

After Recording Please Return to:
Allan C. Beezley, P.C.
1919 14th Street, Suite 300
Boulder, CO 80302
303-440-5867
Attorney for Grantor

*original
for
recording*

DEED OF CONSERVATION EASEMENT

(Colorado Open Lands - Conrad W. Nelson)
(Chaffee County)

THIS DEED OF CONSERVATION EASEMENT is granted on this ^{19th} day of December, 2000 by **CONRAD W. NELSON**, whose address is 429 East Main Street, P.O. Box 609, Buena Vista, CO 81211 ("**Grantor**"), to **COLORADO OPEN LANDS**, a Colorado non-profit corporation ("**Grantee**"), whose address 274 Union Boulevard, Suite 320, Lakewood, CO 80228. The following exhibits are made a part of this Deed of Conservation Easement:

- Exhibit A - Description of Property
- Exhibit A-1 Description of Grantor's "**Adjoining Property**"
- Exhibit B - Map of Property, including location of Parcels and Building Areas
- Exhibit C - Diagram of Building Area on Parcel A, with measurements
- Exhibit D - Aerial photograph of Building Area A on Parcel A
- Exhibit E - Acknowledgement of Baseline Documentation Report
- Exhibit F - Subordination to Deed of Conservation Easement

RECITALS:

- A. Grantor is the owner of the fee simple interest in the subject property legally described in Exhibit A attached hereto and made a part of this Deed, which consists of approximately 160 acres of land located in Chaffee County, State of Colorado (the "**Property**").
- B. Grantee is a "qualified conservation organization," as defined in Section 170(h) of the Internal Revenue Code and a charitable organization as required under C. R. S. Section 38-30.5-104 (2), Colorado Revised Statutes.
- C. The Property possesses agricultural, riparian, wetland, open space, scenic and wildlife values (collectively, the "**Conservation Values**") of great importance to Grantor, the people of Chaffee County, Colorado, and the people of the State of Colorado. Specifically, the Property contains approximately 90 acres of mature and maturing forest at its southeast and west ends, including ponderosa pine, quaking aspen, Douglas fir, and piñon pine trees, and approximately 50 acres of midgrass prairie. Approximately 20 acres of the Property is wetlands (referred to as the "**Wetlands Area**"), the location of which is shown on the attached Exhibit B. The Wetlands Area is fed from an unnamed stream that flows from the San Isabel National Forest west of the Property. For many years hay was cut from the wetlands meadow and cattle have grazed the entire area, but the grass is now allowed to grow. Cattle and other domestic animals will be excluded from the Wetlands Area. The Wetlands Area stores water which is slowly released into Silver Prince Creek which runs diagonally from southwest to northeast across the Property. At the suggestion of the National Resources and Conservation Service, the Grantor plans, with a simple diversion, to increase the size of and flow of water into the wetlands. The wetlands

meadow, the aspen and ponderosa forests are home to a herd of approximately 200 elk, and a small herd of mule deer. A herd of pronghorn antelope wanders through the open area on the northeast corner of the Property. The Grantor is cooperating with the Division of Wildlife to restore wild turkeys to the Property where they once were plentiful. Silver Prince Creek, which is seasonal, runs diagonally through the Property and its very diverse ecology is an important area for protection and restoration. Silver Prince Creek enters the Property from the National Forest and flows through this Property onto the Grantor's 320-acre Adjoining Property, described in the attached Exhibit A-1, which is located northeast of this 160-acre Property, and normally is absorbed into the ground on the Adjoining Property. Silver Prince Creek is partially fed by the flow from the wetlands. Grantor is the owner of water rights associated with Silver Prince Creek to withdraw 15 gallons a minute, for irrigation on the Adjoining Property (Case No. 97CW170, August 9, 1999). The Property lies within 25 miles of the Collegiate Peaks Wilderness Area. The Property is visible from Chaffee County Road 306.

- D. C.R.S. Section 33-1-101, *et seq.*, provides in relevant part that "it is the declared policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." Additionally, C.R.S. Section 35-1-101, *et seq.*, provides in relevant part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of agricultural land for the production of feed and other agricultural products." C.R.S. Section 38-30.5-101, *et seq.*, provides for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."
- E. The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property as of the date of this Deed are further documented in a "Present Condition Report," which report will be acknowledged as accurate by Grantor and Grantee by December, 2000. The Present Condition Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Condition Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.
- F. Grantor intends to convey this Deed of Conservation Easement to Grantee for the exclusive purpose of assuring that the Conservation Values of the Property will be conserved and maintained forever, and that uses of the Property that are inconsistent with the Conservation Values will be prevented or corrected. The parties agree, however, that the current uses of, and improvements to, the Property are consistent with the Conservation Values.
- G. The Grantor owns the fee simple interest in the Property, subject to a deed of trust held by the Wilmington Trust Company (the "**Deed of Trust**"), which has agreed to subordinate a portion of its interest in the Property to this Deed as evidenced by the Subordination attached to this Deed as Exhibit F.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by C.R.S. Section 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, for the purpose of

conserving and forever maintaining the Conservation Values of the Property.

