

PAID: \$76.00

309644

WILSON MESA, CO  
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement"), made as of this 19th day of December, 1996, by Billorado Properties, a Colorado General Partnership, whose address is P.O. Box 2220, Telluride, Colorado 81435 (the "Grantor"), and the ROCKY MOUNTAIN ELK FOUNDATION, INC., a Montana non-profit corporation whose address is 2291 West Broadway, P.O. 8249, Missoula, Montana 59807-8249 (the "RMEF");

W I T N E S S E T H

WHEREAS, the Grantor is the owner of all the real property in San Miguel County, Colorado, described in Exhibit A (the "Property"), and approximately located on the map attached as Exhibit B; and

WHEREAS, the Property has significant relatively natural habitat for native wildlife and ecological, scenic, aesthetic and open space values as recognized in the Colorado Open Space Land and Voluntary Conservation Easement Act, Colorado Revised Statute (CRS) 38-30.5-101, et seq.; and the Grantor intends to convey this Easement under CRS 38-30.5-101, et seq., and other applicable provisions of Colorado statutory and common law; and

WHEREAS, the Property constitutes a valuable element of the natural habitat of the Wilson Mesa and the San Miguel River Valley and its ecological, scenic, aesthetic and open space values, including flora, fauna, and soils; and the Property provides significant winter range for elk, and also provides habitat for deer, bear, mountain lion, and other regional Colorado wildlife, and the maintenance of such natural habitat helps support wildlife populations in the San Miguel River Valley. All of these natural habitat, ecological, scenic, wildlife, aesthetic water resource, and open space values (the "Conservation Values") are of great importance to the Grantor and to the people of the State of Colorado, and are worthy of conservation; and

WHEREAS, the Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the property that will not materially interfere with or materially disrupt the Conservation Values, including such general uses as ranching, hunting, fishing, hiking and camping, cross-country skiing, equestrian use, limited residential development, and other uses permitted by this Easement (the "Primary Uses");

WHEREAS, the Grantor, as the owner in fee of the Property, owns the rights to identify, to conserve and protect in perpetuity, and to enhance by restoration the Conservation Values of the Property; and

WHEREAS, the Grantor desires and intends to transfer certain of such rights to the RMEF, provided that the Grantor's right to use the Property for the Primary Uses is also protected and conserved in the manner more particularly set forth in this Easement; and

WHEREAS, the State of Colorado has recognized the importance of private efforts toward the conservation of natural resources in the state by the enactment of CRS 38-30.5-101, et seq.; and

WHEREAS, the RMEF is organized to conserve and protect natural areas and significant wildlife habitat land for ecological, scientific, charitable, and educational purposes; and the RMEF is a qualified private organization under the terms of CRS 38-30.5-101, et seq.; and the RMEF is a qualified organization under section 501(c)(3) of the "Internal Revenue Code of 1954" as amended, to receive and hold conservation easements and has been in existence for more than two years prior to the date hereof; and

WHEREAS, the parties wish that any interpretation of this Easement shall be construed so as to further the conservation, protection, and enhancement of the Conservation Values of the Property; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to CRS 38-30.5-101, et seq., and other applicable provisions of Colorado statutory and common law, the Grantor hereby conveys and warrants to the RMEF this perpetual Easement over the Property. The scope of this Easement is set forth in this deed. This conveyance is a donation from the Grantor to the RMEF.

## SECTION I - RIGHTS OF RMEF

The rights conveyed by Grantor to RMEF to perpetually conserve the Conservation Values of the Property in this Easement include the following:

A. Identification and Protection. RMEF has the right to, identify, conserve and protect in perpetuity, and enhance the Conservation Values on the Property, in the manner set forth in this Easement to the extent such rights are granted by this easement, subject, however, to the Grantor's reserved rights in this Easement.

B. Access. RMEF has the right to enter upon the Property to inspect, monitor, and enforce compliance with this Easement at reasonable times. RMEF also has the right to undertake observations or ecological studies of natural resources protected by this Easement in a manner that will not unreasonably interfere with the use of the Property by the Grantor. The number of people involved in such studies, the frequency thereof, the method and mode of access to the Property and other aspects of such studies shall be subject to the prior approval of Grantor, which approval shall not be unreasonably withheld. RMEF shall promptly restore any areas of the Property and its vegetation damaged or disturbed in the conduct of such studies. RMEF shall provide to Grantor, free of charge, copies of all results and reports which derive from such studies.

The general public is not granted access to the Property under this Easement. The RMEF shall have the right of immediate entry upon the Property if, in the RMEF's reasonable and sole judgment, such entry is necessary to prevent immediate damage to or the immediate destruction of the Conservation Values of this Easement.

C. Conservation, Injunction, and Restoration. RMEF has the right to undertake any appropriate legal proceedings to prevent any activity on, or use of, the Property which is inconsistent with this Easement, including but not limited to, obtaining an injunction in a court of competent jurisdiction. RMEF also has the right to enforce the reasonable restoration of such areas or features of the Property as may be damaged or impaired by any activities, or failure to take action to prevent such activities, which are inconsistent with this Easement. RMEF shall be entitled to recover its reasonable attorneys fees in enforcing its rights under this Easement.

