

Recording requested by and return to:
Isaacson, Rosenbaum, Woods & Levy, PC
Attn: William Silberstein, Esq.
633 17th Street, Suite 2200
Denver, CO 80202

RECEPTION # 160808
DATE/TIME: 11-30-95 10:00 AM
BOOK/PAGE: AK 301 Ph 5 981-88
MICHELLE OLIN, OURAY COUNTY CLERK

**DEED OF CONSERVATION EASEMENT
FOR THE
CENTENNIAL RANCH**

THIS DEED OF CONSERVATION EASEMENT is granted on this 15 day of November, 1995, by VINCENT L. KONTNY and JOAN D. KONTNY, as Trustees of the Vincent and Joan Kontny Trust dated February 13, 1979, as amended and restated on June 17, 1994 ("Grantors"), to COLORADO OPEN LANDS, a Colorado nonprofit corporation ("Grantee"), for the purpose of forever conserving the open space character, agricultural productivity, wildlife habitat and scenic qualities of the subject property.

WITNESS THAT:

The Grantors are the sole owners in fee simple of the ranch property ("Property") legally described in **Exhibit A** attached to and made a part of this Deed, which consists of approximately 392 acres of land, together with buildings and other improvements, located in Ouray County, State of Colorado.

The Property is primarily open ranchland, and the Uncompaghre River flows through the Property for approximately ½ mile. The Property also includes relatively natural habitat with a variety of wildlife species, including deer, elk, black bear, and various species of fish, waterfowl, and other water birds. The Property contains important nesting sites for both bald eagles and golden eagles. It also has outstanding scenic qualities that can be enjoyed by the general public traveling south along Highway 550 from Montrose to Ridgway through the scenic Uncompaghre Valley.

The agricultural and other characteristics of the Property, its current use and state of improvement, are described in a *Present Conditions Report* prepared by the Grantors with the cooperation of the Grantee, and acknowledged by both to be complete and accurate as of the date of this Deed. Both the Grantors and the Grantee have copies of this report. It will be used by the Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, this 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.

The Grantors intend to make a charitable gift of the property interest conveyed by this Deed to the Grantee for the exclusive purpose of assuring that, under the Grantee's perpetual stewardship, the open space character, agricultural productivity, wildlife habitat, and scenic qualities of the Property will be conserved and maintained forever, and that uses of the land that

are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Deed.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-1-101, *et seq.*, which provide in part 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."

- Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, providing 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."

- The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, *et seq.*, which 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, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state."

The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and, as certified by a resolution of its Board of Directors, accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

The Grantors acknowledge that the Property is now operated in accordance with a plan to conserve natural resources and in a manner conducive to the long-range protection of the Property's agricultural and environmental resources, and that they intend to continue to operate the Property in such a manner.

The Grantors own the fee simple interest in the Property subject to a deed of trust held by Smith Brothers, a partnership which has agreed to subordinate its interest in the Property to this Deed as evidenced by the Subordination attached to this Deed.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, the Grantors voluntarily grant and convey to the Grantee, and the Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest

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in real property defined by Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the open space character, agricultural productivity, wildlife habitat, and scenic qualities of the Property.

1. *Use of Property.* It is the intention of the Grantors to preserve the ability of the Property to be agriculturally productive, including continuing farming and ranching activities, as well as to preserve the open space character and scenic qualities of the Property. The Property may not be used for industrial activities (other than farming and ranching), but may be used for other activities which are not prohibited by the terms of this Deed.

