

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

**AMENDMENT TO FIRST DEED OF CONSERVATION IN GROSS AND
SECOND 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 28 day of December, 2006, between:

James C. Adam and Theresa A. Adam

(hereafter referred to as "Grantor"), whose legal address is 36325 Fruitland Mesa Road, Crawford, Colorado 81415; and

The Valley Land Conservancy, d/b/a The Black Canyon Land Trust, Inc.

a Colorado non-profit corporation 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 granted to Grantee a Conservation Easement encumbering certain real property, consisting of approximately 80 acres, located in Delta County, Colorado, more particularly described as "Phase One Property" in "Exhibit A" attached hereto and incorporated herein by this reference, said property also shown on the Easement Map attached hereto as "Exhibit B" and incorporated herein by this reference, said Conservation Easement recorded on September 20, 2005 in the office of the Clerk and Recorder of Delta County, Colorado, at Reception No. 595715 (hereinafter also referred to as "First Conservation Easement");
- B. Grantor is the sole owner in fee simple of certain real property, including 100% of the real property's mineral rights, consisting of approximately 80 acres, located in Delta County, Colorado, more particularly described as "Phase Two Property" in Exhibit A, said Property shown on Exhibit B (hereinafter referred to as "the Property" or "Phase Two Property"). The existing structures and improvements on the Property include fencing and irrigation structures.
- C. The Property possesses the following attributes: locally important agricultural land; important wildlife habitat; open space; and the Property is adjacent to Bureau of Land

Management public lands and privately conserved lands providing scenic enjoyment to the general public. These attributes are referred to as the “Conservation Values”;

- D. 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”;
- E. 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.*;
- F. 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”;
- G. The Property includes 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;
- H. The Property is predominately undeveloped with irrigated fields and natural vegetation stands providing severe deer and elk winter range and year-round habitat for a diversity of other wildlife species. The Property includes unique canyon habitat resulting from the Smith Fork of the Gunnison River;
- I. 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”;
- J. Grantee has determined that accepting a Conservation Easement on the Property will enhance the long-term wildlife habitat and agricultural values of the Property, and promotes 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;
- K. Grantor and Grantee agree that the continued management of the Property as a working ranch, as limited hereby, is consistent with the goals of this Conservation Easement;
- L. Grantor and Grantee desire to ensure that as outlined in the purposes of this Easement as stated below, the wildlife, agricultural, 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.*;

- M. Grantor intends that properties conserved by the First Conservation Easement and this Second Conservation Easement be treated as an undivided and singular parcel of land that may not be divided, partitioned, or otherwise converted into separate parcels; and
- N. The Grantor intends to grant the property interest conveyed by this Deed to the Grantee for the exclusive purpose of protecting the wildlife, agricultural, and open space of the Property, pursuant to the terms and conditions contained herein; and
- O. 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:

AMENDMENT TO FIRST DEED OF CONSERVATION EASEMENT IN GROSS

The Deed of Conservation Easement in Gross, which was recorded on September 20, 2005 in the Office of the Clerk and Recorder of Delta County, Colorado, at Reception No. 595715, is hereby amended as follows:

1. Section 7.7 of the First Easement shall be rewritten as follows:

7.7 Subdivision. The Property may not be further divided, partitioned, or otherwise converted into separate parcels. This restriction shall apply to adjoining parcels of land that are subject to conservation easements by the Grantor, so that the conserved parcels be unified and treated as a singular parcel that cannot be divided, partitioned, or partially conveyed in terms of land area. This restriction shall not preclude lot line adjustments that do not create residential building lots.

2. Except as modified by this Amendment, the First Easement shall remain in full force and effect is otherwise unchanged.

SECOND DEED OF CONSERVATION EASEMENT IN GROSS

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 donates, 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.

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; the ability to construct, maintain, repair, remodel, replace and occupy a single family dwelling located within a 3-acre Acceptable Development Area, as more specifically set forth below.

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.

“Degradation” shall be as determined by employing the Natural Resources Conservation Service as seventeen range land and pasture health ecological attributes as described in the NRCS National Range and Pasture Handbook.

“Acceptable Development Area” (ADA) shall be the area in which a single-family dwelling, and associated accessory buildings, and buildings and improvements for home occupations, or small-scale businesses may be placed to the extent provided.

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

“Agricultural accessory buildings” shall be non-residential structures limited to agricultural support uses and may include, but not be limited to, barns sheds and storage facilities.

“Animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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. Livestock grazing is allowed but shall not result in degradation of the Property as defined in Section 4 of this easement. All agricultural enterprises shall be subject to applicable local laws and regulations.

6.2 Agricultural Accessory Structures & Improvements. Grantor may construct, maintain, repair, and remove agricultural accessory structures subject to the Notice of Construction provisions in Section 8.1. Notwithstanding the foregoing, irrigation equipment, stream crossings and unpaved paths and trails are permitted.

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 access roads for agricultural purposes. Existing roads are those described in the Baseline Documentation. No new roads may be constructed without Grantee's prior written permission. Such permission shall only be granted upon a finding that any new roads do not adversely affect any of the Conservation values.

Grantors may construct a new access road or driveway necessary to serve the buildings, improvements and uses within the ADA, the alignment of which shall be subject to advance review and approval by the Grantee, which approval shall not be unreasonably withheld. The determination of the location of the access road or driveway will be based upon protecting the conservation values of the Property and minimizing the unnecessary fragmentation of the Property. Parking areas servicing the permitted uses of this Conservation Easement shall be located completely within the ADA

6.5 Utilities. Utility lines required solely for the permitted uses on the Property, and utilities subject to easements upon the Property and of record as of the date of the execution of this Conservation Easement, may be constructed and maintained on the Property. The location and construction of utility lines shall be implemented, insofar as practicable, to avoid fragmenting the Property and diminishing the agricultural attributes of the Property. Installation or construction of utilities shall be subject to the notice requirements of Section 8.1.

With respect to allowable development by Grantor on the Property, all new domestic water, electrical, telephone and other utility pipes shall be buried underground and shall

not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be re-vegetated at the expense of Grantor causing the installation of the utilities no later than the next growing season following the installation.

6.6 Beneficial Use of Water. The parties agree that certain water rights beneficially used upon the Property shall be included within this Conservation Easement, exclusively for conservation purposes, said water rights specifically described

500 shares of the Fruitland Irrigation Company

Together with associated canals, ditches, laterals, headgates, springs, wells, ponds and water shares and stock certificates, easements and rights of way, hereinafter referred to as "Water Rights". The Water Rights included surface water rights and groundwater rights whether decreed or undecreed. Grantor shall have the right to use and enjoy the Water Rights on the Property consistent with historical practices. Grantor shall have the right to maintain, repair, and if necessary, reconstruct or replace any existing structures or equipment associated with the Water Rights to the extent that such activities do not significantly impair or interfere with the Conservation Values of the Property, and further subject to those obligations for maintenance of irrigation system improvements under agreement with the Natural Resources Conservation Service (formerly known as U.S. Soil Conservation Service) located upon the Property.

6.7 Signs and Billboards. Grantor may place a maximum of three (3) signs on the Property: one to identify the Property and farm entity, a second to identify special or unique, ongoing farming activities, and the third to identify the fact that the Property is conserved. Private property signage including but not limited to 'no trespassing', 'posted' and 'no hunting' are permitted. Usual and customary 'for sale' realtor signs are permitted. Additionally, warning signage for utilities are permitted.

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

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

6.10 Residential Structure. Grantor may construct one single-family residential dwelling and accessory structures and improvements within the three-acre Acceptable Development Area (ADA). While the exact location of the ADA is not identified as of the date of execution of this Conservation Easement, the ADA shall be located within the area as generally designated on the Easement Map (Exhibit B), and in a manner that minimizes negative impact upon the Conservation Values. Prior to the building of any residential dwelling structure, the Grantor shall provide a stamped survey of the three-acre ADA to the Grantee, subject to review and approval by the Grantee, which approval shall not be

unreasonably withheld, and recorded as a supplement to this Easement. The residential structure and accessory structures shall be located completely within the ADA. All such construction shall be subject to the Notice of Construction provisions in 8.1.

6.11 Home Occupations or Small-Scale Businesses. Grantor may establish and operate home occupations and small-scale businesses within the permitted single-family residential dwelling located within the ADA provided that said activities do not significantly impair or impact the wildlife or agricultural 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.

6.12 Animal Feeding Operation (AFO). Grantor may establish and operate an animal feeding operation provided said activity follows the best management practices established by the Colorado Department of Health and Environment, Animal Feeding Operations Control Regulation (5 CCR 1002-81).