D. Signs. RMEF has the right to place signs on the Property which identify the land as being protected by this Easement. The number, size, design and location of the signs are subject to Grantor's approval and shall comply with all applicable governmental regulations. Grantor may disapprove of or after approval may require the removal of any sign that may diminish the rights of Grantor to place signs on the Property in accordance with applicable regulations of San Miguel County or the State of Colorado.

## SECTION II- GENERAL EFFECT OF EASEMENT

A. Perpetual Restrictions. This Easement shall run with and encumber the title to the Property in perpetuity, and shall bind the Grantor and all future owners and tenants of the Property.

B. Permitted Uses in General. This Easement shall confine the use of the Property to activities such as the Primary Uses, and other uses which are not prohibited by the terms of this Easement and which are consistent with the purposes and terms of this Easement. Any activity on or use of the Property inconsistent with the purposes or terms of this Easement and which materially interferes with or is materially detrimental to the Conservation Values expressed in this Easement, is expressly prohibited.

C. Dedication of Property. Pursuant to the terms of CRS 38-30.5-101, et seq., the Property conserved by this Easement, subject to the terms and conditions of this Easement, is declared to be open space and natural land, and may not be converted or directed to any uses other than those provided in this Easement.

### SECTION III PERMITTED USES AND PRACTICES

The following uses and practices, while not an exhaustive recital of permitted uses and practices, are consistent with this Easement, and these uses and practices may not be precluded or prevented by this Easement except when this Easement requires prior approval of an activity by the RMEF as provided in Section IV of this Easement or poses a serious threat to the Conservation Values protected by this Easement.

A. Residential and Lodging Facilities. The Grantor may construct, improve, alter, maintain, and repair or replace any buildings permitted by San Miguel County regulations, provided such structures are located within a building area limited to five (5) acres ("Building Area"). Non-native plants may be planted on the Residential Lot Site and game-proof fencing can be constructed on the Residential Lot Site. A separate building area ("Accessory Building Area") may be established for uses such as a barn, stable, or other outbuildings. The size, location and permitted uses for such Accessory Building Area shall be subject to the prior approval of RMEF and such approval shall not be unreasonably withheld; provided, however, such approval shall take into consideration the purposes of this Easement and the approval shall not be granted if the Conservation Values are jeopardized by permitting such Accessory Building Area. Any such approval may be made with conditions. Other than the foregoing, no other buildings are permitted on the Property.

Subdivision or Parceling The Grantor may subdivide or parcel the Property into as many six parcels

C. Ranching Facilities. The Grantor may maintain, replace, and repair, for ranching and recreational purposes, the fences, roads, corrals, barns and sheds, ponds and irrigation facilities, and other improvements on the Property as of the date of this Easement, as identified in the baseline inventory referred to in Section XI. The Grantor may also rearrange and replace corrals, ponds and irrigation facilities in order to effect better livestock management and control. If any or all of such facilities are removed or destroyed, the Grantor may replace them with similar structures of the same approximate size in the same general locations.

The Grantor may construct and repair fences along the border of the Property, around the perimeter of subdivided lots and fences necessary for driveway or entry monuments. Drift fences may be constructed as necessary to control drifting snow. Except as specifically permitted by this Easement, fencing modifications other than repair and replacement and any fencing constructed after the date hereof for livestock management, must be approved by the RMEF, and such approval will not be unreasonably withheld.

Notwithstanding any provision of this Easement to the contrary, no big game-proof fences will be constructed on the Property, except to protect harvested crops, and specific treed or vegetated areas, which are intended to be areas where new plant materials need to be protected from wildlife. In the event the parties cannot agree on specifications for game proof fences, the Colorado Division of Wildlife shall be consulted and their specifications shall control.

D. Ranching Activities. The Grantor may use the Property for common or typical ranching and farming activities, including grazing, feeding, breeding, raising, and managing livestock (as defined in C.R.S. 35-1-102 in effect on the date of this agreement), and building and maintaining ponds and irrigation facilities.

E. Livestock. Livestock grazing use shall not exceed a degree of use described as moderate by the United States Department of Agriculture - Natural Resource Conservation Service as identified on Exhibit C, attached hereto, and does not degrade or deteriorate the wildlife, riparian, and aquatic resources.

F. Hunting and Fishing. It is permitted on the Property to hunt, trap, and fish for animals, birds, and fish in a manner consistent with state and federal laws and regulations, at levels of intensity which are not detrimental to the elk, wildlife, and fishery populations. The parties agree and acknowledge that controlled hunting may be desirable to balance elk and wildlife numbers with the condition of range and habitat; provided, however, nothing in this Easement shall be deemed to require hunting or other methods of game harvesting.

The Grantor will not, through a hunting program, unreasonably interfere with the maintenance of a base population elk herd well-balanced in age and sex ratios and providing for a physically mature bull elk segment ("mature" defined as peak phenotypic expression). In the event the parties cannot agree on the elements of a well balanced wildlife ratio, the Colorado Division of Wildlife shall be consulted and their determination shall control.

G. Water Resources. The Grantor may develop and maintain water resources on the Property for the grazing, ranching, wildlife, waterfowl, domestic, fisheries, and recreational pursuits conducted thereon pursuant to the terms of this Easement, including, but not limited to stream bank stabilization, watering facilities and ponds, construction of wells and pipelines, and to improve the quality and quantity of water available for the purposes described above and in a manner consistent with state and federal laws and regulations.