1. **Purpose.** The purpose and intent of this Conservation Easement are to preserve and protect in perpetuity the Conservation Values of the Property. It is also the purpose of this Conservation Easement to permit other uses of the Property, which uses are expressly described herein, and which are consistent with the protection of the Conservation Values of the Property. It is also the purpose of this Conservation Easement to prevent commercial uses of the Property, except as specifically permitted herein, including unforeseen possible commercial intrusions onto the Property, such as, but not limited to, any commercial telecommunications towers, antennas, satellite dishes, relay stations and similar such facilities.
2. **Rights of Grantee.** To accomplish the purpose of this Deed the following rights are hereby conveyed to Grantee:
 - A) To preserve and protect the Conservation Values of the Property;
 - B) To enter upon the Property at reasonable times with at least five days' prior notice, in order to monitor Grantors' compliance with and otherwise enforce the terms of this Deed; provided however, that in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Deed, no prior notice is required, although Grantee shall make an effort to reach Grantor by telephone prior to such entry. Should Grantee enter the Property without first contacting Grantor, Grantee shall promptly notify Grantor after such entry. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
 - C) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Deed and to require the restoration of such areas or features of the Property that may be damaged by an inconsistent activity or use.
3. **Permitted and Prohibited Acts.** Any activity on or use of the Property inconsistent with the purpose of this Deed is expressly prohibited. Without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:
 - A) **Designation of Parcels; Subdivision.** The Property may be divided into two parcels, referred to as "**Parcel A**" and "**Parcel B**", each of which may be separately owned, encumbered and conveyed, but such separately divided parcels shall at all times remain subject to the terms and provisions of the Deed. Parcel A will be approximately 110 acres in size and Parcel B will be approximately 50 acres in size. The configuration of the Parcels is shown on the attached **Exhibit B**. Any additional division or subdivision of the Property, whether by physical or legal process, including partition, is prohibited.
 - B) **Building Areas.** The Grantor has designated two building areas on the Property, one on Parcel A (referred to as "**Building Area A**") and one on Parcel B, (referred to as "**Building Area B**"). Building Area A is approximately 2.85 acres in size and Building Area B is approximately 7.54 acres in size. Building Area A and Building Area B are depicted on the attached **Exhibit B** and **Exhibit C**, and shown photographically on the attached **Exhibit D**.
 - C) **Building Sites and Construction of Residential and Accessory Buildings.**

- i) *Building Area A – Site One.* At the time of granting of this Deed, a cabin dating from the early 1900's exists within Building Area A – Site One known as (“Uncle Gus’ Cabin”) and is shown on the attached **Exhibit C**. Uncle Gus’ Cabin is a single building unit approximately 26 x 33 feet in size. Grantor may rebuild and reasonably enlarge the cabin to a size not to exceed 2,000 square feet, not including a garage and other storage shed which may be attached or built separately. Grantor may also leave Uncle Gus’ Cabin as is or demolish the cabin, at Grantor’s discretion.
- ii) *Building Area A – Site Two.* Within Building Area A, a second house may be built (referred to as Building Area A – Site Two). Grantor may construct, repair, maintain, reconstruct and reasonably enlarge one single-family residence, which residence shall not exceed 3,000 square feet of gross floor area (including the garage, but excluding the basement) together with reasonable appurtenances such as sheds. At the time of construction, the southernmost part of the house, including decks, shall not be closer than 20 feet to the edge of the slope leading to the Wetlands Area.
- iii) *Building Area B.* Within Building Area B, Grantor may construct, repair, maintain, reconstruct and reasonably enlarge one single-family residence, which residence shall not exceed 4,000 square feet of gross floor area (excluding the basement) together with reasonable appurtenances such as garages and sheds.
- iv) *Open Area.* Building Area A and Building Area B are collectively referred to as the “**Building Areas**”. The remainder of the Property outside of the Building Areas is referred to as the “**Open Area**”.

D) *Construction of Agricultural Buildings and Other Structures.*

- i) *Agricultural and Other Buildings and Structures.* New agricultural buildings and improvements, including but not limited to, barns and storage sheds, to be used solely for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property (the “**Agricultural Buildings**”), may be constructed within the Building Areas on the Property without further approval of the Grantee, provided that the total square footage of the Agricultural Buildings in Parcel A shall not exceed 2000 square feet and the total square footage of the Agricultural Buildings in Parcel B shall not exceed 2000 square feet. No Agricultural Buildings shall be built in the Open Area of the Property, except for open sided lean-to structures to protect cattle or other domestic animals from wind and weather, and only with Grantee’s prior written approval, which approval shall be given unless Grantee determines that the location of the proposed improvement materially or adversely affects the Conservation Values of the Property. Structures which are associated with the production of energy to be principally consumed on the Property, including wind, solar, hydroelectric, and wood-burning energy, may be constructed anywhere on the Property. Structures and facilities for the storage and treatment of animal waste solely produced on the Property, for irrigation of the Property, for farm pond impoundment, and for the purpose of soil and water conservation, are permitted and may be constructed anywhere on the Property. Other buildings or structures, including microwave towers, are prohibited. Any structures which

are impediments to the functioning of the Wetlands Area are prohibited; however, pipelines and ditches useful in maintaining or improving the Wetlands Area are permitted without Grantee's approval.

