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Recorded - 11:55 AM - A - DEC 27, 1990
State of Colorado La Plata County

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS is entered into by and between IDA KOLB, hereinafter referred to as the "Grantor," and LA PLATA COUNTY, COLORADO, hereinafter referred to as the "GRANTEE."

WITNESS THAT:

WHEREAS, Grantor is sole owner of certain real property in La Plata County, Colorado, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property"); and

WHEREAS, the majority of the Property has significant ecological, fish and wildlife, open space and aesthetic value; and

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

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

WHEREAS, the Grantor intends that the Property's natural attributes, and its ecological, fish and wildlife, and aesthetic values be preserved by the continuation of uses, including grazing, that have proven historically compatible with such attributes and values; and

WHEREAS, the Grantor as owner in fee of the property desires to identify and assure the preservation in perpetuity of the property's significant natural elements, and to maintain its fish and wildlife and water quality; and

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

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

NOW THEREFORE, in consideration of the mutual covenants contained herein, based upon common law and further pursuant to Section 38-30.5-101, et seq., Colorado Revised Statutes, 1973, as amended, Grantor does hereby convey to Grantee a Conservation Easement in Gross (hereinafter, the "Easement") consisting of rights hereinafter enumerated, over and across that certain real property situated in La Plata County, Colorado, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

1. Purpose. It is the purpose of this Easement to preserve and protect in perpetuity the natural, ecological, fish and wildlife habitat, open space and aesthetic values of the Property. In so doing, it is the purpose of this Easement to foster the continuation of responsible wildlife, conservation and agricultural practices.

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

(a) To identify, to preserve and to protect in perpetuity the natural, ecological, fish and wildlife, open space and aesthetic features and values of the Property.

(b) To enter upon the Property to inspect and enforce the rights herein granted in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry.

Except as expressly provided herein, Grantor retains exclusive access to and use of the Property.

3. Permitted Uses and Practices. This Easement shall confine the future use of the Property to the preservation of open space, fish and wildlife habitat, grazing, limited residential and other uses which are described herein. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are permitted under this Easement, and these practices are not to be precluded, prevented or limited by this Easement:

(a) To maintain and repair existing fences on the property.

(b) To continue historical modes and levels of agriculture (grazing) provided such use does not in any way impair the ecological and fish and wildlife values of the Property.

(c) To build, maintain, enlarge, renovate and repair/replace once built, no more than 1 (one) residential structure and 2 (two) detached out-buildings on a 3 (three) acre building site on the southern part of the Property.

(d) To improve and maintain the existing access road to provide access for one residence.

(e) To develop and maintain such water resources on the Property as are necessary or convenient for the agricultural uses conducted thereon pursuant to the terms of this Easement.

(f) Grantor specifically retains all right, title and interest in and to all tributary and non-tributary water, water rights and related interests in, on, under or appurtenant to the land.

(g) Grantor specifically retains all right, title and interest to subsurface oil, gas and other minerals; provided, however, that exploration for and extraction of any minerals shall be undertaken in a manner designed to insure the protection of the natural, ecological, fish and wildlife, open space and aesthetic features and values of the property and only by a subsurface method consistent with the provision of Section 170(h) of the

Internal Revenue Code and the regulations thereunder.

4. Prohibited Uses and Practices. The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the property.

(a) The change, disturbance, alteration, or impairment of the natural, ecological, fish and wildlife, open space and aesthetic features and values within and upon the Property, except as otherwise provided herein.

(b) The establishment of any commercial or industrial uses or the construction or erection of any commercial signs or billboards.

(c) The division, subdivision, or de facto subdivision of the Property; provided, however, that the sale, exchange, devise or gift of any unit of land to Grantor's heirs shall not be considered a subdivision or a de facto subdivision for the purpose of this Leed, provided such transfer is effected with an express provision that said land is subject to the terms and conditions of this Easement, without modification or expansion of the terms of this Easement.

(d) The use of motorized vehicles, including snowmobiles, which would in any way result in the degradation of the land and the wildlife habitat thereon. Such degrading uses shall include, but not be limited to, those which increase the susceptibility of the soil to erosion or disturb wildlife wintering areas during winter months or wildlife migration routes.

(e) The commercial harvesting of timber, provided, however, that Grantor shall have the right to collect firewood for personal use and to cut trees as necessary or desirable for environmental purposes. The harvesting of timber may be undertaken only in a manner that minimizes adverse impact to raptorial habitat.

(f) The construction of any new roadways or trails without the consent of the Grantor and Grantee, which consent shall not be unreasonably withheld, provided that such roadways and trails are constructed so as to minimize the impact on natural and aesthetic features of the Property and are not constructed within critical wildlife habitat, migration, or riparian zones.

5. Baseline Data. Grantee acknowledges by acceptance of this Easement that Grantor's historical and present uses of the property are compatible with the purposes of this Easement. In order to establish the present condition of the Property's natural, ecological, fish and wildlife, open space 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 may include but need not be limited to aerial photographs, topographical maps, survey plats, surface photographs of the Property, and documentation from the Colorado Division of Wildlife. The parties agree that if a controversy arises with respect to the nature and extent of the Grantor's historical and present use or the physical condition of the Property subject to this Easement as of the date hereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports and other evidence to assist in resolution of the controversy.

6. Enforcement Right of the Grantee. In the event of a violation of any terms of this Easement, after 30 (thirty) days notice of the violation to the Grantor, the Grantee may take such action as it deems necessary to ensure compliance with the terms of the Easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver of the right to enforce any term of this Easement in the future.