2. *Prohibited Acts.* The Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants below. They also authorize the Grantee to enforce these covenants in the manner described below. However, unless otherwise specified below, nothing in this Deed shall require the Grantors to take any action to restore the condition of the Property after any fire, Act of God or other event over which they had no control. The Grantors understand that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

3. *Construction of Buildings and Other Structures.* The construction of any building or other structure, except those existing on the date of this Deed or those approved by the Grantee subsequent to the date hereof but prior to construction, is prohibited except in accordance with paragraphs (a) through (f) below. Before undertaking any construction that requires advance permission, the Grantors shall notify the Grantee and ask permission.

a. *Fences.* Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, without any further permission of the Grantee; provided, however, that Grantor shall not construct any fence along Highway 550 which would materially adversely impact the public view of the Property from Highway 550 (other than for reasonable and customary livestock management) without advance written permission of the Grantee. The Grantors shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats.

b. *Agricultural Structures and Improvements.* New buildings and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominantly grown or raised on the Property may be built within the Agricultural Building Envelopes described on Exhibit B attached to and made a part of this Deed without the advance written permission of the Grantee. Loafing sheds, corrals and other minor agricultural buildings and improvements may be constructed on the Property without further permission of the Grantee. The construction of any new agricultural buildings or improvements other than those covered by the preceding two sentences shall require the advance written permission of Grantee. The Grantee shall give such permission within a reasonable time, unless it determines that the buildings or other improvements will substantially diminish or impair the open space character or scenic qualities of the property. The Grantees' permission shall not be unreasonably withheld.

c. *Single-Family Residential Dwellings.* All existing single-family residential dwellings may be repaired, reasonably enlarged (not to exceed 25% of their current size) and replaced at their current location without further permission of the Grantee. Two new single-family residential dwellings, together with reasonable appurtenances such as garages and sheds, may be built on the Property below the bluff which separates the Uncompaghe River from Highway 550 within the residential building envelope described on **Exhibit B** attached to and made a part of this Deed without further permission of the Grantee. One of the new single-family residential dwellings may contain a separate caretaker's apartment. No new building constructed within the residential building envelope shall exceed 15,000 square feet of gross floor area (excluding basements). In the event Grantor cannot obtain a building permit from Ouray County for construction of residences or other buildings within the residential building envelope due to the location of the residential building envelope, Grantor may relocate the residential building envelope with the advance written permission of Grantee. Grantee shall give such permission within a reasonable time, unless it determines that the new location of the residential building envelope will substantially diminish or impair the open space character or scenic qualities of the Property. The Grantee's permission shall not be unreasonably withheld. At the time that construction of such dwellings is to commence, the Grantee shall be notified so that its records can be updated.

d. *Farm Labor and Tenant Housing.* All existing dwellings or structures used to house farm tenants and employees may be repaired, reasonably enlarged (not to exceed 25% of their current size), and replaced at their current location without further permission of the Grantee. Three new single or multi-family dwellings or structures to be used solely to house farm tenants, employees, or others engaged in agricultural production on the Property ("Employee Housing Buildings") may be built on the Property only within either the employee housing building envelope described on **Exhibit B** attached hereto or the agricultural building envelopes described on **Exhibit B** attached hereto. None of these three new Employee Housing Buildings shall exceed 3,000 square feet of gross floor area (excluding basements). At the time that construction of such structures is to commence, the Grantee shall be notified so that its records can be updated.

e. *Ranch Office Building.* A new building, which may not be used for residential purposes, which is intended to be used as a ranch office building, and which shall not exceed 1,500 square feet of gross floor area, may be constructed within the agricultural building envelopes described on **Exhibit B** attached hereto without further permission of the Grantee. At the time that construction of such building is to commence, the Grantee shall be notified so that its records can be updated.

f. *Repair and Replacement.* All buildings which are permitted to be constructed hereunder may be repaired, reasonably enlarged (not to exceed 25% of their current or permitted size), and replaced at their permitted location without further permission from the Grantee; provided, however, that the two new single-family residential dwellings may not exceed 15,000 square feet of gross floor area (excluding basements).

4. *Subdivision.* Title to the Property shall not be divided or subdivided, it being the intent of the Grantors herein that the Property shall remain intact as a single parcel. The

foregoing notwithstanding, the Owner of the Property may apply to Ouray County for rezoning or subdivision approval of any type if required to build or rebuild the single family residential dwellings or any other buildings permitted hereunder, so long as title to all parcels created thereby are owned by the same owner as the rest of the Property and are kept in the same ownership at all times.