- ii) **Roads.** The approximate location of the roads which access the Building Areas is shown on the attached Exhibit B. Should Parcel B be sold separately from the entire Property, (A) a road easement will be granted across Parcel A to Parcel B generally in the location shown on the attached Exhibit B; and (B) a road easement will be granted across Parcel B to Parcel A generally in the location shown on the attached Exhibit B. There are a number of old, rudimentary roads on the Property, as shown on the attached Exhibit B, and although they will have to be maintained in order to be utilized while forestry practices used to combat the pine bark beetle are in effect, the use of these roads will be minimized as much as possible. So long as the Adjoining Property to the north is in the same ownership as this Property, a road may be maintained between Parcel A and the Adjoining Property. Should Grantor sell either this Property or the Adjoining Property, the road may be closed or left open by negotiation between the owners. Should additional temporary roads be necessary anywhere on the Property for forest maintenance, such as removing beetle killed trees, or building ditches or installing buried pipe for wetland improvement, they may be constructed without further approval of the Grantee, but when no longer needed they shall be reclaimed as effectively as is practical by re-grading and reseeding. With the exception of the above, roads shall not be relocated, nor shall additional roads be constructed on the Property without the approval of the Grantee, which approval Grantee may withhold unless Grantee determines that the location or relocation of any such road does not adversely affect the Conservation Values of the Property. Roads shall not be constructed within the Wetlands Area.
- iii) **Fences.** Grantor may repair or replace existing fences, and new fences may be built for purposes of reasonable and customary management of livestock and wildlife. Significant cross-fencing shall be discouraged (i.e., permanent fencing shall not enclose areas of less than 20 acres within Parcel B and areas of less than 30 acres in Parcel A.). If grazing is permitted on the Property, the Wetlands Area shall be fenced to prevent grazing in the Wetlands Area. Grantor may also construct fencing on the perimeter of and within a three (3) acre area surrounding each residence (the "**Building Area fencing**"). All fencing on the Property, with the exception of the Building Area fencing, shall be compatible with the movement of wildlife across the Property, as determined by the Colorado Division of Wildlife.
- E) **Agricultural Uses.** Agricultural uses of the Property are permitted. Those uses include:
- i) The use of non-forest land and non-wetland land for the production of agricultural crops and livestock, limited to perennial forage, pasture crops, and agricultural crops which do not require significant tillage of the soil.
- ii) Production and grazing of livestock, equine animals, and fowl, including breeding and training of such stock. Livestock operations are limited to no more than 10 animal units on the Property, with one animal unit being equal to 1,000 pounds of animal weight.

- iii) Other similar and directly associated agricultural uses which are compatible with the use of farm and ranch properties in Chaffee County, Colorado, and/or which are approved by Grantee upon written request of the Grantor.
- F) **Timber Harvesting.** Forest management activities are permitted, and trees may be cut to control insects and disease, to control invasive non-native species, and to prevent personal injury and property damage. Dead or diseased trees may also be cut for firewood and other uses on the Property. Tree thinning activities, including the conservative harvesting of mature trees, may take place to maintain or improve the character and nature of the habitat, and to preserve its value as winter range for deer, elk, pronghorn antelope, and other wildlife. Tree planting activities are permitted, but not required.
- G) **Mining.** The commercial mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited. Notwithstanding the foregoing, soil, sand, gravel, or rock may be removed from portions of the Property only for use on the Property or in connection with the preservation, protection, or enhancement of wetlands located on the Property. The limited removal of soil, sand, gravel, and rock for use on the Property and for enhancement of wetlands on the Property shall be accomplished in a manner which is consistent with the Conservation Values expressed in this Deed and with Section 170(h) of the Internal Revenue Code and applicable regulations. Notwithstanding any other provision of this Deed, not more than one (1) surface acre of the property (which does not have to be contiguous) may be disturbed by mining or other extractive activities.
- H) **Trash.** The dumping or accumulation of any kind of trash or refuse on the Property is prohibited. The dumping of soil, sand, gravel, and tree refuse (such as branches, and stumps), solely from the Property, may be accumulated in gullies and other appropriate sites on the Property to achieve good conservation practices. This section shall not prevent the storage of agricultural products and byproducts on the Property, so long as the storage complies with all applicable governmental laws and regulations.
- I) **Water Rights.** Grantor shall retain, reserve, and preserve the right to use water rights associated with the Property, and shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Property itself. Water rights to utilize water from Silver Prince Creek or from legally established wells or purchased augmentation water may be used by Grantor to irrigate agricultural crops and supply livestock which are otherwise permitted under this Deed. To the extent that the Conservation Values would not be diminished or impinged, Grantor shall have the right to construct, maintain and improve irrigation fixtures, water wells and other water systems on the Property.
- J) **Commercial or Industrial Activity; Communication Facilities.** No commercial or industrial uses shall be allowed on the Property, except as otherwise expressly provided in this Deed. It is the intention of this easement to prohibit commercial activity, including, without limitation, any commercial telecommunications towers, antennas, satellite dishes, relay stations and similar such facilities; however, this provision does not require either party to oppose eminent domain proceedings to establish such uses. Home occupations are permitted on the Property.

