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Michael J. Sawyer
Partner/Shareholder

mjs@mountainlawfirm.com
Office: 970.945.2261
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***Direct Mail to Glenwood Springs**

August 11, 2020

Sent via email:

Lucas West
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RECEIVED

OCT 22 2020

**DIVISION OF RECLAMATION
MINING AND SAFETY**

Re: Application M2020-08, Scott Contracting Rifle Gravel Pit #1

Dear Mr. West:

As you are aware, my firm represents Island Park LLC, the owner of property adjoining the northwest side of the land included in the Scott Contracting Inc. ("Scott") application referenced above. We have reviewed Scott's most recent response to comments received by DRMS on August 5, 2020 ("Scott Response to Comments") in addition to your Fourth Adequacy Review dated September 8, 2020. We continue to have serious concerns regarding the adequacy of the application materials submitted to DRMS. The purpose of this letter is to demonstrate why Scott's mining plan application must be denied by DRMS.

As a preliminary matter, Scott suspended its application with Garfield County for a Land Use Change permit for the gravel pit. Approval from Garfield County is required prior to any dewatering operations. Scott has represented that it intends to undertake a different dewatering plan than the one identified in its DRMS application materials. As you identify in your Fourth Adequacy Review, Scott has not submitted a copy of the revised dewatering plans. DRMS simply cannot grant a permit that is premised upon a dewatering plan that the applicant has indicated will not be developed.

1. Scott has produced no evidence of a legal easement to convey the discharged waters from the Permitted Area, across the Island Park property and back to the Colorado River pursuant to Rules 3.1.6(1) and 6.4.14.

Scott's application incorrectly states that the Island Park ditch crosses the Scott property. See Scott Response to Comments, 2(f). The Island Park ditch does not cross any portion of the Scott property and it never has. Instead, the ditch crosses exclusively property owned by Island Park and the neighboring Grant Bros. Ranch Ltd. ("Grant Bros.") property. **Exhibit A.** The ditch was constructed sometime between 1960 and 1970 by Island Park and the predecessors-in-interest to Grant Bros to provide better drainage for those two properties. Island Park and Grant Bros. are the only entities which may consent to use of the Island Park ditch. Island Park disputes that water from the Scott parcel has ever been deposited into the Island Park ditch. As a result, Scott holds no prescriptive easement rights to use the ditch. Even if Scott were to demonstrate a prescriptive right to use the ditch, Scott is legally precluded from increasing the manner (including sedimentation),

amount or timing of drainage water emanating from their property into a private ditch. *Hawkins v. Borland*, 431 P.3d 1007 (Colo. 1967). Furthermore, Scott provides no evidence for its statement asserting that its proposed use of the Island Park ditch “would be similar to that which already exists and would be virtually undetectable to the layperson.” See Scott Response to Comments, 2(f).

Ultimately, the materials submitted by Scott attempt to confuse the Island Park ditch with the Last Chance ditch. Scott asserts that “[t]he tailwater ditch on the property is not owned or managed by any entity.” See response to comments at 9(b). This statement is false. To clarify, the Island Park ditch is not owned by or part of the Loesch and Crann/Last Chance ditch and is not managed by the Last Chance Ditch Co. By private agreement, Island Park and Grant Bros. permit the Last Chance Ditch Co. to use the Island Park ditch on occasion to discharge water as necessary to re-regulate flows in the Last Chance ditch. Island Park, Grant Bros., and the Last Chance Ditch Co. are the exclusive parties to this agreement. It is a limited license granted exclusively to Last Chance Ditch Co. The agreement involved no other surrounding properties and granted no other third-party any rights.

Enclosed with this letter is a Title Commitment for the Island Park property for your review. **Exhibit B.** The Commitment includes a list of specific record title matters that encumber the Island Park property for the benefit of third parties. You will note that none of the record title exceptions benefit the Scott parcel. Scott has no legal right to use or discharge water into the ditch which is the only means identified in the submittals to DRMS for disposing of 7 c.f.s. of water required to dewater the pit. Island Park disputes that the ditch has sufficient capacity to include the increased flow from dewatering operations. With the addition of 7 cfs into the Island Park ditch, Scott’s activities will result in the ditch overtopping at times of the year and flooding to the Island Park property. Moreover, Scott provides no evidence for its position that only clean and filtered water will be deposited into the ditch.

2. Scott has failed to demonstrate that wetlands located within the proposed Permit Boundary as well as on Island Park property are fed solely by irrigation waters and that lowering the groundwater by the dewatering operations will not cause injury to these wetlands.

The Island Park property includes a significant stretch of the Colorado River that provides superior riparian habitat for a wide range of resident wildlife and migrating waterfowl. Island Park has invested in the enhancement of wildlife and waterfowl habitat on its property. Dewatering from a gravel pit can depress the water table, altering groundwater flow paths thereby affecting nearby wells, springs, wetlands and surface-water bodies. The Scott report, for all its flaws, does show a significant lowering of the groundwater table under the Island Park property. This will harm the wetlands and mesic areas on the Island Park land. Scott cannot receive an approval for a gravel pit that injures the vegetation on the Island Park property.

Further, the burden of proof is on Scott to prove that the wetlands on the Scott property are either: (a) supported entirely by irrigation water and therefore non-jurisdictional, or (b) no longer meeting the regulatory definition of wetlands. Scott acknowledges that: (a) the construction of the pit will destroy wetlands on the Scott property, and (b) dewatering operations will depress groundwater in adjacent wetlands and contribute to a loss of wetland conditions. The information provided by Scott is inadequate to establish that the wetlands are fed solely by irrigation and that the harm to the

wetlands will be accomplished only by limiting agricultural water to the Scott property. Scot has failed to supply a mitigation plan for injury to these wetlands. As such, no approval can be granted due to inadequate wetlands analysis and approved plan for mitigation.

Finally, Aspen Valley Land Trust ("AVLT") holds a conservation easement on a portion of the Island Park property. **Exhibit C.** The Scott activities of lowering the groundwater table and depositing water into the Island Park ditch will harm to the conservation values protected by the conservation easement. Scott's proposed activities are inconsistent with the purposes of and will interfere with the conservation easement.

In conclusion, Scott has failed to submit a response to your Fourth Adequacy Review. As a result, DRMS must deny the application as a matter of law.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS: dts

cc: Island Park

Enclosures: Title Commitment No. 63015724;

Amended and Restated Deed of Conservation Easement in Gross recorded in the Garfield County real estate records at Reception No. 689688.