5. *Development Rights.* The Grantors hereby grant to the Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.

6. *Conservation Practices.* The Grantors recognize the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using good stewardship and management practices.

7. *Timber Harvesting.* Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Trees may also be cut as necessary to clear land for cultivation or use of livestock. Any commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

8. *Mining.* The mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written permission of the Grantee, except that soil, sand or gravel may be extracted solely for use on the Property without further permission from Grantee so long as such extraction is accomplished in a manner which is consistent with the conservation values expressed in this Deed. As to any other proposed mineral extraction, the Grantee shall give such permission within a reasonable time, unless it determines that the proposed mining or extraction will substantially diminish or impair the open space character, agricultural productivity, wildlife habitat, or scenic qualities of the Property. 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.

9. *Paving and Road Construction.* No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed, without the advance written permission of the Grantee, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property. The Grantee shall give such permission within a reasonable time, unless it determines that the proposed paving or covering of the soil, or the location of any such road, will substantially diminish or impair the open space character, agricultural productivity, wildlife habitat, or scenic qualities of the Property.

10. *Trash.* The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibit-

ed. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations.

11. *Recreational Uses.* Golf courses, airstrips, and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may not be built on the Property without the advance written permission of the Grantee. The Grantee shall give such permission unless it determines that the proposed use or facilities will substantially diminish or impair the open space character, agricultural productivity, wildlife habitat, or scenic qualities of the Property.

12. *Feed Lot.* The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this section shall prevent the Grantors from seasonally confining the Grantors' livestock into an area for feeding and nothing in this section shall prevent the Grantors from leasing pasture for the grazing of livestock owned by others.

13. *Water Rights.* The Grantors shall retain and reserve the right to use water rights sufficient for use in agricultural production on the Property, and shall not transfer, encumber, lease, sell, or otherwise separate such quantity of water rights from title to the Property itself.

14. *Rights Retained by the Grantors.* Subject to interpretation under paragraph 21, as owners of the Property, the Grantors retain 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 and the right to sell or otherwise transfer the Property to anyone they choose.

15. *Responsibilities of the Grantors and the Grantee Not Affected.* Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantors as owners of the Property. Among other things, this shall apply to:

a. *Taxes.* The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantors will reimburse the Grantee for the same.

b. *Upkeep and Maintenance.* The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

c. *Liability and Indemnification.* If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property,

the Grantors shall indemnify and reimburse the Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless the Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, the Grantors warrant that the Grantee is a named insured on the Grantors' property insurance policies covering the Property.

16. *Enforcement.* The Grantee shall have the right to prevent and correct violations of the terms of this Deed. With reasonable advance notice to the Grantors, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what it believes is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the open space character, agricultural productivity, wildlife habitat or scenic qualities of the Property, the Grantee shall give the Grantors written notice of the violation and sixty (60) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantors to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the Grantors shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

17. *Transfer of Easement.* With the prior written consent of the Grantors (which consent shall not be unreasonably withheld), the Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the U.S. Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and only if the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Deed. If the Grantee desires to transfer this easement to a qualified organization having similar purposes as Grantee, but the Grantors unreasonably refuse to approve the transfer or, if the Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility; provided that the Grantors receive notice of and an opportunity to participate in the court proceeding.

18. *Transfer of the Property.* Any time the Property itself, or any interest in it, is transferred by the Grantors to any third party, the Grantors shall notify the Grantee in writing at least twenty (20) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed of Conservation Easement.

19. *Amendment of Easement.* This easement may be amended only with the written consent of the Grantee and the Grantors by an instrument duly executed and recorded in the real property records of Ouray County, Colorado. Any such amendment shall be consistent with the purposes of this Deed and shall comply with §170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be

consistent with Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, or any regulations promulgated pursuant to that law.

20. *Termination of Easement.* If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both the Grantors and the Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated and the Property is sold or taken for public use, then, as required by IRS regulation §1.170A-14(g)(6), the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. The Grantee shall use the proceeds consistently with the conservation purposes of this Deed.

