, and repair existing roads for access to the Property. Existing roads are those described in the Baseline Documentation provided for in Section 8.3 herein. No new roads, other than those unpaved roads used for agricultural purposes, may be constructed without Grantee's prior written permission and subject to Notice requirements of Section 8.1 herein. Such permission shall only be granted upon a finding that any new roads do not adversely affect any of the Conservation Values.

6.5. Utilities. Utilities necessary to serve the permitted uses on the Property, and those utilities subject to easements of record as of the time of execution of this Conservation Easement, may be built and maintained on the Property. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be re-vegetated at the expense of Owner causing the installation of the utilities no later than the next growing season following the installation. All other new utilities must have prior written approval of the Grantee.

6.6. Water Resources. Grantor has the right to utilize, maintain, establish, construct, or otherwise improve water sources, courses, and bodies within the Property for uses expressly permitted herein, subject to the prohibition against permanent transfer or severance of any water rights set forth in Section 7.6. below.

6.7. Recreational Uses. Grantor may perform recreational uses on the Property that have minimal impact upon the Conservation Values. Such uses may include, but are not limited to, hunting, camping, and horseback riding.

6.8. Habitat Enhancement Practices. Grantor may enhance wildlife habitat through planting of native plant species, removal of non-native plants, and other similar activities.

6.9. Residential Structures Grantor may repair, remodel, replace, or remove three single-family residential dwellings and accessory buildings and improvements within the

three-acre area in the Acceptable Development Area (ADA). All new residential construction shall be subject to the Notice of Construction provisions in 8.1. The residential structure under construction at the time of this Conservation Easement is not subject to the Notice of Construction requirements. While the exact location of the ADA has not been surveyed as of the date of execution of this Conservation Easement, the ADA shall be located within the designated area on the Easement Map (Exhibit B). Prior to the building of any new residential dwelling structures, the Grantor shall provide a stamped survey of the ADA to the Grantee, subject to review and acceptance by the Grantee, which acceptance shall not be unreasonably withheld, and recorded as a supplement to this Easement. Single-family residential dwellings may not be subdivided from the Property and shall comply with all applicable laws and regulations.

6.10. Home Occupations or Small-Scale Businesses. Grantor may establish and operate home occupations and small-scale businesses within the ADA provided that said activities do not significantly impair or impact the wildlife uses of the Property, are consistent with purposes and intent of the Conservation Easement, and comply with applicable ordinances and laws related to home occupations.

6.11. Farm-support Housing. Grantor may construct, maintain, repair, remove, enlarge or replace one structure, no larger than 1000 square feet, to be used for farm-support housing within the Acceptable Development Area. Farm-support housing within this single structure may include no more than two individual living units, and shall be used exclusively to house farm employees, seasonal farm employees and their family members. All new farm-support housing construction shall be subject to the Notice of Construction provisions in Section 8.1. Farm-support housing may not be subdivided from the Property. Farm-support housing shall comply with all applicable laws and regulations.

7. RESTRICTED USES.

Uses that are inconsistent with the purposes of this Conservation Easement are prohibited upon the Property. The following, although not an exhaustive recital of inconsistent uses, are uses specifically determined to be prohibited:

7.1. Use and Building Prohibitions. Except as provided in Section 6 above, no residential, commercial or industrial activities shall be permitted and no residential, commercial or industrial building or improvement shall be constructed, created, installed, erected or moved onto the Property.

7.2. Impervious Surfaces. Except for residential driveways and roads necessary to access buildings or improvements within the ADA, parking areas within the ADA, and shared roads and driveways necessary to access other development areas within adjoining lands subject to conservation easements toward the objective of clustering, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

7.3. Waste Management. The dumping, land filling, burial, application, injection, or accumulation of any kind of waste on the Property, other than agriculturally-related waste or materials generated on the Property that does not substantially diminish or impair agricultural viability or water quality, or violate any applicable state, local or Federal law or regulation, is prohibited. However, this shall not prevent the storage of agricultural products and byproducts, the composting of nontoxic, non-hazardous biodegradable materials, including animal waste and animal bedding materials, the storage of farm equipment, or temporary storage of trash in receptacles for periodic off-site disposal. In addition, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Easement. Any storage or treatment of sewage associated with buildings permitted on the Property shall be subject to all applicable subdivision laws and regulations accordingly. Sewage generated off the Property can not be stored or treated on the Property.

