

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT by and between THOMAS K. KOBAYASHI and HARUKO T. KOBAYASHI, husband and wife, and JOHN M. KOBAYASHI, of Denver, Colorado (hereinafter referred to as "Grantors"), and THE INSTITUTE OF THE ROCKIES, a Montana non-profit association (hereinafter referred to as the "Institute" or "Grantee").

WITNESS THAT:

WHEREAS, Grantors are the owners in fee simple of certain real property situated in the County of Missoula, State of Montana (hereinafter particularly described in Exhibit "A" and hereinafter referred to as the "Grantors' Land"); and

WHEREAS, substantial portions of Grantors' Land currently remain in an undisturbed, natural state; and

WHEREAS, Grantor's Land has significant scientific, ecological and aesthetic values in its present state as a natural area with natural ecosystems and aesthetic values which has not been subjected to development, exploitation or exploration; and

WHEREAS, Grantors' Land supports significant communities of native plants and provides important habitat for native wildlife as a part of a larger ecological unit constituting the Swan River Valley and the Buck Creek Basin; and

WHEREAS, all of these natural elements and ecological and aesthetic values are of great importance to the Grantors and to the people of the State of Montana, and are worthy of preservation; and

WHEREAS, Grantors desire and intend that the natural elements and the ecological and aesthetic features and values of those portions of the Swan River Valley and the Buck Creek Basin within and upon Grantors' Land be preserved and maintained subject, however, to the limited uses, such as farming, grazing, and forestry practices, as set forth below; and

WHEREAS, the Grantors are willing to grant a Conservation Easement over said property, thereby restricting and limiting the use of the land areas of said property, on the terms and conditions and for the purposes hereinafter set forth, and the Grantee is willing to accept such easement; and

WHEREAS, the Grantor and Grantee recognize, notwithstanding the substantial economic value of development and subdivision rights in Grantors' Land and the limited amount of privately deeded land in the Swan River Valley and Buck Creek Basin, that there are higher human, humanist, and aesthetic, scientific and ecological values of the property in its present natural state, and have, by the conveyance of a Conservation Easement to the Grantee, the common purpose of conserving the natural value of the said property, preserving the natural character of the property, and preventing the use or development of said property for any purpose or in any manner which would materially alter the maintenance of the said property in its scenic and natural condition; and

WHEREAS, the State of Montana has recognized the importance of private efforts toward preservation of natural ecosystems in the State by enactment of Section 76-6-101 et seq., M.C.A.; and

WHEREAS, Grantors desire and intend to transfer as provided in Section 76-6-101 et seq., M.C.A. such rights to the Institute as Grantee; and

WHEREAS, the Grantee is organized, inter alia, to preserve and conserve natural areas and ecologically significant land for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Institute is a qualified private organization under the terms of Section 76-6-101 et seq., M.C.A., Montana identification number 091279, and is also a qualified public charitable organization under the U.S. Internal Revenue Code §501(c)(3), identification number 23-7368583; and

WHEREAS, Grantors agree to pay any and all real property taxes and assessments levied by competent authority on the Grantors' Land, except any tax or assessment, if any, on the Conservation Easement herein granted; and

WHEREAS, the Institute agrees by acceptance of the grants herein forever to honor and defend the intentions of the Grantors stated herein and to preserve and protect in perpetuity and to enhance by mutual agreement the natural ecological and aesthetic values of the Grantors' Land, in connection therewith, the Swan Valley River System and Buck Creek Basin, provided, however, that Grantors intend that enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of the Institute and that any forbearance on behalf of the Institute to exercise its rights hereunder in the event of any breach hereof by Grantors, their heirs, successors or assigns, shall not be deemed or construed to be a waiver of the Institute's rights hereunder in the event of any subsequent breach.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein pursuant to Section 76-6-201, et seq., M.C.A., THOMAS K. KOBAYASHI, HARUKO T. KOBAYASHI and JOHN M. KOBAYASHI, Grantors, do hereby grant and convey to THE INSTITUTE OF THE ROCKIES, Grantee, a Montana non-profit qualified association with offices at Missoula, Montana, in perpetuity an interest and an Open-Space Conservation Easement in gross and of the nature and character consisting of the rights hereinafter enumerated, and to the extent hereinafter set forth, over, across, within, under and upon that real property, situated in Missoula County, Montana (referred to herein as the "Grantors' Land") more particularly described in Exhibit "A" (Grantors' Land) attached hereto and by this reference made a part hereof.