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 commercial or industrial activities shall be permitted and no commercial or industrial building or improvement shall be constructed, created, installed, erected or moved onto the Property.

7.2 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, 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. Notwithstanding the foregoing, manure stockpiling and/or storage is prohibited.

7.3 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.

7.4 Transfer of Water Rights. In order to preserve and protect the Conservation Values of the Property, the Grantor shall continue the historical use of the Water Rights upon the Property and shall not transfer or sever said Water Rights or any partial interest of said Water Rights from the Property. The restrictions herein shall not affect the transfer or conveyance of the Water Rights to a transferee in a conveyance of the Property. Grantor shall not abandon or allow the abandonment, by action or inaction, of the Water Rights or any portion of the Water Rights.

Grantor represents that there are no known adjudicated agricultural water rights appurtenant to the Property other than those described herein and other than existing domestic water that is not subject to the above transfer restrictions.

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.

If the Water Rights include any shares in ditch or reservoir companies, the Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch and reservoir company for inclusion of the following notation thereon: "These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed as recorded in the records of the Clerk and Recorder's Office, _____ County, Colorado, at Reception No. _____. A copy of the re-issued stock certificate(s) shall be promptly provided by Grantor to the Grantee for inclusion in Grantee's records.

7.5 Commercial Recreational Activities. All commercial recreational activities are prohibited except those with a *de minimis* impact on the Conservation Values.

7.6 Subdivision. The Property may not be further divided, partitioned, or otherwise converted into separate parcels. Grantor intends that properties conserved by the First Conservation Easement and this Second Conservation Easement be treated as an undivided and singular parcel of land that may not be divided, partitioned, or otherwise converted into separate parcels. This restriction shall not preclude lot line adjustments that do not create residential building lots.

7.7 Aircraft runways. Aircraft runways shall be prohibited.

7.8 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. No oil and gas drilling is permitted on the Property.

7.9 Hard Surfacing. Except for residential driveways, roads, or other improvements necessary to provide access to permitted buildings or improvements within the ADA, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

7.10 Concentrated Animal Feeding Operations (CAFO). Concentrated animal feeding operations, as defined by The Colorado Department of Public Health and Environment, Animal Feeding Operations Control Regulation (5 CCR 1002-81), are prohibited. For example, 200 mature dairy cows, or 300 cattle or 150 horses, confined in an animal feeding operation, constitute a “Medium” CAFO.

8. ADDITIONAL COVENANTS AND PROVISIONS.

8.1. Notice of Construction. With respect to proposed construction of residential improvements in the ADA, or agricultural structures and improvements on the Property, 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 Conservation Values of the Property.

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 and dated August 12, 2005 and an update letter to the baseline was prepared December 22, 2006, and 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. 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 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, 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 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.

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 if 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.

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 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. Provided however, that in the event of involuntary conversion of all or a portion of the property the imputed value of the property converted was reduced due to the existence of the Conservation Easement then no payment to the land trust will be required. 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. 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 28 day of December, 2006.

Grantor:

James C. Adam
James C. Adam

Theresa A. Adam

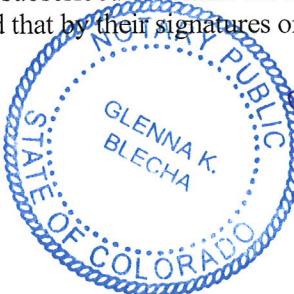
Grantee:

Valley Land Conservancy *dba* The Black
Canyon Land Trust

Jedd Sondergard

STATE OF COLORADO)
COUNTY OF Delta) ss.:)

On the 28th day of December in the year 2006, before me, the undersigned, personally appeared **James C. Adam and Theresa A. Adam** 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 capacity, and that by their signatures on the instrument, executed this instrument.



Leanna K. Blecha
Notary

My Commission Expires: 6/19/2008

STATE OF COLORADO)
COUNTY OF Delta) ss.:
)

On the 28th day of December in the year 2006, before me, the undersigned, personally appeared **Jedd Sondergard** 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 he executed the same in his capacity as Interim Executive Director of the Valley Land Conservancy dba The Black Canyon Land Trust, a Colorado nonprofit corporation, and that by her signature on the instrument, executed this instrument.



Instrument, executed this instrument.
Leona K. Blecha

Notary

My Commission Expires: 6/19/2008

EXHIBIT A

Legal Description

Phase One Property

W ½ NE ¼ Section 17, Township 51 North, Range 7 West, New Mexico Principal Meridian.