LAND TITLE GUARANTEE COMPANY

Date: September 02, 2020

Subject: Attached Title Policy/Guarantee

Enclosed please find your product insuring the property located at 1676 COUNTY ROAD 100, CARBONDALE, CO 81623.

If you have any inquiries or require further assistance, please contact Scott Cieslewicz at (303) 850-4189 or scieslewicz@ltgc.com

Chain of Title Documents:

[Garfield county recorded 08/24/1994 under reception no. 467662](#)

Property Information Binder

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this Binder mean:

- (a) "Land": The land described, specifically or by reference, in this Binder and improvements affixed thereto which by law constitute real property;
- (b) "Public Records": those records which impart constructive notice of matters relating to said land;
- (c) "Date": the effective date;
- (d) "the Assured": the party or parties named as the Assured in this Binder, or in a supplemental writing executed by the Company;
- (e) "the Company" means Old Republic National Title Insurance Company, a Minnesota stock company.

2. Exclusions from Coverage of this Binder

The company assumes no liability including cost of defense by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.
- (b) Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
- (c) Title to any property beyond the lines of the Land, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) Mechanic's lien(s), judgment(s) or other lien(s).
- (e) Defects, liens, encumbrances, adverse claims or other matters: (a) created, suffered or agreed to by the Assured; (b) not known to the Company, not recorded in the Public Records as of the Date, but known to the Assured as of the Date; or (c) attaching or creating subsequent to the Date.

3. Prosecution of Actions

- 1. The Company shall have the right at its own costs to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish or confirm the matters herein assured; and the Company may take any appropriate action under the terms of this Binder, whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision hereof.
- 2. In all cases where the Company does not institute and prosecute any action or proceeding, the Assured shall permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured shall give the Company all reasonable aid in prosecuting such action or proceeding, and the Company shall reimburse the Assured for any expense so incurred.

4. Notice of Loss - Limitation of Action

A statement in writing of any loss or damage for which it is claimed the Company is liable under this Binder shall be furnished to the Company within sixty days after such loss or damage shall have been determined, and no right of action shall accrue to the Assured under this Binder until thirty days after such statement shall have been furnished, and no recovery shall be had by the Assured under this Binder unless action shall be commenced thereon with two years after expiration of the thirty day period. Failure to furnish the statement of loss or damage or to commence the action within the time hereinbefore specified, shall be conclusive bar against maintenance by the Assured of any action under this Binder.

5. Option to Pay, Settle or Compromise Claims

The Company shall have the option to pay, settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Binder, or to pay the full amount of this Binder. Such payment or tender of payment of the full amount of the Binder shall terminate all liability of the Company hereunder.

6. Limitation of Liability - Payment of Loss

- (a) The liability of the Company under this Binder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall the liability exceed the amount of the liability stated on the face page hereof.
- (b) The Company will pay all costs imposed upon the Assured in litigation carried on by the Company for the Assured, and all costs and attorneys' fees in litigation carried on by the Assured with the written authorization of the Company.
- (c) No claim for loss or damages shall arise or be maintainable under this Binder (1) if the Company after having received notice of any alleged defect, lien or encumbrance not shown as an Exception or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice, or (2) for liability voluntarily assumed by the Assured in settling any claim or suit without written consent of the Company.
- (d) All payments under this Binder, except for attorney's fees as provided for in paragraph 6(b) thereof, shall reduce the amount of the liability hereunder pro tanto, and no payment shall be made without producing this Binder or an acceptable copy thereof for endorsement of the payment unless the Binder be lost or destroyed, in which case proof of the loss or destruction shall be furnished to the satisfaction of the Company.
- (e) When liability has been definitely fixed in accordance with the conditions of this Binder, the loss or damage shall be payable within thirty days thereafter.

7. Subrogation Upon Payment or Settlement

Whenever the Company shall have settled a claim under this Binder, all right of subrogation shall vest in the Company unaffected by any act of the Assured, and it shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Binder not been issued. If the payment does not cover the loss of the Assured, the Company shall be subrogated to the rights and remedies in the proportion which the payment bears to the amount of said loss. The Assured, if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect the right of subrogation, and shall permit the Company to use the name of the Assured in any transaction or litigation involving the rights or remedies.

8. Binder Entire Contract

Any action or actions or rights of action that the Assured may have or may bring against the Company arising out of the subject matter hereof must be based on the provisions of this Binder. No provision or condition of this Binder can be waived or changed except by a writing endorsed or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

9. Notices. Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

10. Arbitration

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association.

ANTI-FRAUD STATEMENT: Pursuant to CRS 10-1-128(6)(a), it is unlawful to knowingly provide false, incomplete or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or

attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

This anti-fraud statement is affixed and made a part of this policy.

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Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
(303)321-1880

CB Rantz

Senior Vice President



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 377-1111

By: *C. Monroe* President
Attest: *David Wald* Secretary

AMERICAN
LAND TITLE
ASSOCIATION



Old Republic National Title Insurance Company
PROPERTY INFORMATION BINDER

Order Number: ABS63015724

Policy No.: PIB63015724.2566296

Liability: \$50,000.00

Fee: \$500.00

Subject to the exclusions from coverage, the limits of liability and other provisions of the Conditions and Stipulations hereto annexed and made a part of this Binder,

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, herein called the Company,

GUARANTEES

DALE EUBANK LLC, A COLORADO LIMITED LIABILITY COMPANY

Herein called the Assured, against loss, not exceeding the liability amount stated above, which the assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records as of

August 14, 2020 at 5:00 P.M.

1. Title to said estate or interest at the date hereof is vested in:

DALE EUBANK LLC, A COLORADO LIMITED LIABILITY COMPANY

2. The estate or interest in the land hereinafter described or referred to covered by this Binder :

A FEE SIMPLE

3. The Land referred to in this Binder is described as follows:

A TRACT OF LAND SITUATE IN SECTION 36, TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF A TRACT OF LAND DESCRIBED IN BOOK 364 AT PAGE 167 OF THE RECORDS OF THE CLERK AND RECORDER OF GARFIELD COUNTY COLORADO WHENCE THE WITNESS CORNER TO THE S 1/4 CORNER OF SAID SECTION 36 BEARS S 69 DEGREES 45' E 961.91 FEET; THENCE ALONG THE BOUNDARY DESCRIBED IN SAID BOOK 364 AT PAGE 167 THE FOLLOWING SIX (6) COURSES:

(1) SOUTH 90.13 FEET;

THENCE (2) S 79 DEGREES 17' E 97.63 FEET;

THENCE (3) N 82 DEGREES 30' E 52.93 FEET;