I. The rights conveyed by the Conservation Easement granted are the following:

A. To identify, to preserve and protect in perpetuity and to enhance (said enhancement being subject to the written consent of Grantors, their heirs, successors or assigns) the natural ecological and aesthetic features and values and the natural flora and fauna of the Grantors' Land which are a part of those portions of the Swan Valley River System and Buck Creek Basin within and upon Grantors' Land;

B. To enter upon the Grantors' Land to enforce the rights herein granted and to observe, study and make scientific observations of its ecosystems upon prior written notice to Grantors, their heirs, successors, or assigns, and in a manner that is reasonably consistent with the use of the Grantors' Land by Grantors, their heirs, successors or assigns at the time of such entry;

C. To enjoin any activity on, or use of, the Grantors' Land (Exhibit "A") which is prohibited by this Conservation Easement.

II. In addition to the rights granted, Grantors hereby agree that the following uses are prohibited on Grantor's land, and thus there shall be:

1. No construction, erection, installation or placement upon Grantor's land of any building or structure whether residential, commercial, or for storage purposes;

2. No construction, erection, installation or placement upon Grantor's land of any billboard or other advertising material, whether temporary or permanent in nature;

3. No dumping of soil, trash, waste, rubbish, or unsightly or refuse or other non-compostable materials of any nature whatever;

4. No excavation, dredging or removal of loam, gravel, soil, rock or other materials.

5. No building of any permanent roads or roadways;

6. No activities or uses detrimental to or adverse to land conservation, erosion control, soil conservation, wildlife habitat and the preservation of scenic natural and open condition of the property and its wholesome environmental quality, life-sustaining ecological diversity, and environmental systems, except as herein reserved or specified;

7. Except as permitted under sub-paragraph A hereof, no introduction of non-native plant or animal species which will compete with and result in the material decline or elimination of native species except where such introduction is intended as biological control against introduced or native species and where the introduction is subject to the prior approval of Grantee, which approval shall not be unreasonably withheld;

8. No hunting of any non-game animals, except as heretofore provided in Subparagraph VI-F hereof;

9. No trapping for any purposes, other than predatory and problem animals' control as provided herein in Subparagraph VI-F hereof;

10. The subdivision of the Grantor's land, provided that the sale, exchange, devise or gift of all or part of the Grantor's land solely for purposes consistent with this Conservation Easement shall not be considered as a subdivision or de facto subdivision, provided such transfer is effected with an express provision reflecting that said land is subject to the terms, prohibitions, and conditions of this Conservation Easement, without modification or expansion of the terms, prohibitions and conditions of this Easement, to the extent that said land is situated within any portion of the Grantor's Land subject to this Deed of Conservation Easement. The Institute, as Grantee, shall be furnished with a copy of the pertinent portion of any document or conveyance utilized to effect such a transfer within sixty (60) days of the execution of the same;

11. Construction of temporary roads or trails except to the extent necessary for the conduct of agricultural practices or forestry management as provided herein;

12. No use of motorized vehicles off of roads or travelways for recreational purposes in such a manner as will result in soil erosion or compaction or any interference with vegetation or with the natural habitat of those animal species occurring on the Grantors' Land; where the use of motorized vehicles off of roads or travelways is for agricultural, stock or forestry management purposes, such use will be conducted in a manner so as to minimize soil erosion or compaction or interference with vegetation or with the natural habitat of those animal species occurring on the Grantors' Land;

13. No establishment or maintenance of any commercial feed lots, which commercial feed lot shall be defined for purposes of this agreement as the establishment and maintenance of a permanently constructed confined area or facility within which the land is not grassed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire;

14. No clear-cutting of timber, except as provided in Subparagraph VI-L hereof.

15. No riprapping of the banks of the Buck Creek Basin, other than for purposes of construction or installation or maintenance of a pond or lake, without having obtained the prior approval of the Institute in the manner as hereinbefore provided in Subparagraphs VII A through D.

16. With regard to the raptor or game-bird nesting habitat on the Grantors' Land, Grantors specifically intend that this Conservation Easement shall prohibit the cutting or disturbance of any trees or other vegetation within 150 feet of any active or inactive raptor or game-bird nest, currently known or later identified, during the nesting season. Grantors further intend that this Conservation Easement shall prohibit the removal of any crown trees or other overstory vegetation including the nesting trees themselves, within 100 feet of any active or inactive raptor or game-bird nest, currently known or later identified, at any time, provided, however, that during the non-nesting season, diseased trees may be cut and removed to abate infestation.

III. The Conservation Easement hereby granted shall run with and burden title to the Grantors' Land in perpetuity and shall bind the Grantors, their heirs, successors and assigns.