21. *Interpretation.* This Deed shall be interpreted under the laws of the state of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

22. *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 the Grantors or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

23. *Notices.* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to the Grantors and the Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To the Grantors:

Vincent and Joan Kontny
601 Lido Park Drive, 2AB
Newport Beach, CA 92663

To the Grantee:

Colorado Open Lands
Suite C-2050
5555 DTC Parkway
Englewood, CO 80111

24. *Grantors' Title Warranty.* The Grantors warrant that they have good and sufficient title to the Property and hereby promise to defend the same against all claims from persons claiming by, through or under the Grantors.

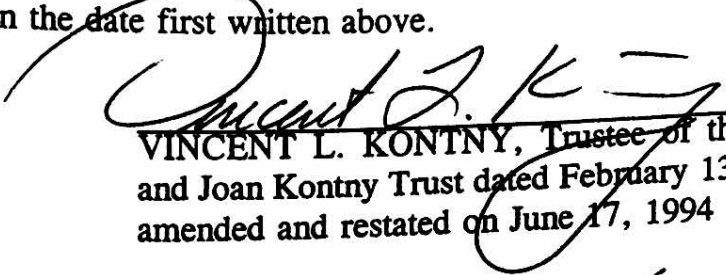
25. *Grantors' Environmental Warranty.* The Grantors warrant that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promise to defend and indemnify the Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws.

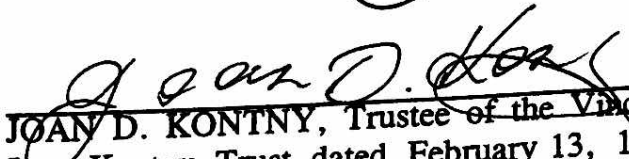
26. *Subsequent Liens on the Property.* No provisions of this Deed of Conservation Easement should be construed as impairing the ability of the Grantors to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement.

27. *Acceptance.* As attested by the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Conservation Easement.

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

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


VINCENT L. KONTNY, Trustee of the Vincent
and Joan Kontny Trust dated February 13, 1979, as
amended and restated on June 17, 1994


JOAN D. KONTNY, Trustee of the Vincent and
Joan Kontny Trust dated February 13, 1979, as
amended and restated on June 17, 1994

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 1995, by Vincent L. Kontny and Joan D. Kontny, Trustees of the Vincent and Joan Kontny Trust dated February 13, 1979, as amended and restated on June 17, 1994.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

160808

OURAY COUNTY CLERK

981

BOOK 301 / PAGE 988

State of California

County of Orange

On 11-15-95

Date

before me, Mary K. Meyer

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Vincent L. Kontney & Joan D. Kontney

Name(s) of Signer(s)

☐ personally known to me – OR – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Mary K. Meyer
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed of Conservation Easement

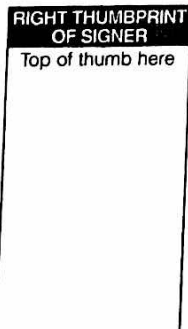
Document Date: 11-15-95 Number of Pages: 9

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

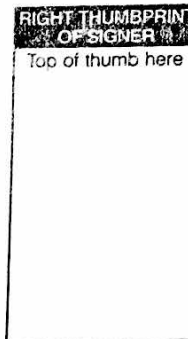
Signer's Name: Kontney

- ☒ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____



Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____



Signer Is Representing:



Representing:

ACCEPTED:

COLORADO OPEN LANDS, a Colorado nonprofit
corporation

By M. Lee Dusa
President

STATE OF COLORADO)
City and) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 15th day of November,
1995, by M. Lee Dusa as President of Colorado Open Lands, a Colorado nonprofit
corporation.



WITNESS my hand and official seal.

My commission expires: 9-17-1999

Jeanne K. Watson
Notary Public

Exhibit A Legal Description of Property
Exhibit B Building Envelopes