THENCE (4) N 66 DEGREES 14' E 31.76 FEET;

THENCE (5) SOUTH 632.72 FEET;

THENCE (6) N 89 DEGREES 24'40" W 661.35 FEET ALONG THE SOUTH LINE OF GOVERNMENT LOT 23 OF SAID SECTION 36; THENCE N 52 DEGREES 22'35" W 708.14 FEET;

Old Republic National Title Insurance Company

PROPERTY INFORMATION BINDER

Order Number: ABS63015724

Policy No.: PIB63015724.2566296

THENCE NORTH 300.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD;
THENCE EASTERLY 1060 FEET MORE OR LESS ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID DENVER & RIO GRANDE WESTERN RAILROAD;
THENCE SOUTH 40 FEET MORE OR LESS ALONG THE EAST LINE OF GOVERNMENT LOT 15 OF SAID SECTION 36 TO THE SOUTHEAST CORNER OF SAID LOT 15;
THENCE WEST 15 FEET MORE OR LESS ALONG THE SOUTH LINE OF GOVERNMENT LOT 15 ALSO BEING THE NORTH LINE OF GOVERNMENT LOT 23 TO THE POINT OF BEGINNING, COUNTY OF GARFIELD, STATE OF COLORADO.

4. The following documents affect the land:

1. (THIS ITEM WAS INTENTIONALLY DELETED)
2. (THIS ITEM WAS INTENTIONALLY DELETED)
3. (THIS ITEM WAS INTENTIONALLY DELETED)
4. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED APRIL 21, 1947, IN BOOK 218 AT PAGE 564.
5. ANY VESTED AND ACCRUED WATER RIGHTS FOR MINING, AGRICULTURAL, MANUFACTURING, OR OTHER PURPOSES IN THE LAND SO ENTERED AND PATENTED TOGETHER WITH THE RIGHT TO PROSPECT AS CONTAINED IN PATENT RECORDED APRIL 21, 1947, IN BOOK 218 AT PAGE 564.
6. (THIS ITEM WAS INTENTIONALLY DELETED)
7. AN UNDIVIDED ONE-FOURTH INTEREST IN AND TO ALL OIL, GAS AND OTHER MINERALS TOGETHER WITH THE RIGHT OF ENTRY AS RESERVED IN INSTRUMENT RECORDED NOVEMBER 24, 1958 IN BOOK 312 AT PAGE 390, ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
8. (THIS ITEM WAS INTENTIONALLY DELETED)
9. (THIS ITEM WAS INTENTIONALLY DELETED)
10. TERMS, CONDITIONS AND PROVISIONS OF PRIVATE WAY LICENSES RECORDED AUGUST 19, 1982 IN BOOK 606 AT PAGE 693 AND RECORDED AUGUST 19 1982 IN BOOK 606 AT PAGE 730.
11. TERMS, CONDITIONS AND PROVISIONS OF PRIVATE WAY LICENSE RECORDED AUGUST 19, 1982 IN BOOK 606 AT PAGE 718.
12. EASEMENTS AND RIGHT OF WAY AS CONTAINED IN INSTRUMENT RECORDED MAY 10, 1984 IN BOOK 649 AT PAGE 520.
13. TERMS, CONDITIONS AND PROVISIONS OF ASSIGNMENT RECORDED AUGUST 24, 1994 IN BOOK 913 AT PAGE 631.
14. EASEMENTS AND RIGHTS OF WAY AS RESERVED IN INSTRUMENT RECORDED AUGUST 24, 1994 IN BOOK 913 AT PAGE 635.
15. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION #97-44 RECORDED MAY 06, 1997 IN BOOK 1017 AT PAGE 860.
16. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION #97-88 RECORDED SEPTEMBER 16, 1997 IN BOOK 1034 AT PAGE 264.
17. EASEMENTS AND RIGHTS OF WAY AS CONTAINED IN HOLY CROSS EASEMENT RECORDED OCTOBER

Old Republic National Title Insurance Company

PROPERTY INFORMATION BINDER

Order Number: ABS63015724

Policy No.: PIB63015724.2566296

- 14, 1997 IN BOOK 1038 AT PAGE [495](#) AND RECORDED JULY 10, 2000 IN BOOK 1196 AT PAGE [670](#).
18. TERMS, CONDITIONS AND PROVISIONS, EASEMENTS AND RIGHTS OF WAY AS CONTAINED IN EASEMENT AGREEMENT RECORDED NOVEMBER 12, 1998 IN BOOK 1097 AT PAGE [803](#).
19. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION RECORDED JULY 22, 1998 IN BOOK 1079 AT PAGE [425](#).
20. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT AGREEMENT RECORDED NOVEMBER 12, 1998 IN BOOK 1097 AT PAGE [803](#) AND RECORDED OCTOBER 16, 2003 IN BOOK 1529 AT PAGE [808](#).
21. TERMS, CONDITIONS AND PROVISIONS OF HOLY CROSS AGREEMENT RECORDED APRIL 26, 1999 IN BOOK 1126 AT PAGE [316](#).
22. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION RECORDED AUGUST 28, 2003 IN BOOK 1512 AT PAGE [499](#).
23. ACCESS TO THE SUBJECT PROPERTY IS LIMITED TO THE TERMS, CONDITIONS AND PROVISIONS OF LICENSE AGREEMENT BY AND BETWEEN DALE EUBANK, LLC. AND THE ROARING FORK TRANSPORTATION AUTHORITY DATED JUNE 1, 1995 AND RECORDED OCTOBER 1, 2010 UNDER RECEPTION NO. [792324](#) AND THOSE AGREEMENTS LISTED ABOVE.
- FIRST AMENDMENT TO SAID ACCESS LICENSE RECORDED OCTOBER 1, 2010 UNDER RECEPTION NO. [792325](#).
24. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 2013-31 RECORDED MAY 07, 2013 AT RECEPTION NO. [834955](#).
25. DEED OF TRUST DATED JANUARY 25, 2012 FROM CARBONDALE MINI-STORAGE LLC AND CIRCLE E PROPERTY MANAGEMENT LLC AND DALE EUBANK LLC TO THE PUBLIC TRUSTEE OF GARFIELD COUNTY FOR THE USE OF BANK OF COLORADO TO SECURE THE SUM OF 4,000,000.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED JANUARY 27, 2012, UNDER RECEPTION NO. [813852](#).
- SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED JANUARY 27, 2012, UNDER RECEPTION NO. [813853](#).
26. DEED OF TRUST DATED JANUARY 10, 2013, FROM DALE EUBANK LLC, A COLORADO LIMITED LIABILITY COMPANY TO THE PUBLIC TRUSTEE OF GARFIELD COUNTY FOR THE USE OF BANK OF COLORADO TO SECURE THE SUM OF \$1,000,000.00 RECORDED JANUARY 11, 2013, UNDER RECEPTION NO. [829896](#).
- SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED JANUARY 13, 2013, UNDER RECEPTION NO. [829897](#).
27. DEED OF TRUST DATED DECEMBER 16, 2016 FROM DALE EUBANK LLC, A COLORADO LIMITED LIABILITY COMPANY TO THE PUBLIC TRUSTEE OF GARFIELD COUNTY FOR THE USE OF BANK OF COLORADO TO SECURE THE AGGREGATE SUM OF \$16,725,000.00 RECORDED DECEMBER 19, 2016 UNDER RECEPTION NO. [886706](#).
- SAID DEED OF TRUST WAS FURTHER SECURED BY ASSIGNMENT OF RENTS RECORDED DECEMBER 19, 2016, UNDER RECEPTION NO. [886707](#).