IV. This Conservation Easement shall confine the use of the Grantors' Land to all uses prohibited and proscribed, and any other uses are reserved to Grantors.

V. Pursuant to the terms of Section 76-6-107 et seq., M.C.A., Grantors' Land is preserved hereby as open-space and natural land, and may not be converted or directed to any uses other than those proscribed, prohibited or provided herein.

VI. Grantors state that the following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with Grantors' intentions and with this Conservation Easement, and Grantors intend

that these practices not be precluded, prevented or limited by this Conservation Easement, except for the requirement of prior approval from the Institute as provided herein.

A. To buy, sell, raise, pasture and feed livestock of every nature and description, including, but not limited to, the continuation of historical modes of stock trailing, stock watering and stock crossings; to buy, sell, plant, raise and harvest agricultural crops of every nature and description, and to continue activity on the Grantors' Land consistent with the maintenance, and enhancement by mutual agreement, of soil composition, structure and productivity and to the extent that such activities do not result in the pollution or degradation of any surface waters of the Swan Valley River in such manner as to have a demonstrable detrimental effect upon fish or wildlife, their natural habitat, or upon the natural ecosystems and their processes.

B. For educational, scientific or recreational use that does not result in a degradation of any of the ecological elements of those portions of the Swan Valley River System within and upon Grantors' Land in such a manner as to have a demonstrable detrimental effect upon fish or wildlife, their natural habitat or upon the natural ecosystems and their processes.

C. To develop and maintain those water resources on the Grantors' Land necessary for the agricultural, wildlife and domestic purposes conducted thereon pursuant to the terms hereof, including, but not limited to, the right to locate, construct, install and maintain a lake or pond on the premises, and to construct, install and maintain pump and irrigation and water source systems and means to transmit power to operate said system, particularly with respect to wells and other sources of water within Grantors' Land. Where possible, the aforementioned systems and the means to operate the same, will be buried or otherwise camouflaged.

D. To build, maintain and repair fences, and to maintain and repair the existing travelways of ingress and egress to adjacent lands.

E. To use agrichemicals, including but not limited to fertilizers and biocides, only in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable agricultural and residential purposes. The use of such agents shall in all cases be conducted in such a manner as to minimize any adverse effect upon the natural values of those portions of the Swan Valley River System and Buck Creek Basin within and upon Grantors' Land and to minimize any impairment of the natural ecosystems and their processes.

F. To control predatory and problem animals by the use of selective control techniques. All measures used for such control shall be limited in their effectiveness to specific animals which have caused damage to livestock or other property, Grantors retaining no right to use poison bait, cyanide guns or other nonselective control techniques; provided, however, that in the control of coyotes only, and only during the period immediately prior to and during the season when domestic livestock give birth to their young, Grantors may use any chemical(s) approved for non-experimental use in coyote control by the Environmental Protection Agency of the United States of America. Provided further, that the aforementioned restrictions do not apply to ground rodents.

G. To bury and otherwise camouflage, if reasonably practicable, all utility systems or extensions of existing utility systems constructed in the future, and to install, construct, repair and maintain any such utility system that is placed alongside existing travelways of ingress or egress to adjacent lands.

H. To harvest timber for sustained yield timber management and use of firewood or construction materials only for Grantors' uses in accordance with forestry practices which are consistent with the general and specific intentions of the parties as expressed in this Conservation Easement, and which do not materially interfere with the integrity of:

i. The water quality of the Swan Valley River System or the Buck Creek Basin, including, but not limited to, its fisheries resources;

ii. The wildlife and fish habitat on the Grantors' Land; and

iii. The natural aesthetic qualities of the Swan Valley River System within and upon the Grantors' Land and the Grantors' Land.

iv. To clearcut timber only in order to remove or abate disease or infestation.

VII. Grantors, their heirs, successors or assigns, may not undertake any activity pursuant to the underlined portions of the provisions of Subparagraphs VI-E, VI-F, II-15 without first having notified the Institute as provided herein. Prior to the commencement or undertaking of any such activity, Grantors, their heirs, successors or assigns, shall send the Institute written notice of the intention to commence or undertake such activity.

A. Said notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to The Institute of the Rockies, 622 Evans Avenue, Missoula, Montana 59801, or to such other address as Grantors, their heirs, successors or assigns may be from time to time informed of in writing by the Institute.