- K) **Hazardous Materials.** The storage, dumping or the disposal of toxic and/or hazardous materials on the Property is prohibited. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state, or local law.
 - L) **Conservation Practices.** The property shall be managed in accordance with good conservation practices to prevent the following: (i) Overgrazing by livestock; (ii) Noxious weeds from becoming established and proliferating, to the extent reasonably possible; and (iii) Soil erosion.
 - M) **Recreation.** Noncommercial, passive recreational uses (i.e., hiking, picnicking, cross-country skiing, and snowshoeing) are permitted on the Property. Non-passive and/or commercial recreational use and development of the Property involving structures or significant acreage (i.e. golf courses, racetracks for uses other than equestrian riding and training, tennis courts and clubs, baseball, soccer and other ball fields, and other similar uses) are prohibited. Equine breeding and training facilities are permitted and are not interpreted to be commercial recreational uses for purposes of this Deed. Motorized recreational vehicles, such as all terrain vehicles and snowmobiles may be used only as necessary for the agricultural, management and/or forestry activities allowed herein. Recreational uses of such vehicles, and use of motorcycles, dirt bikes and other similar vehicles, is prohibited. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with paragraph 3(D), and then only in a manner that does not substantially diminish or impair the Conservation Values of the Property, except that use of the Property for more than "de minimis" commercial recreation activity is prohibited. The term "de minimis" shall have the meaning as set forth in 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
 - N) **Signs.** No-trespassing signs are permitted. Other signs may not exceed the combined area of 25 square feet, and may be displayed only for purposes of stating the name of the Property, stating the name and address of the occupant, advertising on-site activity which is otherwise permitted herein, and advertising the Property for sale or rent.
4. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property, the right to sell or otherwise transfer the Property to anyone Grantor chooses, and the right to grant access easements as described in paragraph 3(D)(ii), above.
5. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:
- A) **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or

assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

B) **Upkeep and Maintenance.** Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, including weed control and eradication, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the property.

C) **Liability.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due solely to the gross negligence or intentional acts of any of the Indemnified Parties; (ii) the obligations under this Section 5; or (iii) the presence or release of hazardous or toxic substances on, under, or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state, or local law.

6. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Upon five day's prior notice to Grantor (except in the event of emergency, as described in paragraph 2, above), Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute as outlined in Section 7 below. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute within 60 days of Grantee's notice to Grantor of the alleged violation, or by such other date as the parties may mutually agree, the parties may take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation. Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs and expenses of suit and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed, shall be borne by Grantor unless a court with jurisdiction determines that Grantee has acted in bad faith in seeking to enforce this Deed. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of scenic or environmental values. Notwithstanding any requirement of mediation outlined herein, if Grantee, in its sole and absolute discretion, determines that there is imminent harm or danger to the Property or the

Conservation Values, then Grantee may request a court of competent jurisdiction (via an *ex parte* hearing if necessary) to issue an injunction to stop it, temporarily or permanently. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later date.

7. **Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Deed, and Grantor agrees 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 upon the other. Within fifteen (15) days of the receipt of such request, the parties shall select a single trained and impartial mediator with experience in conservation easements and other land preservation tools. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator with experience in conservation easements and other land preservation tools. Mediation shall then proceed in accordance with the following guidelines:
 - 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; and (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 Deed.
 - 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 required by the mediator.
 - 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 proceedings or construed as an admission of a party.
 - D) **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of 120 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. **Public Access.** Nothing herein contained shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the terms of this Deed.
9. **Transfer of Easement.** Grantee shall have the right to transfer the easement created by this Deed to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the United States Internal Revenue Code, and under C.R.S. Section 38-30.5-101, *et seq.*, only if the agency or the organization expressly agrees to

assume the responsibility imposed on Grantee by this Deed, and only if the Grantor first approves the transfer in writing, which approval shall not be unreasonably withheld. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that is designated by the then owner of the Property and that agrees to assume the responsibility.