H. Restoration and Enhancement of Aquatic and Terrestrial Habitat. The Grantor may carry out activities that will restore and enhance the aquatic, terrestrial, and wetland habitat for fish, waterfowl and wildlife use and production in a manner consistent with state and federal laws and regulations.

I. Agrichemicals. The Grantor may use agrichemicals, including but not limited to fertilizers, biocides, herbicides, insecticides and rodenticides, but only in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable ranching, grazing, and residential objectives. 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 the Property and to avoid any impairment of the natural ecosystems and their processes.

J. Predators. The Grantor may control predatory and problem animals by the appropriate use of legal control technique. Wherever possible, all measures used for such control shall be limited in their application to specific animals which have caused damage to livestock or other property; provided, however, that if it is not possible to identify a specific predatory or problem animal or when historic data indicates that a sufficient threat exists, the Grantor may use appropriate preventive control techniques; and provided further, that the aforementioned restrictions applicable to the identification and control of problem animals shall not apply to rodents.

K. Tree Cutting. The Grantor may cut trees for posts and poles for use on the Property and cut and gather dead, dying and down trees and as necessary to comply with any recommendations of the State Forest Service or San Miguel County with respect to wildfire prevention, without obtaining the prior approval of RMEF.

The Grantor may also cut and remove trees to abate disease or infestation, to perpetuate a healthy forest, or to provide or enhance a diversity of habitat for elk and other wildlife. All such cutting for these purposes will be under the auspices of a Forest Management Plan prepared by a qualified forester or natural resources professional and with the approval of the RMEF as provided in Section IV prior to beginning the prescribed activity.

Maintenance of a healthy forest and tree cover is integral to the wildlife and wildlife habitat, the water quality, and the scenic and aesthetic provisions of this Easement. As such, all permitted uses and practices affecting the forest and tree cover will, except as otherwise provided herein and in those areas located outside of the Building Area, be conducted in a manner reasonably intended to maintain healthy forest conditions over time and to sustain and perpetuate the mix of naturally occurring species in representative ages and group sizes, while also taking into consideration other factors concerning the reasonable use of the land and the degree of harm to the local environment involved in any disturbance of natural conditions on the Property.

L. Rock, Sand and Gravel. The Grantor may use rock, sand and gravel from the Property for road building and repair and construction work on the Property, and for reasonable, non-commercial use on the roads accessing the Property provided it will not interfere with the integrity of wildlife habitat, water quality and the Conservation Values of this Easement. The area to be disturbed for such uses will not exceed five (5) acres in size. All extractive activities allowed hereby shall be only be permitted to the extent of their compliance with applicable regulations of the Internal Revenue Service ("IRS") so as to avoid any conflict with the Conservation Values and the purposes of this Easement. In the event of any conflict between such uses and the IRS regulations, the IRS regulations shall control and the conflicting uses shall immediately cease and the land disturbed shall be promptly restored.

M. Residual Rights Except as expressly limited by this Easement the Grantor may exercise and enjoy all rights as owner of the Property.

#### SECTION IV - PRIOR APPROVAL OF ACTIONS BY RMEF

If any provision of this Easement requires the Grantor to obtain the prior approval of the RMEF before performing any act or undertaking any enterprise, then the Grantor shall not perform that act or undertake that enterprise until it has satisfied the notice and approval provisions of this section. Nothing in this Section shall prohibit or limit in any manner the ability of the RMEF to obtain writs or injunctive relief relating to any violation of this Easement.

A. Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise which requires the RMEF's approval, the Grantor will notify the RMEF in writing of the activity, use or enterprise which the Grantor intends to undertake. This notice must inform the RMEF of all aspects of such proposed activity, use or enterprise.

Any notice provided or permitted to be given under this Easement must be in writing and may be given and shall be deemed to have been given (i) by depositing the same in the United States mail, addressed to the party notified, postage prepaid and registered or certified with return receipt requested; (ii) by delivering the same in person to such party; or (iii) by depositing the same into the custody of a nationally recognized overnight delivery service such as, but not limited to Federal Express Corporation, addressed to the party to be notified; or (iv) by facsimile. For purposes of notice, the addresses of the parties shall be as set forth below. From time to time either party may designate another address for all purposes of this Easement by giving the other party no less than ten (10) days' advance notice of such change of address in accordance with the provisions hereof.

As to Grantor:  
 Billorado Properties,  
 a Colorado general partnership  
 P.O. Box 2220  
 Telluride, Co. 81435  
 Facsimile: 970-728-5422.  
 For Overnight: 125 W. Pacific Suite B2  
 Telluride, Co. 81435

With copy to Grantor's Attorney:  
 Herbert S. Klein  
 201 N. Mill St. #203  
 Aspen, Colorado 81611  
 Facsimile: 970-925-3977

As to RMEF:  
 The RMEF  
 P.O. Box 8249  
 Missoula, Montana 59807-8249  
 Attention: Land Department

For Overnight: 2291 West Broadway  
 Missoula, Montana 59802  
 Facsimile: 406-523-4550

With copy to RMEF attorney attention legal department at same address as above

Personal delivery shall be deemed to have occurred when any notice is delivered to the offices of the party for whom the delivery is intended, and may be evidenced by an affidavit of delivery, or to such address as the parties may from time to time designate in writing with notice as provided herein.