7.4. Chemicals. All pesticides, herbicides, fertilizers, or other chemical treatment of the Property shall be used in accordance with applicable laws and with sound agricultural practices.

7.5. Commercial Feed Lot/Confined Feeding Operations. The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Conservation Easement "commercial feed lot" is defined as a permanently constructed confined feeding area or facility within which the land is not grazed or cropped annually and which is used and maintained solely for the purposes of continual reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding, or from leasing pasture for the grazing of livestock owned by others. In addition, no confined commercial pig or chicken feeding operations shall be allowed anywhere on the Property. For purposes of this Conservation Easement, "confined pig or chicken feeding operations" shall include pig or chicken sheds encompassing a portion of the Property greater than 1,000 square feet.

7.6. Transfer of Water Rights. Grantor specifically retains all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property; provided, however, that except to the transferee in a conveyance of the Property, Grantor shall not permanently sever, transfer, sell or otherwise dispose of any conditional water rights, absolute water right(s) or shares in any ditch company which are appurtenant to the Property including 1/12 of the Hice Water and 1/12 of the Needle Rock Ditch water, 1/6 interest in the Lone Rock Ditch and 15 acre feet of the Smith Fork Project Allotment. Grantor represents that there are no known adjudicated water rights appurtenant to the Property other than those described herein.

Grantor and Grantee intend and desire that the obligations and restrictions set forth in this Section are enforceable pursuant to CRS §38-30.5-101, *et seq.* Alternatively, the parties intend and desire that the obligations and restrictions set forth in this Section be enforceable as a restrictive covenant, or that such obligations and restrictions be enforceable as an equitable servitude.

7.7 Commercial Recreational Activities. All commercial recreational activities are prohibited except those with a minimal impact on the Conservation Values.

7.8 Subdivision. The Property may not be further divided, partitioned, or otherwise converted into separate parcels. This restriction shall not preclude boundary line adjustments that do not create residential building lots.

7.9 Aircraft runways. Aircraft runways shall be prohibited.

7.10 Mining Prohibitions. There shall be no excavation, removal of topsoil, sand, gravel, rocks or minerals, in any manner, except as may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement. No sale of surface or subsurface minerals or mineral rights, including gravel, sand, rock or topsoil from the Property, is permitted. No quarrying or surface mining activities are permitted on the Property.

8. ADDITIONAL COVENANTS AND PROVISIONS.

8.1. Notice of Construction. With respect to proposed construction of residential improvements in the ADA, farm support housing, or enclosed agricultural accessory structures and improvements on the Property as more specifically defined in Section 6.2, and in order to determine that any of the new structures and improvements are for a use permitted by the terms of this Easement, the Grantor or owner proposing such construction shall give Grantee written notice thereof not less than forty-five (45) days prior to the anticipated commencement of site preparation and/or construction. This notice shall include: (1) building plans identifying the use of the proposed structure or improvement, and (2) maps indicating the location of the proposed structure or improvement. In addition, the boundaries of the proposed structure shall be physically marked on the land. Such information shall allow Grantee to confirm that the structures or improvements proposed for construction: (1) conform to the use or uses permitted; and (2) do not impair the agricultural, open space, or wildlife conservation values of the Property as identified herein.

Grantee shall give written permission within forty-five (45) days of receipt of a request for such permission (provided that Grantor has supplied sufficient information to make such a determination), unless Grantee determines that the proposed structure and/or improvements are not permitted under the terms of this Conservation Easement. In approving such proposal, Grantee may attach such conditions as it reasonably deems necessary to comply with the purposes, terms and intent of this Conservation Easement. If Grantee fails to respond within forty-five (45) days, Grantor will further contact Grantee to confirm that Grantee received the first notice, and if after ten (10) days Grantee does not respond, the proposal shall be deemed approved.

8.2. Extinguishment of Development Rights. Except as specifically reserved to Grantor in this Conservation Easement, all development rights that are now or hereafter

allocated to, implied, or inherent in the Property are terminated and extinguished by this Conservation Easement, and may not be used or transferred to any portion of the Property as it is now or hereafter may be described, or to any other property, whether adjacent or otherwise.