10. **Transfer of Property.** Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee at least thirty (30) days in advance in writing, and the document of conveyance shall expressly refer to this Deed of Conservation Easement. Grantor's failure to comply with this requirement will not invalidate the conveyance.
11. **Termination of Easement.** If a court with jurisdiction determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill any of its conservation purposes, the court, at the joint request of Grantor and Grantee, may terminate the easement created by this Deed. Grantor and Grantee agree that the granting of this Deed immediately vests Grantee with a property right, which the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable solely to improvements which are allowed by this Easement) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. Grantor and Grantee further agree that this ratio shall remain constant, so that should the easement created by this Deed be extinguished or terminated, Grantee shall be entitled to a portion of the proceeds from any subsequent sale, exchange or involuntary conversion. Grantee shall use the proceeds consistently with the conservation purposes of this Deed. This provision is intended to comply with Treasury Regulation Section 1.170A-14(g)(6)(i).
12. **Perpetual Duration.** The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that either party's rights and obligations under this Deed shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of such party's entire interest in this Deed or the Property, except that liability of such transferring party for acts or omissions occurring prior to such transfer shall survive the transfer.
13. **Notices.** Any notices required by this Deed shall be in writing and shall be personally delivered to or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

Grantor: Conrad W. Nelson
Box 609
Buena Vista, CO 81211

Grantee: Colorado Open Lands
274 Union Blvd, Suite 320
Lakewood, CO 80228

with a copy to Grantee's counsel:

William M. Silberstein, Esq.
Isaacson, Rosenbaum, Woods & Levy, P.C.
17th Street, Suite 2200
Denver, CO 80202

14. **Grantor's Representations and Warranties.**

- A) Grantor warrants that Grantor has good sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except the Deed of Trust which has been subordinated to the terms of this Deed, and *ad valorem* property taxes for the current year, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.
- B) Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:
 - i) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are not now any underground storage tanks located on the Property;
 - ii) Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;
 - iii) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
 - iv) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

15. **Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

16. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Conservation Easement.

17. **General Provisions:**

A) **Severability.** If any provision of this Deed, or the application thereof to any person or

circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- B) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- C) **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription.
- D) **Interpretation.** This Deed shall be interpreted under the laws of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to give effect to its intended conservation purposes.
- E) **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.
- F) **Amendment.** If the circumstances arise under which an amendment to or modification of this easement would be appropriate, Grantor and Grantee are free to jointly amend this easement; provided that no amendment shall be allowed that will affect the qualifications of this easement under any applicable laws. Any amendment must be consistent with the conservation purposes of this easement and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the official records of Chaffee County, Colorado

TO HAVE AND TO HOLD, this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

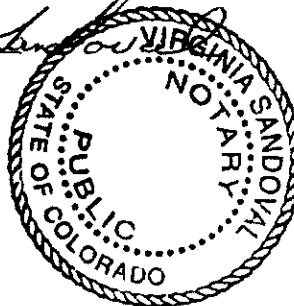
Conrad W. Nelson
Conrad W. Nelson

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 19th day of December, 2000, by Conrad W. Nelson, as Grantor.

Witness my hand and official seal.

My commission expires: 8/31/03

Virginia Lee Sandoval
Notary Public


GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corp.

By *Daniel E. Pike*
Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 19th day of December, 2000, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 4/4/2003

Sharon Pamela Bilby
Notary Public

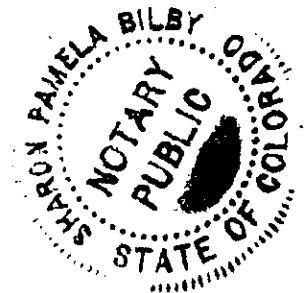


EXHIBIT A

Legal Description of the Property

Chaffee County, Colorado:

The Northwest quarter (NW1/4) of Section 35, all in Township 14 South, Range 79 West of the 6th Principal Meridian.

TOGETHER WITH a non-exclusive right-of-way easement 30 feet in width along the northerly boundary of the Northeast Quarter (NE1/4) of said Section 35, from County Road No. 339 extending Westerly to the northeast corner of the Northwest Quarter (NW1/4) of said Section 35.

AND TOGETHER WITH all minerals or mineral rights as Grantor may have right and title to on said property.

EXHIBIT A-1

Description of Adjoining Property

Chaffee County, Colorado:

The South Half of Section 26, Township 14 South, Range 79 West of the 6th P.M., Chaffee County, Colorado, containing 320 acres, more or less.