B. RMEF's Response. The RMEF shall have either ten (10) days or twenty (20) days from the date that such notice is given, as provided in paragraph B.2, below, to review the proposed activity, use, or enterprise, and to notify the Grantor of any objections that it may have to the activity, use, or enterprise. The objections, if any, shall be based upon the RMEF's reasonable and explained opinion that the proposed activity, use or enterprise is not permitted by or inconsistent with the purpose and/or provisions of this Easement. If, in the RMEF's judgment, the proposal set forth by the Grantor can be modified to conform with the purposes and

provisions of this Easement, then the response shall inform the Grantor of the manner in which the proposed activity, use or enterprise can be modified to be consistent with this Easement. Except as provided in Paragraph C of this Section, the Grantor can commence or conduct the proposed activity, use, or enterprise only if it receives the RMEF's express written approval, and only in the manner explicitly proposed by the Grantor and approved by the RMEF. The RMEF will notify Grantor of such response as provided above for notices to the Grantor.

B. 2. From time to time, RMEF shall identify its lands department person responsible for this Easement ("Land Person") and all notices shall be directed to such person's attention at the address and in the manner provided for above. If the Land Person is away from the place of business of the RMEF for four or more days when the notice is received, then RMEF shall have twenty (20) days to provide any approval or denial of a request for approval; otherwise, the time period for such response shall be ten (10) days. Grantor may rely on any information obtained by placing a telephone call to the office of the Land Person at the time the request for approval is sought to be made in order to determine whether or not the Land Person is available and thus determine the applicable time period for such response. The Grantor shall provide a written confirmation to the office of the Land Person as to the information obtained by Grantor as a result of such telephone call.

In the event it is RMEF's opinion that the proposed activity, use or enterprise is objectionable, based on the foregoing criteria, then, and in that event, RMEF shall make a good faith effort to advise Grantor how the proposal set forth by Grantor can be modified to conform

with the purposes of the provisions of this Easement. Response from the RMEF shall then inform Grantor of the manner in which the proposed activity, use or enterprise can be modified to be consistent with this Easement.

C. RMEF's Failure to Respond. If the RMEF fails to post its response to a proposal sent to it by the Grantor within the ten (10) or twenty (20) day period, as determined pursuant to paragraph B.2 above, after the proposal is given, then the proposed activity, use or enterprise shall automatically be deemed consistent with the terms of this Easement, and the Grantor will have no further right to object to the activity, use or enterprise described in the proposal.

D. Force Majeure. The Grantor will not be obligated to send any notice to the RMEF, and the RMEF will not be entitled to bring any action against the Grantor, with respect to any prudent activity undertaken by the Grantor in a good faith effort to prevent, abate, or mitigate injury to the Property from fire, flood, storm, earth movement, acts of war, and similar causes beyond the control of the Grantor. Grantor will promptly inform the RMEF of injury to the Property caused by such events.

#### SECTION V - PROHIBITED USES AND PRACTICES

Except for uses which are expressly permitted hereby, including those uses set forth in Section III, any activity on or use of the Property specifically prohibited hereby or inconsistent with the purposes of this Conservation Easement or materially detrimental to the Conservation Values is expressly prohibited. The Grantor states and agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are deemed to be inconsistent with the purposes of this Easement, and shall be prohibited:

A. Commercial Facilities and Activities. The Grantor will not establish or conduct any commercial or industrial facilities or activities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, any restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, snowmobiling, gas station, retail outlet or facility for the manufacture or distribution of any product. Nothing in this paragraph shall prohibit commercial recreational, equestrian, ranching, farming or agricultural uses.

B. Subdivision. The Grantor will not divide, subdivide, parcel, or take any action (including entering into any lease or other agreement) which creates an actual or de facto subdivision of the Property, except as permitted by Paragraph B, Section III.

C. Construction. The Grantor will not construct any structures or facilities except as otherwise provided in paragraphs A, C and G of Section III.

D. Roads. The Grantor will not construct any new roads except in connection with forest management, stock and wildlife water development, and activities specifically provided for in Section III, such as roads to access buildings, newly subdivided lots and utility installations. Any road constructed for temporary use will be reclaimed and restored to its original condition, by regrading and planting of native seed mix, within six (6) months after discontinued use, subject to seasonal growing conditions and limitations.

E. Alteration of Watercourses and Topography. The Grantor will not change, disturb, alter, excavate, or impair any watercourse or wetland or the topography of the surface of the ground on the Property, except as expressly permitted by this Easement.

F. Timber Harvesting. The Grantor does not have the right to harvest timber on the Property except as specifically allowed in Section III, paragraph K.

G. Mineral Activities. Except as permitted by Section III.L., the Grantor cannot explore for or extract oil, gas, and other minerals, rock, gravel, or sand found in, on or under the Property (or lease, sell or otherwise dispose of the rights to such materials) unless it obtains the prior consent of the RMEF pursuant to Section IV of this Easement. The RMEF will only consent to such activities on the following conditions:

(i) No water shall be utilized in connection with such activities which would cause interference with the surface water, wells, streams, or other sources of water used by wildlife, livestock, or for residential purposes on the Property.

(ii) Whenever possible, access to exploration and/or extraction sites shall be by existing roads. Any new roads shall be constructed in a good and work like manner, with proper drainage, including culverts where necessary, so that as little erosion as possible shall result. No roads shall be constructed without the prior written approval of the RMEF as to the location, route, and type of construction to be used.