8.3. Existing Conditions; Baseline Documentation Report. By its execution of this Conservation Easement, Grantee acknowledges that the present uses of the Property are permitted by this Conservation Easement. In order to evidence the present condition of the Property (including both natural and man-made features) so as to facilitate future monitoring and enforcement of this Conservation Easement, a Baseline Documentation Report, including maps and photographs, describing such condition at the date hereof, has been prepared and executed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Grantee. The Baseline Documentation Report as prepared by Rare Earth Science, LLC and dated August 11, 2005 is incorporated herein by this reference.

8.4. Enforcement. Grantee may enforce this Conservation Easement at law or in equity, against any or all of the owners of the Property or any part thereof. If there is a violation, or threatened violation, of this Conservation Easement, Grantee shall provide written notification to Grantor, who shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same and (b) restoring the Property to the condition before such violation; or, in the case of a threatened violation, refrain from the activity that would result in the violation. If a violation continues for more than 15 days after written notice is given without Grantor taking steps to cure the same, or at any time if the violation or a threatened violation threatens immediate and irreparable harm to the Conservation Values of the Property that this Conservation Easement is intended to protect, Grantee may seek immediate injunctive relief and may also pursue all available legal remedies. If a violation has occurred, the Grantor shall reimburse Grantee for all expenses, including, but not limited to, reasonable attorneys' fees, incurred in enforcing this Conservation Easement and curing the violation. If legal remedy results in finding of no violation, Grantee shall pay for all expenses including but not limited to reasonable attorney's fees. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto.

8.5. Amendment. This Conservation Easement may be amended only in very limited circumstances and only upon the following conditions:

8.5.A. Any amendment will comply with Grantee's adopted policy on amending conservation easements, as such policy may be in effect from time to time. Such policy may include requirements for biological assessments, requirements for appraisals, and other items;

8.5.B. There shall be no amendment permitting the location of a non-agricultural structure outside of the ADA, unless Grantee determines that such structure will have no greater adverse effect on the agricultural productivity, wildlife habitat, and scenic beauty of the Property than it would have as originally specified, and such

amendment would result in strengthening the conservation goals and purpose of this Conservation Easement;

8.5.C. No amendment will be granted unless the Grantee determines that such amendment will enhance, or at a minimum, it will not adversely affect in any way the agricultural, scenic and other protective goals of this Conservation Easement and is otherwise consistent with the overall Purposes and intent of this Easement; and

8.5.D. Any amendment of this Easement shall be at the discretion of the Grantee and shall comply with IRC §170(h). If Grantor requests the amendment, Grantor shall reimburse the Grantee for all expenses, including, for example, staff time, reasonable attorneys' fees, and recording costs incurred in preparing and executing the amendment.

8.6. Notice and Approval Requests/Responses, in Writing. Any written notice or approval request required or desired to be given under this Conservation Easement by Grantor, and any subsequent response from Grantee, shall be in writing and shall be deemed given when received, or three (3) days after mailing by certified mail, or by FedEx or a similar public or private courier service which provides receipt of delivery, properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above, (c) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by giving notice pursuant to this paragraph.

8.7. Encumbrance by Conservation Easement. Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Conservation Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to the Valley Land Conservancy *dba* The Black Canyon Regional Land Trust, by instrument dated _____, and recorded in the office of the Clerk and Recorder of _____ County at Reception No. ____." The failure to include such language in any deed or instrument shall not, however, affect the validity or applicability of this Conservation Easement to the Property.

8.8. Taxes and Assessments. Grantor shall pay all taxes, levies, and assessments and other governmental or municipal charges, which may become a lien on the Property, including any taxes or levies imposed to make those payments. If Grantor fails to make such payments, Grantee is authorized to make such payments (but shall have no obligation to do so) upon prior notice to Grantor, according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. The payment, if made by Grantee, shall become a lien on the Property of the same priority as the item if not paid would have become, and shall bear interest until paid by Grantor at two percentage points over the prime rate interest, as published in the Wall Street Journal, and as may be adjusted from time to time.

8.9. Severability. Invalidation of any provision of this Conservation Easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in full force and effect.

8.10. Binding Effect. The provisions of this Conservation Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, have no further responsibility or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property; but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership of the Property, of which the owner had actual knowledge, or should have known.