EXHIBIT B

Map of Property, Including Location of Parcels and Building Areas

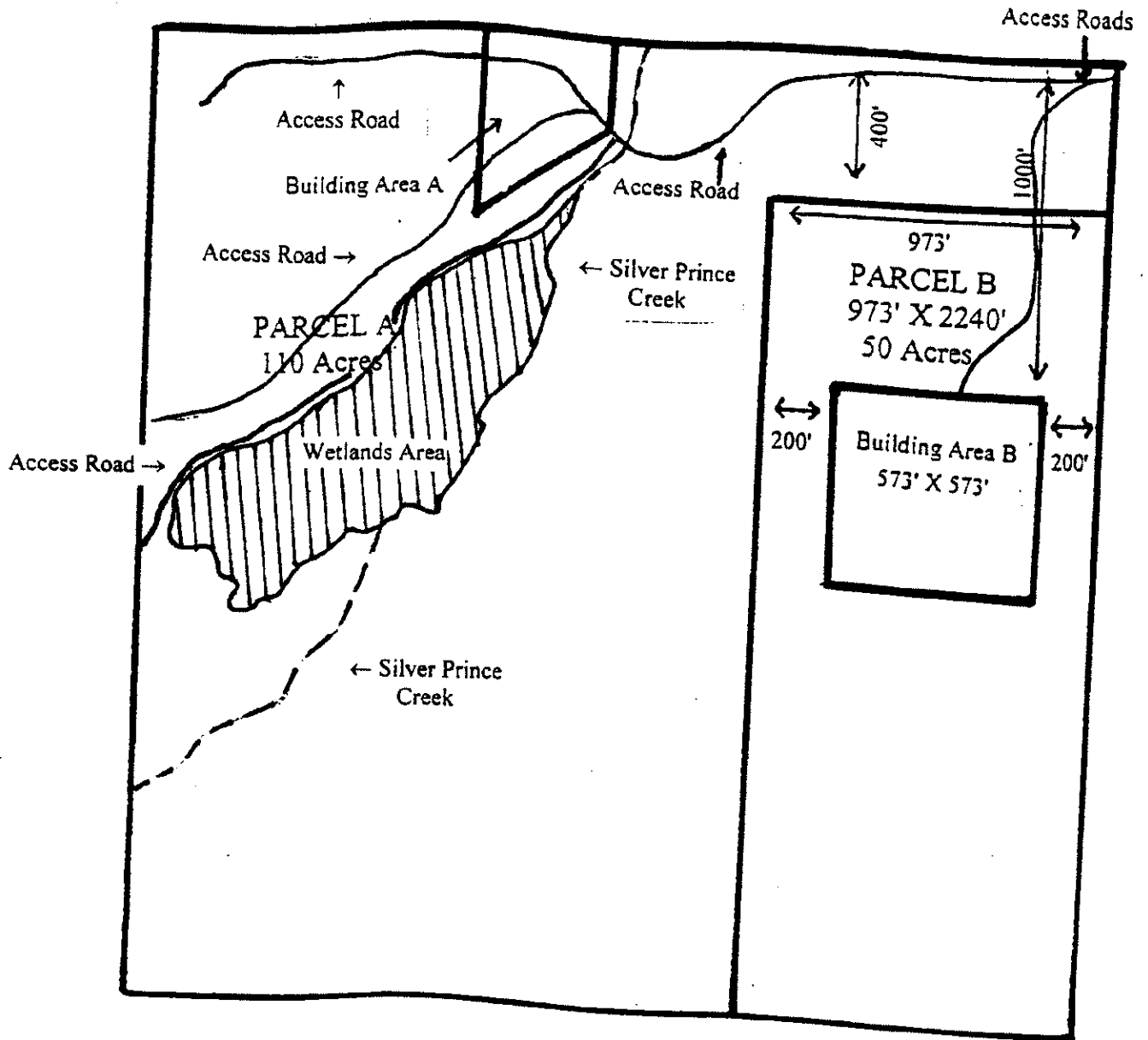


Exhibit C Building Area on Parcel A

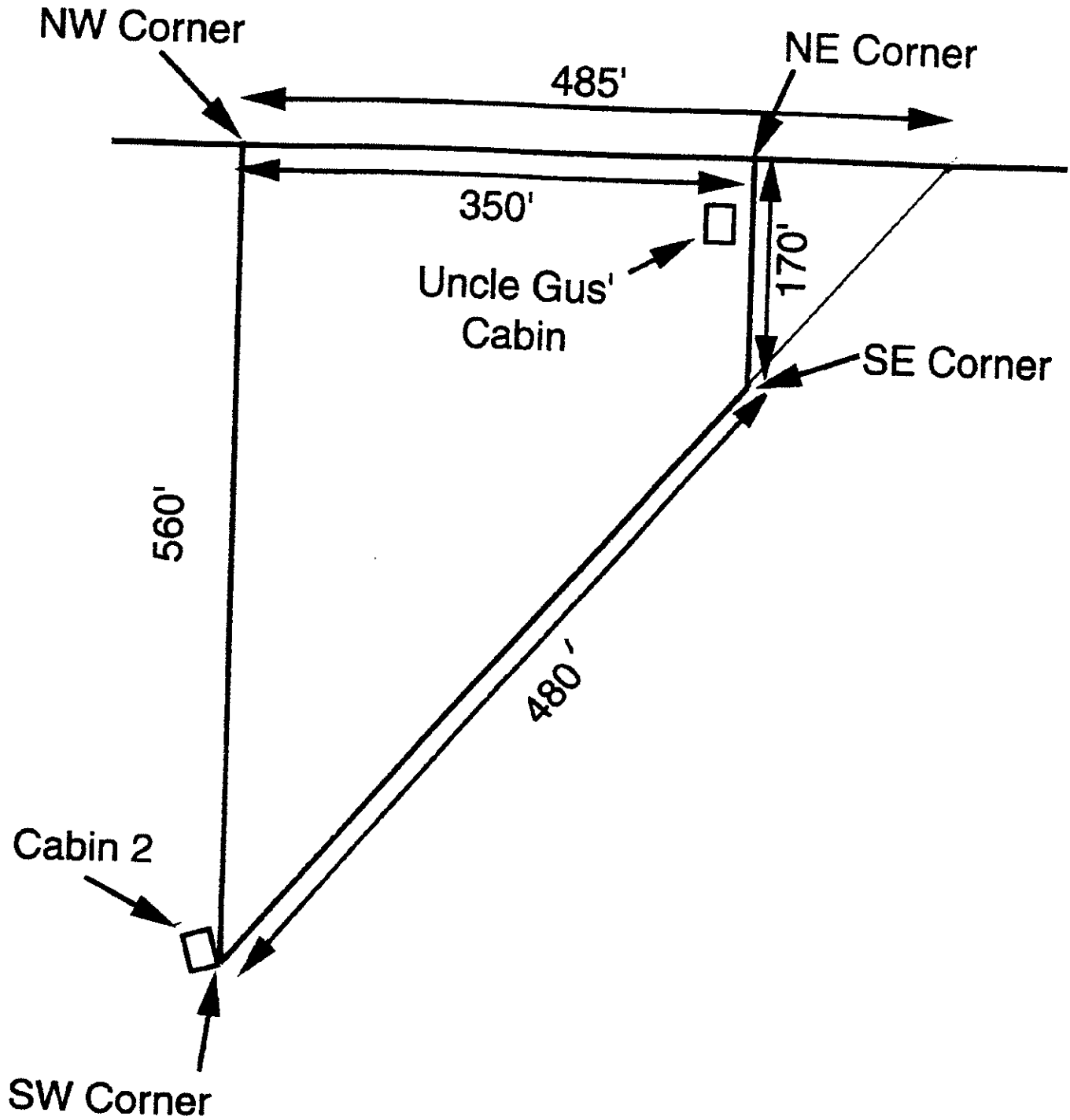


EXHIBIT D

12/27/2000 01:55 RECORD FEE: \$110.00
CHAFFEE COUNTY, CO, JOYCE M RENO - CLERK & RECORDER REC #: 315274

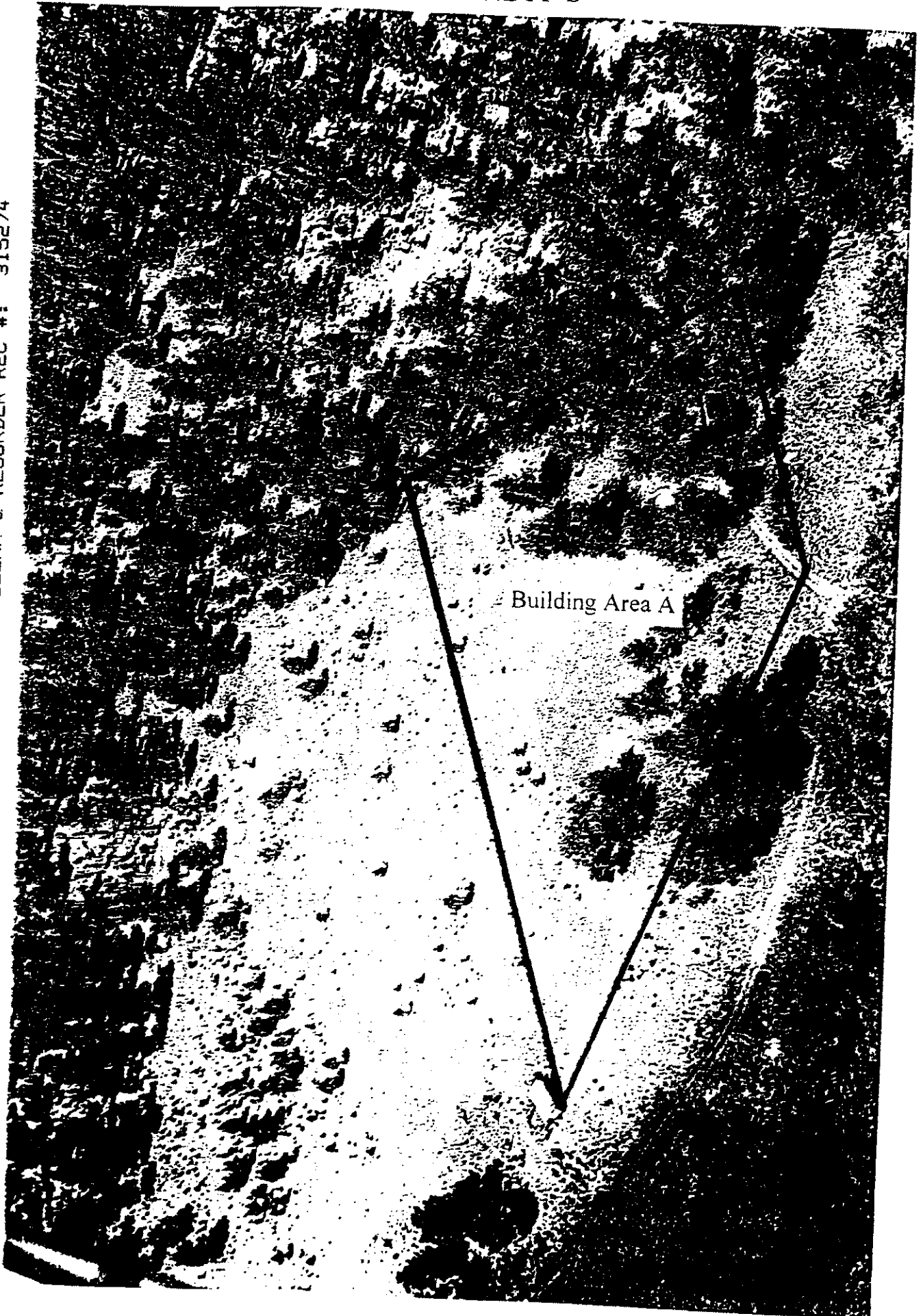


EXHIBIT E

Acknowledgment of Baseline Documentation Report

The undersigned Grantor acknowledges that the "Nelson Property Baseline Documentation Report" dated December, 2000 is an accurate representation of the biological and physical condition of the Property as of the date of conveyance of the Conservation Easement.

OWNER:
CONRAD W. NELSON

Conrad W. Nelson December 19, 2000
Name (Date)

EXHIBIT E

Acknowledgment of Baseline Documentation Report

The undersigned Grantor acknowledges that the "Nelson Property Baseline Documentation Report" dated December, 2000 is an accurate representation of the biological and physical condition of the Property as of the date of conveyance of the Conservation Easement.