(iii) Any surface disturbance shall be restored upon the completion of exploration or extraction activities to a condition similar or equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation.

(iv) Any waste water resulting from such activities which is of materially poorer quality than existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies. Any saltwater produced from drilling operations must be disposed of off the Property.

(v) There shall be no exploration for or extraction of oil, gas, other minerals, rock, gravel, or sand by any surface mining method, within the meaning of Section 170 (h) (5) (B) of the Internal Revenue Code and the regulations promulgated thereunder, nor shall there be any exploration or extraction by any subsurface mining method if such activity would, in the sole judgement of RMEF, result in the destruction of the Conservation Values of the Property.

(vi) All such exploration and/or extraction activities shall be in compliance with applicable state and federal laws pertaining to reclamation of the Property.

(vii) All such exploration and/or extraction activities that can be initiated and completed in an estimated time period of less than one (1) year, will be undertaken during that time period which will have the least impact on wildlife, first and foremost, and wildlife habitat and water resources thereafter.

H. Game Farming or Game Farm Animals. The Grantor will not construct, conduct, or operate a game farm, or raise or hold game farm animals, on the Property. For the purposes of this Easement, "Game farm animals" shall be defined as native Colorado big game animals and Colorado non-native mammals capable of breeding with native Colorado big game animals.

I. Commercial Feed Lot. The Grantor will not establish or maintain any commercial feed lot. For the purposes of this Easement, a commercial feed lot shall be defined as a permanently constructed confined area or facility within which the land is not grazed or cropped usually, for purposes of engaging in the business of the reception and feeding of livestock for

J. Off-Road Vehicles. The Grantor will not use vehicles off of existing roads and travelways in a manner which may result in significant erosion or compaction of the soil, on the natural appearance of the Property, material interference with vegetation, or interference with the natural habitats of those animal species occurring on the Property, this does not prohibit the recreational use of ATVs. The parties recognize, however, that use of off-road vehicles may be necessary in ranch management and retrieval of harvested game animals, and such limited use is therefore expressly permitted, provided that all reasonable efforts are made to minimize any adverse impact of the use, consistent with the and intent of this Easement.

~~Harassment of elk or other wildlife by persons is prohibited~~ Harassment of elk or other wildlife by persons is prohibited

L. Dumping. Trash, debris, ashes, sawdust, and other non-compostable refuse may be dumped or otherwise disposed of on the Property, except that generated by the Primary Uses, then only within the Building Envelope or within an area on the Property designated as a common dump area for the owners of lots within the Property, and normal ranching operations, and as permitted by applicable state and federal laws. The location of a common dump area shall be subject to the prior approval of RMEF which approval shall not be unreasonably withheld.

M. Utilities. Except for on grade vaults, pedestals and similar facilities, all utility structures and systems installed after the date hereof, must be buried, unless prior approval is obtained from RMEF.

O. Non-native Species. Except as permitted by Section III.A., the Grantor will not introduce any non-native plant or animal species.

P. Raptor Nests. The Grantor will not cut or disturb any trees or other vegetation within 300 feet of any active raptor nest during the nesting season, or remove any crown tree or over story vegetation within 300 feet of any active raptor nest at any time. However, diseased trees may be cut down and removed during the non-nesting season to abate infestation or if necessary to comply with wildfire protection regulations.

Q. Aircraft Facilities. The Grantor will not construct or erect any aircraft facilities or aircraft landing facilities on the Property if the same will be detrimental to the known elk herd which has a calving area in the immediate vicinity of the location of such facilities and in such case, said facilities may be built but may not be operated during the time of year when calving takes place. Grantor shall obtain the consent of RMEF, which shall take into consideration the provisions of this paragraph in determining whether or not to provide such consent, and such consent shall not be unreasonably withheld.

R. Billboards. The Grantor will not construct, maintain, or erect any commercial signs or billboards on the Property. Small signage may, however, be displayed to state the name of the owner and Property, that the area is protected by this Easement, the prohibition of any unauthorized entry or use, or the advertisement for the sale of the Property.

#### SECTION VI - BREACH, RESTORATION, AND REMEDIES

A. Breach and Restoration. If a violation of any prohibition contained in Section V of this Easement, or damage to the Conservation Values associated with the Property, whether by the Grantor or by a third party, comes to the attention of the RMEF, the RMEF may notify Grantor in writing of such violation. Upon receipt of such notice by the RMEF, the Grantor agrees to immediately cease and desist from any actions which may in any manner violate the terms or intent of this Easement and/or the prohibitions contained in Section V.

The Grantor shall have thirty (30) days after receipt of such notice to undertake actions including initiation of restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If the Grantor fails to take such corrective action, the RMEF may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of such corrections, including the RMEF's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor, through either action or inaction, is determined to be responsible for the violation. In the event Grantor is determined to not be in violation of this Easement, then the Grantor's legal fees shall be paid by RMEF. Provided, however, and



Notwithstanding any provision of this Easement to the contrary, the Grantor expressly agrees that if any activities are taking place on the Property which violate the terms or intent of this Easement and/or the restrictions contained in Section V, that the RMEF is entitled, at any time, to seek and obtain any injunctive relief or writs from a court of competent jurisdiction so as to conserve and protect the Property until there is final resolution of any dispute.