B. The Institute shall have thirty (30) calendar days from the posting of such notice, as indicated by the registered or certified return receipt, to review the proposed activity and to notify Grantors of its objections thereto. Such objections, if any, shall be based solely upon the Institute's opinion that the proposed activity is inconsistent with this Conservation Easement. Said notice shall inform Grantors of the manner in which the proposed activity can be modified to be consistent with this Conservation Easement. The proposed activity may thereafter be conducted in a manner that is mutually acceptable to Grantors and the Institute.

C. The Institute's response to Grantors' notice shall be sent by registered or certified mail, return receipt requested, to Grantors c/o John M. Kobayashi, Holme Roberts & Owen, 1700 Broadway, Suite 1800, Denver, Colorado 80290, or to such other address as the Institute may from time to time be informed of in writing by Grantors, their heirs, successors or assigns.

D. Should the Institute fail to post its response to Grantors' notice within thirty (30) calendar days of the posting of said notice, the proposed activity shall automatically be deemed consistent with the terms of this Conservation Easement, the Institute having no further right to object to the activity identified by such notice.

VIII. Grantors shall be under no liability or obligation or any failure in the giving of notice as required above with regard to any activity undertaken by Grantors necessitated by virtue of fire, flood, act of God, or other elements, hazardous conditions,, or any other cause beyond the control of Grantors similar to those hereinbefore.. specified.

XI. Grantors further intend that should Grantors, their heirs, successors or assigns, undertake any activity requiring approval of the Institute without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement, the Institute shall have the right to force the rehabilitation of that portion of the Grantors' Land affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such rehabilitation and the Institute's costs of suit, not including attorney's fees, shall be borne by Grantors or those of their heirs, successors or assigns against whom a judgment is entered, or, in the event that the Institute secures redress without a completed judicial proceeding, by Grantors or those of their heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity. As a condition precedent to institution of any court action or any legal proceeding, the Institute agrees that it shall send written notice of the alleged violation and allow one hundred twenty (120) days to Grantors, their heirs, successors, and assigns, for any rehabilitation that the Institute asserts may be required. Such notice shall state with exactitude the alleged violation, shall describe with particularity the basis of such allegations and shall specify precisely the rehabilitation required. Nothing herein contained shall be construed to preclude Grantors from exhausting their legal remedies in determining whether the proposed activity to which the Institute has objected is inconsistent with the Conservation Easement.

X. Nothing herein contained shall be construed as affording the public access to any portion of the land subject to his Conservation Easement.

XI. The parties hereto covenant and agree that the Institute may not assign its interest in the Conservation Easement without the prior written consent of Grantors, their heirs or successors; in no event shall any assignment be to any person or entity other than one qualified to receive an open-space conservation easement. In the event the Institute shall cease its lawful existence or shall be subjected to any proceedings of insolvency or bankruptcy, it agrees to consent to agreement to any person or entity that is one qualified to receive an open-space conservation easement according to the designation of Grantors.

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

XIII. If this Deed of Conservation Easement shall not be accepted by the Internal Revenue Service as qualifying for all benefits to Grantors pursuant to §170 of the Internal Revenue Code, then this Deed of Conservation Easement shall be deemed to be then null and void.

XIV. All of the terms, restrictions and conditions of this grant shall be binding upon the heirs, successors, and assigns of the Grantors and Grantee as parties hereto.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands this 29th day of December, 1980.

Thomas K. Kobayashi
Thomas K. Kobayashi

Haruko T. Kobayashi
Haruko T. Kobayashi

John M. Kobayashi
John M. Kobayashi

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

I, Diane Whiteaker a notary public, hereby certify that on the 29th day of December, 1980, personally appeared before me Thomas K. Kobayashi, Haruko T. Kobayashi and John M. Kobayashi, who being by me first duly sworn declared that they were the persons who signed the foregoing document as Grantors and that the statements therein contained are true.

Diane Whiteaker
Notary Public

My commission expires: November 16, 1981



"EXHIBIT A"

TO

DEED OF CONSERVATION EASEMENT

THOMAS K. KOBAYASHI, HARUKO T. KOBAYASHI

& JOHN M. KOBAYASHI AS GRANTORS

TO

THE INSTITUTE OF THE ROCKIES AS GRANTEE

E 1/2 SW 1/4
Section 17 (17)
Township (20) North
Range Sixteen (16) West

480823

I received and filed this instrument for record on the 31 day of Dec 19 80 at 11:02 o'clock A.M. and it is recorded in Vol. 154 of Micro Records of the County of Missoula, State of Montana, on page 1998 Fee 18.00
Paid 18.00 Return to Langsdon Law Office Witness my hand, Fern Hart, County Recorder
Address Druid BY Debra Roman Deputy
Roman 59864