INVOICE

Land Title Guarantee Company
5975 Greenwood Plaza Blvd Suite 125
Greenwood Village, CO 80111
970-945-2610

KARP NEU HANLON ATTORNEYS AT LAW
KARP NEU HANLON ATTORNEYS AT LAW
PO BOX 2030
201 14TH ST #200
GLENWOOD SPRINGS, CO 81602

Reference

Your Reference Number:
Our Order Number: 63015724
Our Customer Number: 8838.2
Invoice Requested by: KARP NEU HANLON ATTORNEYS
AT LAW
Invoice (Process) Date: September 01, 2020
Transaction Invoiced By: George Rietsch
Email Address: grietsch@ltgc.com

Invoice Number: 63015724

Date: September 01, 2020

Order Number: 63015724

Property Address: 1676 COUNTY ROAD 100 CARBONDALE 81623

Parties: A Buyer To Be Determined

Invoice Charges

Previous Amount Due:	\$0.00
Property Information Binder	\$500.00
Total Invoice Amount:	\$500.00
Current Balance Due:	\$500.00

Due and Payable upon receipt

Please make check payable to Land Title Guarantee Company and send to the address at the top of Page 1.
Please reference **Invoice Number 63015724** on your Payment

NOTICE TO TITLE COMPANY: This Deed of Conservation Easement in gross requires a One Hundred Dollar (\$100.00) fee be paid to Aspen Valley Land Trust or its successor organization by purchaser upon purchase of this Property or any portion of this Property, pursuant to Section 16 herein.

**AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT IN GROSS**

COLORADO RIVER PRESERVE

THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("Easement") is executed this 30th day of December 2005, by **GLENWOOD LEGACY PARTNERSHIP, LLLP and STEPHEN S. BALCOMB, KATHARINE RIPPY and MARK BALCOMB** ("Grantors"), to and for the benefit of **ASPEN VALLEY LAND TRUST**, a Colorado nonprofit corporation having offices at 320 Main Street, Suite 204, Carbondale, Colorado 81623 (the "Trust")(collectively, the "Parties").

RECITALS

WHEREAS, Grantors are the owner in fee simple of approximately 195.36 acres of real property on the Colorado River in Rifle, Garfield County, State of Colorado, more particularly described in **Exhibit A** (the "Property"); and

WHEREAS, Grantors donated a conservation easement over approximately 96 acres of land, to the Trust on December 15, 2004 ("First Donation Parcel"), recorded in the real property records of Garfield County at Reception No. 665174 ("Original Conservation Easement Deed"); and

WHEREAS, Grantors wish to donate a conservation easement over the remainder of the Property, an additional 99.36 acres of land, to the Trust ("Second Donation Parcel"); and

WHEREAS, for federal and state tax treatment, the addition of the Property to the previous conservation easements herein shall be treated as a separate donation; and

WHEREAS, by this instrument, Grantors wish to amend and restate the Original Conservation Easement Deed to clearly and concisely reflect the acreage encumbered by the Easement, the intent of the Parties, and the uses appurtenant to the Property. To that end, the terms of the Original Conservation Easement Deed have no further force and effect; and

WHEREAS, the Property possesses natural, scenic, open space (including agricultural), wildlife, and recreational values (collectively, "Conservation Values") of importance to the

Return to: Aspen Valley Land Trust
320 Main Street, Ste 204
Carbondale, CO 81623 176
12/30/05
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Trust, the people of Garfield County, and the people of the State of Colorado that are worthy of preservation; and

WHEREAS, the Property is located in a rapidly developing area of Garfield County, where recent development in the vicinity of the Property threatens to degrade the biological integrity as well as the rural and scenic character of the area; and

WHEREAS, in particular, the Property protects a significant stretch of the Colorado River that provides superior riparian habitat, one of Colorado's most important and rare habitats for a wide range of resident wildlife and migrating waterfowl; and

WHEREAS, the Property is also highly visible by the public from the adjacent Highway 70, a major transcontinental highway; nearby through-ways; and the Colorado River; and

WHEREAS, conservation of the Property is promoted by the Garfield County Comprehensive Plan of 2000 which states: "The rural character of Garfield County, particularly the unincorporated portions, is defined in a large extent by the presence of large parcels of open space. These open spaces include... ranch land that provide visual open space opportunities. The Recreation and Open Space element addresses the need to encourage recreational areas within subdivisions and protect important open space in unincorporated areas of the County. The preservation of agricultural land fosters the rural lifestyle, which continues to be a priority for Garfield County residents.... County residents value the rural and open space qualities enhanced by ranch lands and expressed strongly a desire to preserve it to the greatest extent possible. The transition of agricultural lands to more urban uses, particularly in the eastern portion of the County and the Roaring Fork Valley floor, has forced the retainment of open space uses to the forefront of issues currently facing the County. Ranchland provides some of the best possible open space. It is generally well irrigated, green, privately maintained and beneficial to air and watersheds. Maintained agricultural land and undisturbed big game winter range are less likely to be weed infested. The maintenance of open space also encourages the preservation of the rural lifestyle which residents of the County value. Although once taken for granted that agricultural land would remain undeveloped for perpetuity, the last five years has marked a transition point for these land uses. Subdivision development has begun to encroach on agricultural lands, slowly depleting important open space uses...."; and

WHEREAS the Trust acknowledges and agrees that continued use of the land for agricultural production and private recreation does not impair or interfere with the Conservation Values of the Property; and

WHEREAS, Grantors intend, as owner of the Property, to convey to the Trust the right to preserve and protect the Conservation Values of the Property in perpetuity and the Trust agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, the Trust is a charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is a publicly-supported



organization as described in Section 170(b)(1)(A) of the Code whose primary purpose is to preserve and protect the natural, scenic, agricultural, historical, and open space resources of the greater Roaring Fork Valley area, including the area in which the Property is located, by assisting landowners who wish to protect their land in perpetuity, and is a "qualified organization" to do so within the meaning of Section 170(h)(3) of the Code; and

WHEREAS, the State of Colorado has recognized the importance of private efforts toward the preservation of natural systems in the State by the enactment of C.R.S. §§38-30.5-101 *et seq.*; and

WHEREAS, the Board of Directors of the Trust has duly authorized the Trust's Executive Director or her designee to execute and accept conservation easements on behalf of the Trust.