COLORADO OPEN LANDS, a Colorado non-profit corporation

by: *Michael R. [Signature]* 12/19/00
its: PRESIDENT (Date)

attest: *Elizabeth H. Richardson* 12/19/00
its: Land Protection Specialist (Date)

12/27/2000 01:55 RECORD FEE: \$110.00 PAGE #: 0022 OF 0022
CHAFFEE COUNTY, CO., JOYCE M RENO - CLERK & RECORDER REC #: 315274

EXHIBIT F

**SUBORDINATION TO
DEED OF CONSERVATION EASEMENT
FOR THE
CONRAD W. NELSON PROPERTY**

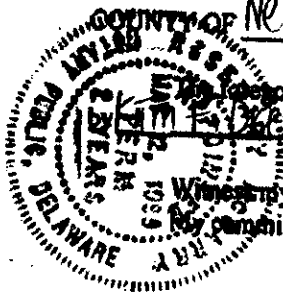
For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, Wilmington Trust Company, as beneficiary of that certain Deed of Trust in the principal amount of \$900,000.00, which Deed of Trust is dated January 13, 2000, and was recorded on February 1, 2000, at Reception No. 309035 of the records of the Chaffee County, Colorado Clerk and Recorder (the "Deed of Trust") hereby consents to the execution of that certain Deed of Conservation Easement by Conrad W. Nelson, as Grantor to Colorado Open Lands, a Colorado nonprofit corporation, as Grantee (the "Deed of Conservation Easement"), which Deed of Conservation Easement encumbers all or a part of the Property which is encumbered by the Deed of Trust, and subordinates the lien of the Deed of Trust to the Deed of Conservation Easement and agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence or continuing validity of the Deed of Conservation Easement, which Deed of Conservation Easement shall run with the land and remain in full force and effect as if such Deed of Conservation Easement were executed, delivered and recorded prior to the execution, delivery, and recording of the Deed of Trust.

IN WITNESS WHEREOF, the undersigned have executed this Subordination this 5 day of December, 2000.

WILMINGTON TRUST COMPANY

By: KFDrexler
Title: Vice President

STATE OF Delaware,
COUNTY OF New Castle



The foregoing instrument was acknowledged before me this 5 day of December, 2000, by Kathleen F. Drexler as Vice President of Wilmington Trust Company, Beneficiary.

Witness my hand and official seal.
My commission expires:

ROSEMARY M. MCGARRY
NOTARY PUBLIC-DELAWARE
My Commission Expires May 12, 2001

Rosemary McGarry
Notary Public