7. Restoration. Grantor intends that should any prohibited activity be undertaken on the property, the Grantee shall have the right to cause the restoration of the Property affected by such activity to the condition existing prior to the undertaking of such prohibited activity, and the cost of such restoration shall be borne by the Grantor, her successors or assigns, against whom the judgment is entered. Nothing contained herein shall be construed to preclude Grantor from exhausting her legal remedies to determine whether the activity to which the Grantee has objected is consistent with the Easement.

8. Costs and Taxes. Grantor agrees to bear all costs of maintenance of the Property and hereby indemnifies the Grantee therefrom. Grantor agrees to pay all real property taxes and assessment levied by competent authority on the Property or on this Easement.

9. Access. Nothing contained herein shall be construed as affording the public access to any portion of the land subject to this Easement.

10. Assignment of Grantee's Interest. The parties hereto agree that the grantee may assign its interest in this Easement to a "qualified organization," within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, upon obtaining the prior written consent of the Grantor.

11. Grant in Perpetuity. The Easement herein granted shall run with the Property in perpetuity and shall bind the Grantor, her successors and assigns, forever.

12. Miscellaneous.

(a) If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Conservation Easement in Gross and the application of such provisions to person or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

(b) The Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument by which any interest in the Property is conveyed, and Grantor will attach a copy of this Deed of Conservation Easement in Gross thereto or reference same by Reception Number.

IN WITNESS WHEREOF, the Grantor has executed this Deed of Conservation Easement in Gross this 31 day of December, 1990.

BY THE GRANTOR:

Ida Kolb
Ida Kolb

County of La Plata)

SS

State of Colorado)

The foregoing Deed of Conservation Easement in Gross was signed and acknowledged before me this 31 day of December, 1990, by Ida Kolb as Grantor. Witness my hand and official seal.

UNOFFICIAL COPY

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP SEPT. 21, 1994
BONDED THRU GENERAL INS. UND.

commission expires: _____
Address: 11 W Broadway St. Meade Fl.
Barbara C. Neil



Ida Kolb
Ida Kolb

Acknowledged and Accepted

BY THE GRANTEE:

UNOFFICIAL COPY

THE BOARD OF COUNTY COMMISSIONERS FOR LA PLATA COUNTY, COLORADO BY:

Doris A. Brennan, Doris A. Brennan, Chairwoman
J. Paul Brown, J. Paul Brown, Commissioner
Claude E. Deering, Jr., Claude E. Deering, Jr. Commissioner

ATTEST: Nancy Kopka, Clerk to the Board

12-26-90

County of La Plata)

SS

State of Colorado)

The foregoing Deed of Conservation Easement in Gross was accepted and acknowledged before me this 31 day of December, 1990, by Doris A. Brennan, J. Paul Brown, and Claude E. Deering, Jr., being members of the BOARD OF COUNTY COMMISSIONERS FOR LA PLATA COUNTY, COLORADO, as Grantee. Witness my hand and official seal.

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My commission expires: 10-19-93

Address: 1060 E. 2nd Ave.
Durango, CO 81301



Nancy Kopka
Notary Public

604730

EXHIBIT "A"

LEGAL DESCRIPTION

A tract of land lying and being in the $W\frac{1}{2}NE\frac{1}{4}$ of Section 28, Township 36 North, Range 9 West N.M.P.M. more particularly described as follows, to wit: Beginning at the North $\frac{1}{4}$ Corner of said Section 28, a granite stone properly marked in a mound of stone; thence running from said point of beginning S $89^{\circ}33'$ E a distance of 988.00 feet, more or less to the NW corner of a tract owned by Lula J. Green; thence S $10^{\circ}11'$ A a distance of 503.13 feet to a point, thence S $6^{\circ}48'$ W a distance of 260.60 feet to a point; thence South a distance of 150.00 feet to a point; thence S $6^{\circ}54'$ E a distance of 422.38 feet to a point; thence S $7^{\circ}10'$ E a distance of 11.00 feet to a point; thence West a distance of 932.75 feet more or less to a point in the West line of $W\frac{1}{2}NE\frac{1}{4}$ of Section 28 a distance 1440.60 feet more or less to the point of beginning, containing 30.0 acres more or less, together with an undivided $1/20$ th interest ($1/20$ th cis) in the Water Fall Ditch (aka Fall Creek Ditch) under Priority 7 (old Priority 1).

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STATE OF COLORADO
Roy Romer, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

EXHIBIT "B"

REFER TO



For Wildlife
For People

AN EQUAL OPPORTUNITY EMPLOYER
Perry D. Olson, Director
8060 Broadway
Denver, Colorado 80216
Telephone: (303) 297-1192

December 21, 1990
151 E. 16th Street
Durango, Colorado 81301
303-247-0855

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Kathy Roser
LaPlata County Open Space Committee
P.O. Box 1651
Durango, Colorado 81302

RE: Conservation Easement on 30 Acre Tract owned by Ida Kolb

Dear Ms. Roser:

We were pleased to learn that Ms. Kolb is seeking a conservation easement on her property near Waterfall Village. Over the past 10 years this area has become increasingly important to wintering elk as its pinyon-juniper/oakbrush composition provides important food sources as well as thermal and resting cover. As winter snow deepens, elk often cross the property as they migrate toward the lower valley floors. For these reasons the Division recently classified the area as critical habitat under its wildlife resource inventory system.

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In order to maintain wildlife values of this property we make the following suggestions:

- 1.) that development be restricted to one single family dwelling at the extreme southern boundary, and,
- 2.) that any dead or dying trees shall be left standing and not harvested.

Thank you for the opportunity to comment on this matter.

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Sincerely,

Kevin J. Ellis
Kevin Ellis
District Wildlife Manager

KE:ds