NOW, THEREFORE, in consideration of the matters above, the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows, which agreement shall constitute an amendment to, and restatement of, the Original Conservation Easement Deed:

1. Grant. Grantors hereby voluntarily and irrevocably grant and convey to the Trust a perpetual Conservation Easement in gross (the "Easement"), pursuant to C.R.S. §§ 38-30.5-101 *et seq.*, through the terms mutually agreed to in this Deed of Conservation Easement in Gross ("Easement Deed"), consisting of the rights and restrictions enumerated herein, over and across the Property, to have and to hold said Easement unto the Grantees and its successors and assigns forever. The Easement shall constitute a binding servitude upon the Property and shall be subject to prior reservations, easements, encumbrances and exceptions of record, except as otherwise set forth herein.

2. Purposes. Pursuant to the terms of C.R.S. §§ 38-30.5-101 *et seq.*, the purposes of the Easement are to assure that the Property will remain forever predominantly in its scenic, natural and open space (including agricultural) condition, subject to the uses of the Property permitted hereunder, and to prevent any use of the Property that is inconsistent with the preservation and protection of the Conservation Values of the Property and, in the event of their degradation or destruction, to restore such Conservation Values of the Property.

3. Intent. Subject only to the Purposes set forth above and express prohibitions below, the intent of the Parties is to permit all uses of the Property that are consistent with the preservation and protection of the Conservation Values as determined by Grantee in its sole discretion. Nothing in this Easement Deed is intended to compel a specific use of the Property other than the preservation and protection of the Conservation Values.

4. Baseline Documentation. The Parties acknowledge that a Baseline Documentation of the Conservation Values of the Property has been prepared for the First Donation Parcel dated November 2004 and for the Second Donation Parcel dated March 2005 by Beattie Wildlife Consulting, Inc. a company familiar with conservation easements, the Property, and the environs.



The Trust and Grantors have reviewed and approved the Baseline Documentation, as summarized in **Exhibit B** (Baseline Documentation Summary), as an accurate representation of the biological and physical condition of the Property at the time of this grant. However, the Baseline Documentation is not intended to preclude the use of other evidence, such as reports, maps, and photographs, to establish the present condition of the Property if there is a controversy over its use. Grantors have retained a copy of the Baseline Documentation for its records and a copy of the Baseline Documentation is on file with the Trust.

5. Rights of Trust. To accomplish the purposes of the Easement, Grantors convey the following rights to the Trust:

5.1. The right to preserve and protect the Conservation Values of the Property in perpetuity;

5.2. The right to enter upon the Property at reasonable times, to inspect the Property thoroughly, to monitor Grantors' compliance with, and otherwise enforce the terms of this Easement Deed; provided that such entry shall be upon seventy-two (72) hour prior notice to Grantors and shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property, except that no such notice shall be required in the event the Trust reasonably believes that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement Deed;

5.3. The right to prevent any activity on or use of the Property that is inconsistent with the purposes of the Easement, or which may be inconsistent with the preservation and protection of the Conservation Values of the Property, and to require the restoration of such areas or features of the Property that are damaged by any inconsistent activity or use;

5.4. Any other rights that the Parties may approve consistent with the purposes of the Easement and the Conservation Values.

6. Prohibited and Permitted Uses. The following uses and practices by Grantors, though not an exhaustive recital, are either consistent with or prohibited by this Easement Deed. Certain of these consistent uses and practices are identified as being subject to specified conditions, such as to the notice provision described in Section 10, or to the requirement of and procedures for prior approval by the Trust described in Section 11, or to both Sections 10 and 11. Any activity on or use of the Property inconsistent with the preservation and protection of the Conservation Values of the Property is prohibited. All uses of the Property that are not expressly prohibited herein and are consistent with the preservation and protection of the Conservation Values of the Property are permitted.

6.1. **Building Rights.**

A. Agricultural Structures. Grantors may construct additional structures for agricultural purposes on the Property (such as hay sheds or loafing sheds); provided such buildings are not for residential or other non-agricultural use. Grantor agrees to notify Trust prior to undertaking such permitted activities,

though the construction and location of such improvements does not require Trust's approval.

B. Residential Structures. Grantors shall not construct, improve, place, or replace any other buildings, structures, camping accommodations, mobile homes, parking lots, boat ramps, or billboards.

6.2. Agricultural Uses. Grantors retain the right to maintain, convert and expand agricultural operations on the Property in a manner consistent with the preservation and protection of the Conservation Values on the Property and sound environmental practices as determined by the Natural Resource Conservation Service ("NRCS"), or other entity qualified at the time to oversee such practices; though Grantors agree not to convert the Property to high-intensity agricultural uses, such as sod farms or tree farms. Grantors retain the right to lease lands for agricultural purposes as approved herein;

A. Feed Lots. Grantors shall not establish or maintain any commercial feed lot, defined for purposes of this Easement Deed as a permanently constructed and confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and extended feeding and finishing of large numbers of livestock for hire;

B. Livestock and Grazing. Grantors may graze and keep livestock on the Property in a manner that does not result in overgrazing or "low to moderate" soil quality as defined by the NRCS, or other such entity as may be qualified at the time to oversee such practices;

6.3. Easements and Roadways. Grantors shall not convey easements or rights-of-ways, pave or widen existing roadways or construct new roadways without the consent of the Trust, which shall be in the Trust's sole discretion, except as required under condemnation proceedings pursuant to Section 14 or as necessary for the uses permitted herein; provided that Grantors may construct unpaved paths and trails without the consent of the Trust;