B. Injunctive and Other Relief. The Grantor and the RMEF further intend that should the Grantor undertake or cause to be undertaken any activity which requires the approval of the RMEF without obtaining the prior consent of the RMEF in the manner required by Section IV of this Easement, or undertake or cause to be undertaken any activity in violation of the terms of this Easement, then the RMEF, at the RMEF's sole election, shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities, or force the restoration of that portion of the Property affected by such activity to a condition similar or equivalent to the condition that existed prior to the undertaking of such unauthorized activity, by restoring soils, replanting suitable domestic vegetation, or taking such other action as the RMEF deems necessary to achieve restoration. In such case, the costs of such restoration and the RMEF's costs of suit, including attorney's fees, shall be borne by Grantor or those of its successors or assigns against whom a judgment is entered, or in the event that the RMEF secures redress without a completed judicial proceeding, by Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity. In the event a judgment is entered against RMEF in an effort to seek injunctive relief or restoration and Grantor is held not to be in violation of this Easement, then RMEF shall pay Grantor's costs of suit, including attorney's fees. Nothing contained in this Easement shall be construed to preclude the Grantor from exhausting its legal remedies in determining whether the proposed activity to which the RMEF has objected is inconsistent with this Easement. The parties hereto covenant and agree that the obligation to restore the Property to its prior condition, as provided in this Section VI, may be enforced only against that party or parties who shall have caused such damage, including, but not limited to the Grantor and the heirs, personal representatives, successors, or assigns of the Grantor.

C. Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened acts of non-compliance under this Easement constitutes immediate and irreparable harm. RMEF is entitled to invoke the equitable jurisdiction of any court to enforce this Easement.

D. Cumulative Remedies. The remedies of RMEF set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by the RMEF if there is an actual or threatened violation of this Easement.

E. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the RMEF's right to eventually enforce the terms of this Easement.

#### SECTION VII - MANAGEMENT PLAN

The RMEF and the Grantor may agree, by mutual consent, to prepare a management plan (or modification of a prior management plan) for the Property. This plan shall be a guideline, consistent with the terms of this Easement. It will propose ways to manage the land to restore and enhance the terrestrial, aquatic, and wetlands for wildlife and fish use and production. The parties intend that the management plan, and future modifications, will be a mutual and cooperative planning effort, and will assist by mutual consent in implementing the goals and provisions of this Easement. The management plan is not intended to be a binding legal document, but a facilitating management strategy. The Grantor will meet at least every two years with the area Colorado Division of Wildlife biologist to review big game animal use and management opportunities on the Property.

#### SECTION VIII - COSTS AND TAXES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Colorado law. Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority on the Property.

SECTION IX - INDEMNITY

The Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property and agrees to indemnify the RMEF against all claims and obligations arising from such operation, upkeep, and maintenance activities. Grantor also agrees to defend and indemnify RMEF against obligations arising from past, present or future dumping of hazardous materials on the Property and any obligations associated with their cleanup or containment of their impacts.

SECTION X - ASSIGNMENT OF EASEMENT

The RMEF may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of Section 170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Any such "qualified organization" shall agree to enforce the conservation purposes protected by this Easement. The RMEF agrees that it will make a reasonable effort in the event of any assignment to choose an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c) (1) of the Code, which has conservation of natural resources as a substantial organizational purpose; and provided further, that the RMEF represents to the Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of the RMEF. The RMEF will receive the consent of the Grantor before making any assignment of this Easement, and such consent will not be unreasonably withheld by Grantor.

SECTION XI - BASELINE DATA

The parties acknowledge that an inventory of baseline data relating to the Property has been completed by competent professionals familiar with the Property, and furnished by the Grantor to the RMEF. Copies of this inventory of baseline data are on file in the RMEF's offices in Missoula, Montana. The parties acknowledge that this collection of baseline data contains an accurate representation of the condition of the Property subject to this Easement and natural resources associated with the Property as of the date of the execution of the Easement in accordance with Treasury Regulation §1.170A-14(g) (5) (I).

Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

SECTION XII - EXTINGUISHMENT OF DEVELOPMENT RIGHTS

The Grantor hereby acknowledges the extinguishment of all development rights except as specifically reserved herein that are now, or hereafter may be, allocated, implied, reserved or inherent to the Property, and the Grantor agrees that all of Grantor's rights or interest in such development rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield or density of the Property or any other property with regard to any land use or zoning which affects, or may affect, the Property.

SECTION XIIIEXTINGUISHMENT OF EASEMENT - COMPENSATION

The Grantor and the RMEF agree that the donation of this Easement gives rise to a property right, immediately vested in the RMEF. The RMEF's property right in this Easement shall be based on the condition and improvements on the Property at the time that the Easement is established, and this condition shall be documented as referred to in Section XI above. For purposes of this Section, the property right shall be deemed to have a fair market value at least equal to the proportionate value that this Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of the RMEF's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Easement, as provided in Treasury Regulation Section 1.170A-14(g) (6) (I), if a portion of the RMEF's rights under this Easement, the RMEF, on a subsequent sale, exchange, conveyance, or involuntary conversion of the Property or a portion of the Property, shall be entitled to a portion of the proceeds at least equal to such proportionate value of

this Easement as established at the time of its creation, unless under the laws of Colorado the Grantor shall be entitled to the full proceeds from the sale, exchange, or conversion without regard to the terms of this Easement. All interpretations of the RMEF's property rights shall follow Treasury Regulation Section 1.170.