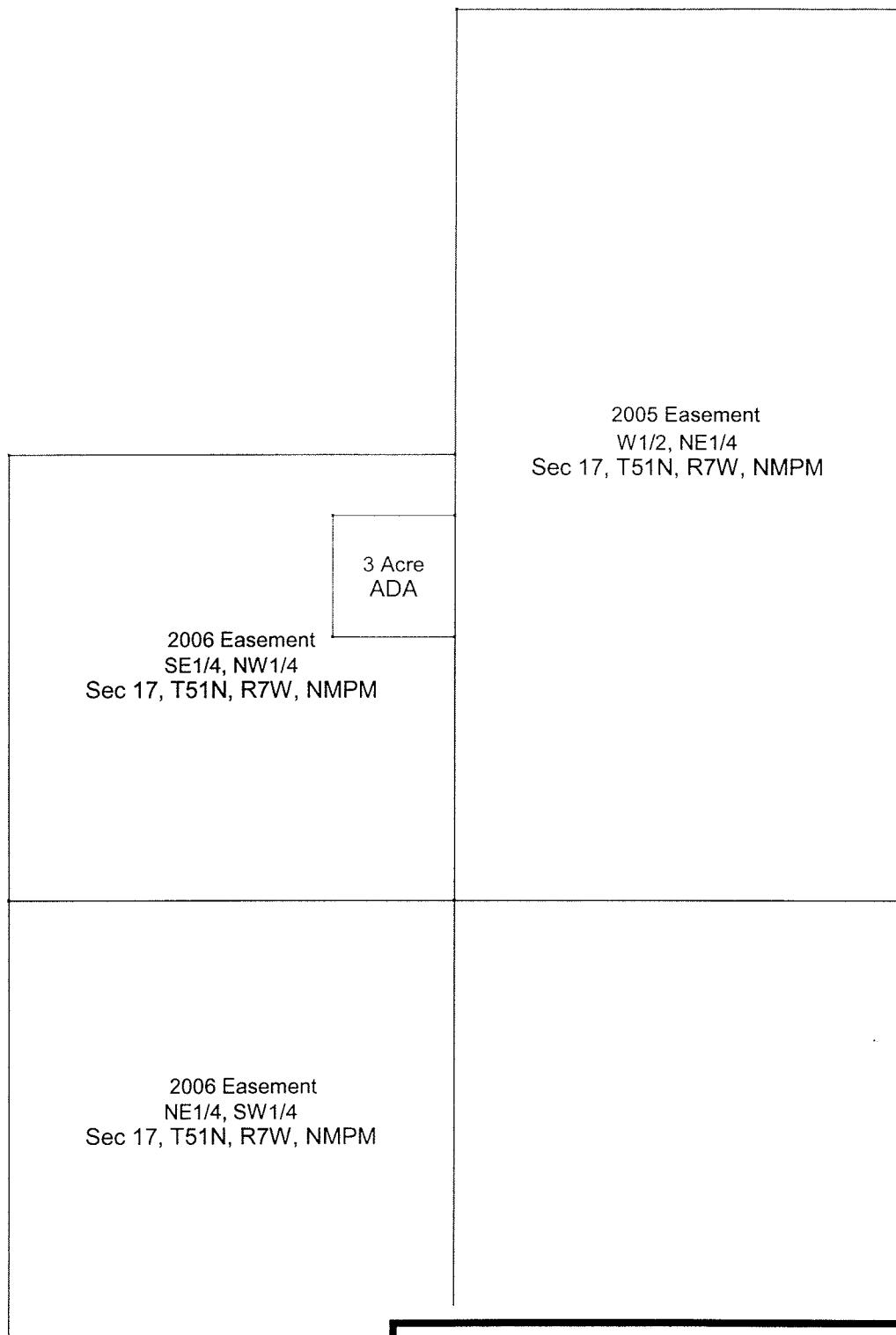
County of Delta
State of Colorado.

Phase Two Property

The SE1/4 NW1/4 and the NE1/4 SW1/4 of Section 17, Township 51 North, Range 7 West of the New Mexico Principal Meridian.

County of Delta
State of Colorado.

EXHIBIT B
Conservation Easement Map



Adam 2006 Conservation Easement

Exhibit B

DATE: 12/21/2006

SCALE: 1" = 500'

DRAWN BY: BCLT