8.11. Liability; Indemnification; Insurance.

8.11.A. Grantee has no obligations or rights whatsoever, express or implied, relating to the use, maintenance or operation of the Property.

8.11.B. Grantor agrees to indemnify and hold Grantee, its employees, board, volunteers, and agents harmless from any and all costs, claims or liability, including but not limited to, reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due solely to the negligence of Grantee or its agents, in which case Grantor shall have no liability.

To the extent that the Property qualifies for liability insurance, and for that period of time that Grantor owns the Property, Grantor shall add Grantee as an additional insured to its policy of liability insurance, and shall provide a copy of the endorsement evidencing such insurance to Grantee on the date of conveyance of this Easement and in the future upon request by Grantee.

8.11.C. Grantor further agrees to indemnify and hold Grantee harmless from and against any and all claims, costs, expenses (including all reasonable attorney's fees), fines, penalties, assessments, citations, personal injury or death, arising from or out of the existence (actual or alleged) of any and all environmentally hazardous or toxic substances or materials whatsoever on or under the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state or local law.

8.11.D. Grantee shall have no liability to Grantor for Grantee's acts, taken in good faith, in connection with the administration of this Conservation Easement, except to the extent that Grantee's or Grantee's agents' negligent, reckless or intentional conduct causes personal injury or property damage.

8.12. Acts Beyond Grantor's Control. This Conservation Easement shall not be construed to entitle Grantee to bring any legal action against Grantor for any injury to or change in the Property resulting from natural events beyond the control of the Grantor. Such natural events include fire, flood, storm, earthquake, tornado, landslide or Acts of God, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This paragraph shall not be construed to relieve the Grantor of the obligation to clean-up garbage or materials dumped on the Property by third parties or to otherwise maintain the Property in a condition consistent with the purposes of this Easement.

8.13. Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to effectuate the provisions and purposes of this Conservation Easement or which are necessary to qualify this instrument as a Conservation Easement under CRS §38-30.5-101, *et seq.*, necessary to create a "qualified conservation contribution" under IRC §170(h) or any regulations promulgated pursuant thereto.

8.14. No Forfeiture. Nothing herein contained will result in a forfeiture of Grantor's title in any respect.

8.15. Controlling Law. The Laws of the State of Colorado shall govern the interpretation and performance of this Conservation Easement.

8.16. Attorneys' Fees. All references to attorneys' fees, as noted throughout this Conservation Easement, shall include disbursements, costs, witness fees, and all other expenses incurred in connection with legal representations.

8.17. Local, State and Federal Laws in Effect. The Property remains subject to all applicable local, state and federal laws and regulations.

8.18. Grantor's Title Covenant and Warranty; Environmental Warranty.

8.18.A. Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.

8.18.B. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous or toxic substances, materials or wastes on the Property. Without limiting the foregoing or the indemnity contained in Section 8.11.C above, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property; or to otherwise become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

8.18.C. Grantor represents and warrants that Grantor has not encumbered the Property with a mortgage, lien, deed of trust or other instrument that would take priority over the Conservation Easement, other than as disclosed to Grantee prior to execution of this document.

8.18.D. Grantor represents and warrants that Grantor has not: (i) entered into a lease or granted an easement on any portion of the Property; (ii) leased or granted any rights to use of the Property to any party; or (iii) made any agreement with respect to the Property; any of which would be contrary to the purposes of this Conservation Easement.

8.18.E. Grantor represents and warrants that legal access from a public road exists to the Property.

8.18.F. The Property, as depicted on the Conservation Easement Map attached hereto as Exhibit B, shall be permanently monumented on the ground at Grantor's expense.

8.19. No Merger. Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Conservation Easement.

8.20. Waiver of Certain Defenses. With respect to the provisions of this Conservation Easement and enforcement thereof, Grantor waives any defense of laches, waiver, estoppel or prescription.

8.21. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

8.22. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of the 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 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:

8.22.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; (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.

8.22.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.

8.22.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.

8.22.D. Time Period. Neither party shall be obligated to continue the mediation process beyond a period of forty five (45) days from the date of receipt of the initial request or of the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

8.22.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.