Whenever all or part of the Property is taken in exercise of eminent domain, or under claim of rights of eminent domain, by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, the Grantor and the RMEF shall join in appropriate actions to recover the full value of the Property taken and all incidental or direct damages resulting from such taking. All expenses incurred by the Grantor or the RMEF in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between the Grantor and the RMEF in proportion to their interest in the Property, as provided in the first paragraph of this Section.

The Grantor agrees that this Easement will be recorded in the real property records of San Miguel County and reference hereto shall be made in any subsequent deed, or other legal instrument, by means of which they convey any interest in the Property (including any leasehold interest). The Grantor will notify the RMEF in writing of any conveyance of interest by sending written notice to the RMEF as provided in paragraph A of Section IV. The Grantor agrees to provide notice of this Easement to successor owners of interest, and to any potential purchasers or subsequent owners. In the event the Grantor elects to sell some or all of the Property, the Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information.

#### SECTION XIV - MISCELLANEOUS PROVISIONS

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

H. Enforcement. The Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of the RMEF, and that the RMEF's failure to exercise its rights under this Easement in the event of any breach of this Easement by the Grantor shall not be deemed or construed to be a waiver of the RMEF's rights under this Easement in the event of any subsequent breach.

I. "Grantor" and "RMEF". The terms "Grantor" and "RMEF", as used in this Easement, and any pronouns used in place thereof, shall mean and include the above-named Grantor, and its heirs, personal representatives, executors, successors and assigns, and the RMEF and its successors and assigns, respectively.

J. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

K. Amendment. Nothing in this Easement shall be construed to preclude the Grantor from making a subsequent conveyance of rights in the Property to further protect its conservation values, provided, however, that any such subsequent conveyance shall not impair any conservation purpose sought to be advanced by this Easement. This Easement may only be amended by the mutual agreement of the parties hereto during their ownership of the Property, or subsequently, their successors or assigns, provided any such amendment shall not impair the conservation purposes of this Easement.

L. Liberal Construction. This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with CRS 38-30.5-101, et seq.

If any provision of this Easement is held to be invalid or in violation of IRS regulations concerning conservation easements, then that section will be null and void and of no effect and such invalidity shall not have any affect on the remaining provisions of this easement.

M. Successors. This Easement is binding upon, and will inure to the benefit of the Grantor's and the RMEF's successors in interest. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as the Grantor.

N. Governing Law. This Easement will be construed in accordance with Colorado Law

O. Entire Agreement. This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

J. Compliance with Law. All uses and practices permitted by this Easement, including the Primary Uses, will not exceed or violate but will be in full compliance with all applicable state and federal laws.

IN WITNESS WHEREOF, the Grantor and the RMEF execute this Easement

GRANTOR:  
BILLORADO PROPERTIES a Colorado General Partnership

By: William W. Carstens  
William W. Carstens, Trustee  
under Trust dated 2/7/80  
General Partner

RMEF

ROCKY MOUNTAIN ELK FOUNDATION, INC

By: Robert W. Munson  
Robert W. Munson  
President

STATE OF COLORADO )

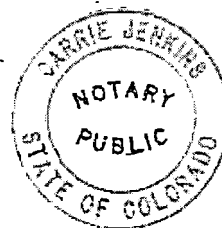
COUNTY OF SAN MIGUEL

SS

The foregoing instrument was acknowledged before me this 19th day of December, 1996, at 3:50 p.m. by William W. Carstens, Trustee under Trust dated 2/7/80, General Partner of Billorado Properties, a Colorado General Partnership.

My commission expires: MY COMMISSION EXPIRES:  
December 17, 1997

Carrie Jenkins  
Notary Public



STATE OF MONTANA

County of Missoula )

SS

On this 20 day of December, 1996, Robert W. Munson, who is known to me to be the President of Rocky Mountain Elk Foundation, Inc., and the person whose name is subscribed to the instrument set forth above, personally appeared before me, Connie McLaughlin, a Notary Public for the State of Montana, and acknowledged that he executed the same on behalf of Rocky Mountain Elk Foundation, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal on the date above written.

(SEAL

Connie McLaughlin  
Notary Public for the State of Montana  
Residing at Missoula, Montana  
My commission expires 10-15-99