6.4. Reversion to Wildlife Habitat. If, in the future, Grantors determine that agriculture is no longer an economically feasible or desirable use of the Property, Grantors shall revert the Property to wildlife habitat. If agricultural operations cease, Grantors agree to reseed any heavily disturbed areas or formerly farmed areas with appropriate native vegetation species to prevent the spread of noxious weeds and to provide forage and habitat for wildlife;

6.5. Surface Disturbance. Grantors shall not change, disturb, alter, or impair the relatively natural habitat for plants, wildlife, or similar ecosystems within and upon the Property, except in emergencies and for fire or disease prevention, or as necessary to the uses permitted herein. "Surface Disturbance" includes the removal, destruction, or cutting of native vegetation including sagebrush, etc. and the change in the topography of the Property by placement or removal of soil, gravel, land fill, dredging soils, or other material;

6.6. Signs and Billboards. Grantors may place a maximum of three signs on the Property, one to identify the Property, a second to identify the ranching/farming company, and the third to identify the fact that the Property is conserved. No other commercial signs or billboards shall be permitted. Private property signage, including, but not limited to, "no trespassing," "posted," and "no hunting" are permitted. Usual and customary "for sale" realtor signs are permitted. Additionally, warning signage for utilities are permitted;

6.7. Commercial and Industrial Activities. Grantors shall not conduct any commercial or industrial activity on the Property inconsistent with the preservation and protection of Conservation Values. Grantors may establish a small-scale business within a permitted agricultural building provided said activities do not impair or impact the conservation values of the Property, are consistent with the purposes and intent of the Conservation Easement, and are subordinate to the agricultural uses of the building. All small-scale business shall comply with applicable local laws and ordinances; and

6.8. Non-native Species. Grantors shall not introduce non-native plant or animal species, except for domestic animals and as necessary for agricultural uses in a manner consistent with the preservation and protection of the Conservation Values and sound environmental practices pursuant to the Colorado Noxious Weed Act, C.R.S. § 35-5.5-101.;

6.9. Water Resources. There are no water rights associated with or used on the Property; however, Grantors may utilize, maintain, establish, construct, or otherwise improve any watering facilities within the Property for uses expressly permitted herein, including agriculture and wildlife habitat enhancement;

6.10. Fencing. Grantors may replace existing fences or erect new fencing on the Property, or both, provided such fencing complies with current Colorado Division of Wildlife standards for fencing in a wildlife migration area;

6.11. Use of Chemicals. Grantors may use agri-chemicals including fertilizers, pesticides, and herbicides on the Property in a manner consistent with sound environmental conservation practices as determined by the NRCS, or other such entity as may be qualified at the time to oversee such practices;

6.12. Mineral Rights. At the time of granting the Easement, Grantors do not own the mineral rights to the Property. The owners of mineral rights to the Property, Island Park LLC and Nu Balco, LLLP ("Mineral Estate"), have executed a Mineral Agreement recorded in the records of Garfield County as Reception No. 16811687 at Book 176 and Page 142 stating that the exercise of these mineral rights shall be done in conformity with Treasury Regulations 1.170a-14(g)a in manner that is not remedially destructive of the Conservation Values of the Property. Grantor's current or future ownership of mineral rights shall be subject to the following provisions:

A. Subsurface Mineral Rights. Currently there is no oil and gas development on the Property. However, the Mineral Estate has leased the Property's subsurface mineral rights to Antero Resources II Corporation by an Oil and Gas Lease dated

July 1, 2004, Memorandums of which are recorded in Book 1603 at Page 861 and in Book 1638 at Page 558. The Parties agree that any disturbance of the surface of the Property for future exploration and development of subsurface minerals must be consistent with Section 170(h) of the Code and Section 1.170A-14(g). Accordingly, at a minimum, all oil and gas exploration and development must be temporary and limited in nature and preserve and protect the Conservation Values of the Property by concealing production facilities with existing topography where possible; limiting the expansion of existing roads, or the construction of new roads, to the extent possible; and reclaiming all disturbed areas to their original or better condition.

i. The Parties hereby agree that future oil and gas development is limited to one (1) drilling pad, with a disturbance envelope not to exceed three (3) acres in size with one access road, to be constructed in conformity with Treasury Regulation 1.1701-14(g);

ii. Grantor shall reference the fact of this Easement and a summary of the Property's Conservation Values into any and all future surface use agreements, or pipeline and access road agreements operating on the Property.

B. Surface Mineral Rights. Grantors shall neither transfer, lease or otherwise separate the soil, sand, gravel, rock, or any other mineral substance from the surface of the Property nor explore for or extract soil, sand, gravel, rock, or other minerals from the surface of the Property;

6.13. **Subdivision.** Grantors may divide or subdivide (including *de facto* subdivision) the Property into no more than three parcels of land only at the sole discretion of the Trust, though this does not prohibit lot line adjustments; provided, however, that Grantors rerecord this Easement Deed to reflect such adjustments.

6.14. **Motor Vehicles.** Grantors shall use motorized vehicles off roadways now existing or new roadways permitted herein only when such use is consistent with preservation and protection of the Conservation Values of the Property, except in emergencies and as necessary and incidental to the use of the Property for agricultural purposes permitted in Subsection 6.2;

6.15. **Trash.** Grantors shall not accumulate, dump, or dispose of trash, garbage, or other refuse on the Property; including the dumping, injection, burning, or burial of man-made materials or any other material then known or suspected to be environmentally hazardous;

6.16. **Water Features.** Grantors shall not manipulate, divert, dam, pollute, drain, dredge, or otherwise alter the naturally-occurring streams, wetlands, springs, lakes, ponds, or other surface or subsurface water features on the Property in a manner that degrades or destabilizes their natural banks or shorelines, or otherwise is inconsistent with the preservation and protection of the Conservation Values of the Property, except that Grantors retain the right to construct and maintain agricultural ditches, stock ponds or other agricultural improvements without further

permission from the Trust if such construction and maintenance is in compliance with local, state, and federal rules and regulations;

6.17. Recreation. Grantors shall not construct or maintain a golf course on the Property; however, Grantors may use the Property for low-impact recreational uses, such as hiking, cross country skiing, hunting and fishing, that are consistent with the preservation and protection of the Conservation Values of the Property, Section 170(h)(3) of the Code, and C.R.S. § 38-30.5-102;

6.18. Communications Facilities. Grantors may erect, construct, install, locate, or relocate a communication facility, a telecommunication facility, or any other appurtenant structures, equipment, or material only for personal use, provided that the creation or location of which are consistent with the preservation and protection of the Conservation Values, in particular, the scenic qualities of the Property visually accessible to the public;

6.19. Utilities and Water Lines. Grantors may install utility lines or substations and water lines, pumps and wells on the Property only as necessary and directly related to uses of the Property permitted by this Easement Deed;

6.20. Other Technology. Grantors may install and operate wind-powered electric generators, solar collectors, fuel cells, and other technology on the Property for personal and residential use only, provided such installation or operation is conducted in a manner consistent with the preservation and protection of the Conservation Values of the Property;

6.21. Lighting. Grantors may install minimal external lighting for safety and agricultural purposes, provided that the creation or location of such lighting is consistent with the preservation and protection of the Conservation Values.