9. QUALIFIED CONSERVATION COVENANTS

9.1 Assignment and Continuity. Grantee agrees that it will provide Grantor a 30-day written notice of intent to assign or transfer this Conservation Easement. Grantor agrees that it will provide Grantee any objections to the proposed assignment or transfer, or suggestions for alternative assignments, in writing within the 30-day notice period. Both parties shall make a good-faith effort to promptly resolve any objections or proposed alternatives related to such assignment.

Notwithstanding the above provisions, Grantee shall retain the authority to assign or transfer this Conservation Easement to an assignee that (a) is a Qualified Organization as defined in IRC §170(h), and which (b) agrees to continue to carry out the conservation purposes of this Conservation Easement as defined under IRC §170(h) and regulations thereunder. No assignment shall be made which adversely affects the status of the transactions herein contemplated under IRC §170(h). Any assignee must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee that encompass those of this Conservation Easement. Grantee and Grantor intend that any

“Qualified Organization” receiving this Easement be committed to sustaining agricultural opportunities for the Property.

If the Grantee ever ceases to exist or no longer qualifies under IRC §170(h) or applicable state law, it will assign this Conservation Easement to a Qualified Organization pursuant to these provisions. If it fails to do so, a court with jurisdiction may transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9.2. Notice. Grantor agrees to give Grantee written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this Conservation Easement. Grantor further agrees to notify Grantee of any permanent conveyance or transfer of all or any part of the Property, such notice to be given in writing in advance of such conveyance or transfer. Grantor may lease the Property without providing advance notice to Grantee. If Grantor leases or transfers the Property, Grantor shall provide Grantee a signed acknowledgement from any lessee/transferee indicating the lessee/transferee will abide by and be bound to this Conservation Easement. Notwithstanding the foregoing, the failure to give notice of any conveyance, lease or transfer shall not invalidate the transaction involved. Upon fee conveyance of the Property, a transfer fee of One Hundred and no/100 Dollars (\$100.00) shall be paid to Grantee. Any notice required or desired to be given under this Conservation Easement shall be in writing and shall be deemed given when received or three days after mailing by certified mail, by public or private delivery service which provides receipt of delivery, properly addressed as follows: (a) if to Grantee, at the address set forth above; (b) if to Grantor, at the address set forth above; or (c) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.

9.3. Inspection. Grantee or its designees shall have the right to enter the Property, but not the residential dwelling, accessory buildings and other buildings on the Property without the approval of Grantor, which approval shall not be unreasonably withheld, for the purpose of determining whether the provisions of this Conservation Easement are being observed. Notice of such inspections shall be delivered to the Grantor, [his/hers/its] designee(s) or agent(s) at least forty-eight (48) hours prior to such inspection. If Grantor does not respond to notice, Grantee or its designees shall have the right to inspect the Property without Grantor or Grantor’s representative present. Grantee or its designees shall also have the right to inspect the Property at any time, without prior notice, if Grantee has cause to believe the provisions of the Conservation Easement have been or are being violated.

9.4. Extinguishment. If a subsequent unexpected change in the conditions surrounding the Property make impossible the continued use of the Property or any portion thereof for the conservation purposes established by this Conservation Easement, and if the Conservation Easement is extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor of such property the Grantee shall

be entitled to that portion of the proceeds equal to the proportionate value of the conservation easement as set forth in Form 8283 filed by Grantor and executed by Grantee. Grantor agrees that the donation/conveyance of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under IRC §170(h) for any improvements which may hereafter be made on the Property), based on the appraisal to be obtained on the Property in connection with this grant of this Conservation Easement. Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes and intent of this Conservation Easement.

9.5. Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in IRC §170(h), and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes," such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

9.6 Third-Party Beneficiary. This Conservation Easement is entered into by and between the Grantor and Grantee, is solely for the benefit of the Grantor and Grantee, and their respective successors and assigns and does not create rights or responsibilities in any third party.

9.7. Perpetuation of Easement. This Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed affected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

Furthermore, the fact that any use of the Property that is expressly prohibited by the terms of this Conservation Easement may become greatly more economically valuable than uses permitted by the terms of the Conservation Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Conservation Easement, has been considered by Grantor in granting this Conservation Easement and by Grantee in accepting it. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement. In addition, the inability of Grantor, its successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

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

IN WITNESS WHEREOF, the parties have executed this instrument this _____ day
of _____, 2005.