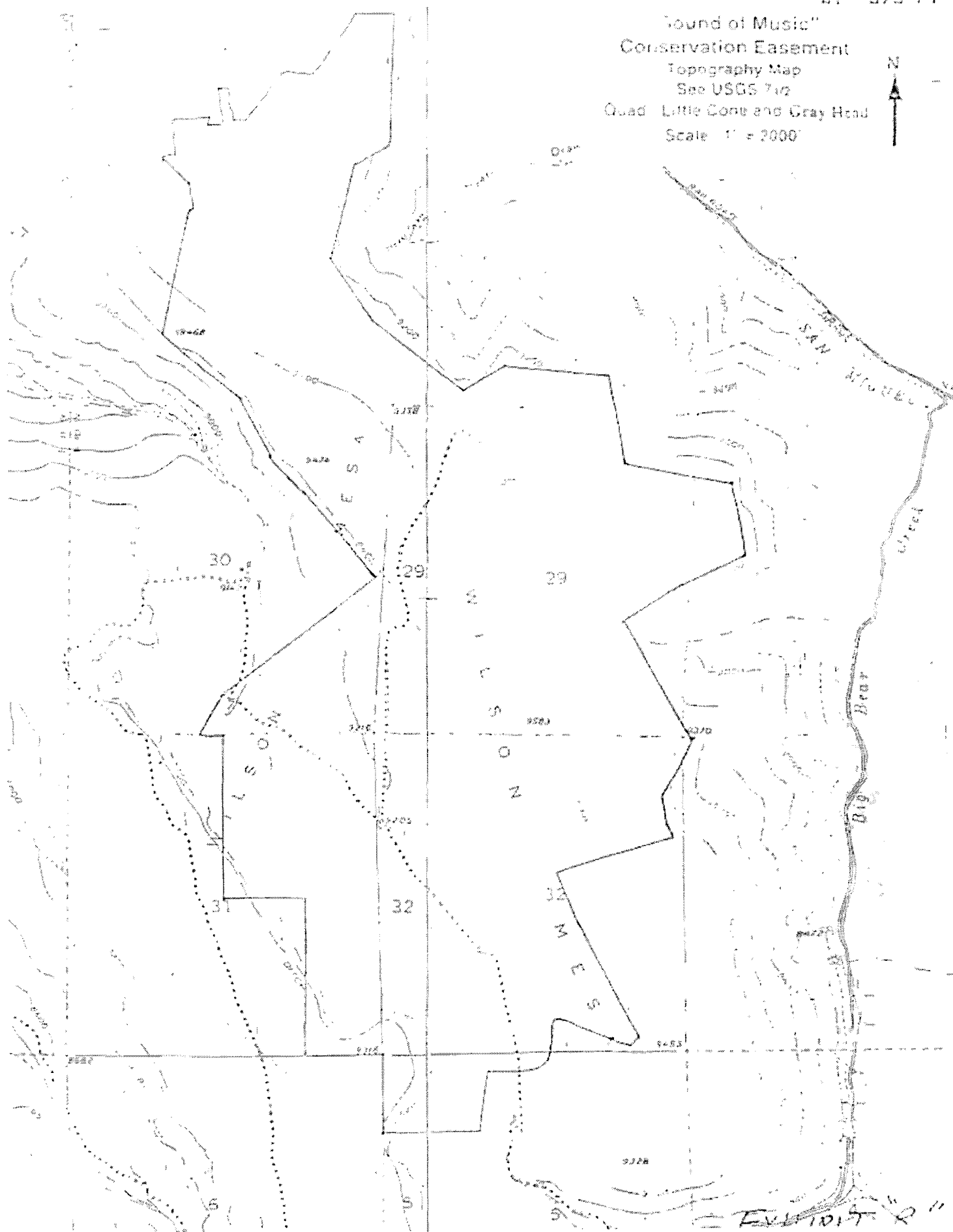
BILLORAD\CONSVHKR.ES6

## EXHIBIT "A"

### Wilson Mesa Conservation Easement Property

A parcel of land consisting of 1,994 acres mol located in Sections 18, 19, 20, 28, 29, 30, 31, 32 and 33, Township 43 North, Range 10 West, and Sections 4 and 5, Township 42 North, Range 10 West, of the New Mexico Principal Meridian designated as Lot 2, Amended Replat of Sound of Music, according to the Map recorded February 6, 1992 in Plat Book 1 at Page 1239, Except that portion conveyed in Deed recorded August 30, 1994 in Book 534 at Page 344, County of San Miguel, State of Colorado.

"Sound of Music"  
 Conservation Easement  
 Topography Map  
 See USGS 712  
 Quad Little Cone and Gray Head  
 Scale 1" = 2000'



## EXHIBIT C

329644  
B: 573 P: 643UNITED STATES DEPARTMENT OF AGRICULTURE  
Soil Conservation ServiceMT-JS-ES-502  
RANGE (Rev. July 1961)GUIDE TO DEGREE OF USE

DEGREE OF USE	DESCRIPTION
Unused 0 percent	No livestock use.
Slight 1-20 percent	Practically undisturbed. Only choice areas and choice forage grazed.
Moderate 21-40 percent	Most of the accessible range shows grazing. Little or no use of poor forage. Little trailing to grazing.
Full (This or less use is Proper Use.) 41-50 percent	All fully accessible area are grazed. Major sites have key forage species properly utilized. Overused areas less than 10 percent of pasture area.
Close 51-60 percent	All accessible range plainly shows use and major sections are closely cropped. Livestock forced to use much poor forage.
Severe 61-80 percent	Key forage species almost completely used. Low-value forage carrying grazing load. Trampling damage is wide spread in accessible area.
Extreme 81-100 percent	Range appears stripped of vegetation. Key forage species are weak from continual grazing of regrowth. Poor quality forage closely grazed.

1. Determine the degree of use at or near the end of the grazing period.
2. Proper use determination is based on key species on major sites, not total vegetation.
3. When properly grazed, the vegetation left will supply adequate cover for soil protection and will maintain or improve the quantity and quality of desirable vegetation.

Proper Use of Annual Growth Depends on SEASON OF USE:

Spring Use	(Moderate)
Summer and Early Fall Use	- (Full)
Late Fall and Winter Use	- Dormant Season (close)

Remarks:

EXHIBIT "C"