7. Reserved Rights. Grantors reserve to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in all uses of the Property not expressly prohibited herein that are consistent with the preservation and protection of the Conservation Values of the Property. Grantors shall notify the Trust in writing, as described in Sections 10 and 11, before exercising reserved rights that might not be consistent with the preservation and protection on the Conservation Values of the Property. Grantors have the burden to prove that Grantors' uses are consistent with the preservation and protection on the Conservation Values of the Property.

8. Access. By terms of this Easement Deed, Grantors do not afford the public any more than visual access to any portion of the Property, although Grantors 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 Easement Deed.

9. Representations and Warranties. Grantors represent and warrant that, after reasonable investigation and to the best of its knowledge:

9.1. No substance 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 exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property, except for fuels customarily used or transported in connection with camping, wrangling, agricultural and construction activities on the Property [e.g. anti-freeze, paint, veterinary medicines];

9.2. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

9.3. Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

9.4. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

9.5. 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, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

9.6. Grantors have good and sufficient title to the Property, that Grantors have good right, full power and lawful authority to grant and convey the Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement Deed, and Grantors hereby promise to warrant and forever defend the title to the Easement against all and every person or persons lawfully claiming by, through or under Grantors, the whole or any part thereof, except for rights-of-way, easements, restrictions, covenants and mineral reservations of record, which are acceptable to the Trust at the time of execution of this Easement Deed.

10. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify the Trust before undertaking certain permitted activities or uses is to afford the Trust an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the terms of this Easement Deed. Whenever notice and the Trust's approval, as described in Section 11 below, are required, Grantors shall notify the Trust in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity or use in question, unless this Easement Deed provides otherwise. Whenever notice is required without the Trust's approval, Grantors shall notify the Trust in writing not less than thirty (30) days in advance of the proposed activity or use. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit the Trust to make an informed judgment as to the activity or use's

consistency with the terms of this Easement Deed and the preservation and protection of the Property's Conservation Values.

11. The Trust's Approval. Whenever this Easement Deed requires that Grantors obtain the Trust's approval of any activity on or use of the Property, such approval shall be given in the Trust's sole discretion. Where the Trust's approval is required, the Trust shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantors' written notice (as described in Section 10, above) of and request therefor. The Trust's approval may be withheld at the Trust's sole discretion if the Trust determines that the action as proposed would be inconsistent with the Conservation Values or the purposes or terms of this Easement Deed; the reason(s) for such a determination shall be set forth with specificity by the Trust in a written notice to Grantors. Where a modification of the proposed use or activity by Grantors would render the same consistent with the purposes of the Easement and the Conservation Values, the Trust may specify, in such written notice to Grantors, such required modifications.

12. Trust's Remedies: Enforcement. The Trust shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Easement Deed. The Trust may enter the Property for the purpose of inspecting for violations in accordance with Subsection 5.2 above. If the Trust finds what it believes is a violation, or a threat of a violation, the Trust shall notify Grantors of the nature of the alleged violation. Upon receipt of this notice, Grantor shall immediately discontinue any activity that could increase or expand the alleged violation and shall either: (1) restore the Property as is best possible to its condition prior to the violation in accordance with a plan approved by the Trust; or (2) provide a written explanation to Trust of the reason why the alleged violation should be permitted. If the Trust is not satisfied with Grantors' written explanation, the Parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, the Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute pursuant to Section 12.1 below.

At any time, including if Grantors do not immediately discontinue any activity that could increase or expand the alleged violation while the Parties are attempting to resolve the alleged violation, the Trust may take appropriate legal action pursuant to the Sections below, including seeking injunctive relief by *ex parte* means if necessary, to stop an alleged violation. The Trust's remedies described in this Easement Deed 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. The failure of the Trust to discover a violation or to take immediate legal action shall not bar the Trust from doing so within two (2) years from the date upon which the violation is discovered.

12.1. Mediation. If a dispute arises between the Parties concerning the consistency of any proposed use or activity with the terms of this Easement Deed, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either Party may refer the dispute to mediation by written request upon the other. Within ten (10) days of the receipt of such request, the Parties shall select a single trained and impartial mediator with experience in Easements and other land preservation tools. If the Parties are unable to agree on the selection of a single mediator, then the Parties shall each select a trained and impartial mediator with

experience in Easements and other land preservation tools, and those two mediators shall select a similarly skilled mediator who shall alone mediate the dispute. Mediation shall then proceed in accordance with the following guidelines:

A. Purpose. The purpose of the mediation is to: (1) promote discussion between the Parties; (2) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (3) 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 Easement 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, except in cases when the Trust believes that Conservation Values are continuing to be harmed during the mediation process, in which case the Trust can suspend its involvement in the mediation to remedy this threat of ongoing violation. 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 in any subsequent litigation. 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 sixty (60) 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. The Parties shall equally share and each bear 50% of the mediator's fees;

12.2. Injunctive Relief. The Trust may bring an action at law or in equity, *ex parte* as necessary, in a court of competent jurisdiction, to enforce the terms of this Easement Deed and to enjoin by temporary or permanent injunction a violation, which may require restoration of the Property to the condition that existed prior to the violation;

12.3. Damages. The Trust shall be entitled to recover damages for violation of the terms of this Easement Deed or injury to the Conservation Values, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefor, the Trust, in its sole discretion, may apply any damages recovered to the cost of undertaking any restorative, remedial, corrective action on the Property;

12.4. Emergency Enforcement. If the Trust reasonably believes an ongoing or threatened imminent activity violates the Easement Deed, the Trust may, in its sole discretion, take immediate legal action as set forth in this Section 12 without prior notice to Grantors, without waiting for the period provided for cure to expire, and without waiting for the 60-day mediation period to expire;

12.5. Scope of Relief. The Trust's rights under this Section 12 apply equally in the event of either actual or threatened violations of the terms of this Easement Deed. Grantors agree that the Trust's remedies at law for any violation of the terms of this Easement Deed are inadequate and that the Trust shall be entitled to the injunctive relief described in Subsection 13.2, both prohibitive and mandatory, in addition to such other relief to which the Trust may be entitled, including specific performance of the terms of this Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Trust's remedies described in this Section 12 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity;