Grantor:

Christopher John Smith

Grantee:

The Valley Land Conservancy, a
Colorado Nonprofit Corporation, *dba*
Black Canyon Regional Land Trust, Inc.

Cheryl Lyn Smith

Adell K. Heneghan, Executive Director

STATE OF COLORADO)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 2005, before me, the undersigned, personally appeared **Christopher John Smith** and **Cheryl Lyn Smith** personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to within the instrument and acknowledged to me that they executed the same in their individual capacities

Notary

My Commission Expires: _____

STATE OF COLORADO)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 2005, before me, the undersigned, personally appeared **Adell K. Heneghan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity as Executive Director of the Valley Land Conservancy, a Colorado Nonprofit Corporation, *dba* Black Canyon Regional Land Trust, Inc.

Notary

My Commission Expires: _____

EXHIBIT A
Legal Description

That parcel shown as Tract 3 in the survey recorded in Book 7 at Page 96, under Reception # 410210:

TOGETHER WITH :

A parcel of land within the SW1/4 NW1/4 of Section 27, Township 15 South, Range 91 West of the 6th Principal Meridian having bearings based upon a bearing of N.01°22'28"E. between the N1/16 corner common to said Section 27 and Section 28 and the Northwest corner of said Section 27 with all other bearings being relative thereto, said parcel being more particularly bounded and described as follows:

Beginning at the aforementioned N1/16 corner and running thence S.73°31'12"E. 950.92 feet to a point on the South right-of-way line of Delta County Needle Rock Road (formerly known as E-50 Road) and the TRUE POINT OF BEGINNING; parcel boundary runs thence S.44°29'52"E. 66.20 feet; thence S.40°41'15"E. 198.17 feet; thence S.44°20'38"E. 128.34 feet; thence S.51°00'36"E. 110.11 feet; thence S.31°14'35"W. 25.06 feet; thence N.51°05'35"W. 114.94 feet; thence N.44°20'38"W. 130.59 feet; thence N.40°41'15"W. 198.14 feet; thence N.44°29'52"W. 98.72 feet to a point on the South right-of-way line of the aforementioned Needle Rock Road ; thence along said South right-of-way S.81°21'20"E. 41.68 feet to the point of beginning. Parcel as described contains 0.30 acres.

EXCEPTING

A parcel of land within the SW1/4 NW1/4 of Section 27, Township 15 South, Range 91 West of the 6th Principal Meridian having bearings based upon a bearing of N.01°22'28"E. between the N1/16 corner common to said Section 27 and Section 28 and the Northwest corner of said Section 27 with all other bearings being relative thereto, said parcel being more particularly bounded and described as follows:

Beginning at the aforementioned N1/16 corner and running thence S.53°55'13"E. 1667.94 feet to a point on the East line of said SW1/4 NW1/4 and the TRUE POINT OF BEGINNING; parcel boundary runs thence N.25°37'07"W. 148.77 feet; thence N.15°59'30"W. 51.83 feet; thence N.00°29'00"W. 67.67 feet; thence N.19°04'06"E. 59.47 feet; thence N.31°15'23"E. 19.94 feet; thence N.51°00'36"W. 46.19 feet; thence N.31°14'35"E. 82.73 feet; thence N.88°50'07"E. 50.73 feet to a point on the East line of said SW1/4 NW1/4; thence along said East line S.01°07'14"W. 425.81 feet to the point of beginning. Parcel as described contains 0.60 acres.

ENTIRE PARCEL AS DESCRIBED CONTAINS 107.8 ACRES MORE OR LESS.

County of Delta, State of Colorado

A.D.A. 225ft x 450ft
GTR or EAST SIDE OF
ADA LOCATED AT
PROPERTY CORNER (A)

HOLDS ROCK ROAD (ROUTE E-60 BR78)

PIECE A
PAUL FENCE MOORE
11.25 ACRES

FARMER & SONS PROPERTY (UNSUBDIVIDED)
165.45 AC. APPROX.
1972-80 B.M. 1, 62221

ENTIRE SMITH PROPERTY

VALLEY SURVEY CO., INC.
S/I/16
528 | 527
1984

VALLEY SURVEY CO., INC.
S/I/16
527
1984

VALLEY SURVEY CO., INC.
C/I/4
517
1984

DEPT TRAIL

3 1/4" x 1/4" N. C.R.
SURVED