12.6. Costs of Enforcement. All reasonable costs incurred by the Trust in enforcing the terms of this Easement Deed against Grantors, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement Deed, shall be borne by Grantors only when a court finds the Trust acted in good faith in seeking enforcement; provided, however, that if Grantors ultimately prevail in a judicial enforcement action, each Party shall bear its own costs;

12.7. Forbearance Not a Waiver. Enforcement of the terms of this Easement Deed shall be at the sole discretion of the Trust, and any forbearance by the Trust to exercise its rights under this Easement Deed in the event of any breach of any term of this Easement Deed by Grantors shall not be deemed or construed to be a waiver by the Trust of such term or any subsequent breach of the same or any other term of this Easement Deed or of any of the Trust's rights under this Easement Deed. No delay or omission by the Trust in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver;

12.8. Waiver of Certain Defenses. No action shall be commenced or maintained to enforce the terms of any building restriction described in this Easement Deed, or to compel the removal of any building or improvement, unless said action is commenced within two (2) years from the date of discovery of the violation for which the action is sought to be brought or maintained. To the extent that any defense available to Grantors pursuant to C.R.S. §38-41-119 is inconsistent with the foregoing, Grantors waive that defense. Grantors waive the defenses of laches, estoppel and prescription with regard to the enforcement of all other terms of this Easement Deed;

12.9. Acts Beyond Grantor's Control. Nothing contained in this Easement Deed shall be construed to entitle the Trust to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Grantors are not responsible for acts of third parties who are out of Grantors'



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control, except that Grantors are responsible for guests, invitees, and other third parties authorized by Grantors to access the Property;

13. Costs, Liabilities, Taxes and Environmental Compliance.

13.1. Costs, Legal Requirements and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage, except as provided herein. Grantors remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement Deed, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors;

13.2. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish the Trust with satisfactory evidence of payment upon request. The Trust is authorized, but in no event obligated, to make or advance any payment of Taxes, upon ten (10) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantors to the Trust at the lesser of fifteen percent (15%) per annum, or the maximum rate allowed by law;

13.3. 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, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Trust, in which case the Trust shall be responsible therefor;

13.4. Control. Nothing in this Grant shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Trust to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and any Colorado state law counterpart;

13.5. Hold Harmless. Grantors shall hold harmless and defend the Trust and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "AVLT Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, cause of action, claims, demands, or judgments, including, without limitation, court awarded third-party attorneys' fees,

arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the AVLT Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), by any person other than any of the AVLT Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release of hazardous or toxic substances in, on, from, under or about the Property at any time, 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, unless caused solely by any of the AVLT Parties; (4) tax benefits or consequences of any kind which result or do not result from entering into this Easement Deed, and (5) the obligations, covenants, representations, and warranties described herein.

14. Extinguishment and Condemnation.

14.1. Extinguishment. In granting the Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement Deed may become more economically valuable than permitted uses and that neighboring properties may be used entirely for such prohibited uses in the future. It is the intent of Grantors and the Trust that any such changes shall not be deemed circumstances justifying the termination or extinguishment of the Easement. In addition, the inability of Grantors, or Grantors' heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Easement Deed, or the unprofitability of doing so, shall not impair the validity of this Easement Deed or be considered grounds for its termination or extinguishment.

If circumstances arise in the future that render the purposes of this Easement Deed impossible to accomplish, this Easement Deed can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction after the court has explored all options for importing other purposes for the Easement pursuant to the *cy pres* doctrine. Each Party shall promptly notify the other when it first learns of such circumstances. The amount of the proceeds to which the Trust shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with the Proceeds paragraph, below. The Trust shall use all such proceeds in a manner consistent with the conservation purposes of the Easement;

14.2. Proceeds. Grantors and the Trust stipulate that as of the date of this Easement Deed, they are each vested with a real property interest in the Property. The Parties further stipulate that the Trust's interest in the First and Second Donation Parcels is determined by multiplying (1) the fair market value of the Property if unencumbered by this Easement by (2) the ratio of the value of this Easement at the time of this grant, which the Parties agree is 38.25% of the full fair market value of the Property. For purposes of this Subsection, the Trust's

percentage interest in the Property shall remain constant in relation to any future fair market value of the Property. However, the value of any improvements to the Property made by Grantor after the date of this Easement Deed is reserved to Grantor. The values shown on the appraisal for the First Donation Parcel, completed by Appraisal Associates on November 6, 2003 and updated on December 13, 2004, and for the Second Donation Parcel, completed on December 29, 2005, shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended.

14.3. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate the Easement, in whole or in part, Grantor and the Trust shall act jointly to recover the full value of the interests in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and the Trust in connection with the taking or in-lieu purchase shall be paid out of the amount recovered. The Trust's share of the balance of the amount recovered shall be determined by multiplying that balance by the percentage set forth in subsection 14.2;

14.4. Application of Proceeds. The Trust shall use any proceeds received under the circumstances described in this Section 14 in a manner consistent with its conservation purposes, which are exemplified by this grant.

15. Assignment. The Trust may transfer the Easement with notice given to Grantor, provided that the Trust may assign its rights and obligations under this Easement Deed only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; (b) authorized to acquire and hold conservation easements under Colorado law; and (c) charged with a mission similar to that of the Trust. As a condition of such transfer, the Trust shall require the transferee to expressly agree, in writing, to carry out and uphold the purposes of the Easement and the Conservation Values and otherwise assume all of the obligations and liabilities of the Trust set forth herein or created hereby. After such transfer, the Trust shall have no further obligation or liability under this Easement Deed. The Trust agrees to give written notice to Grantors of an assignment at least sixty (60) days prior to the date of such assignment. The failure of the Trust to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement Deed or limit its enforceability in any way.

16. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement Deed in any Deed or other legal instrument by which it divests itself of any interest in the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to the Trust of the transfer of any such interest at least thirty (30) days prior to the date of such transfer, and provide the opportunity for the Trust to explain the terms of this to potential new owners prior to sale closing.

In addition, at any time Grantors transfer the Property to any Third Party Purchaser, other than Grantor's heirs or beneficiaries, said Third Party Purchaser shall pay a transfer fee of \$100.00 to the Trust to cover administrative costs associated with the transfer as well as put the Third Party Purchaser on notice of the terms of this Easement Deed.

The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement Deed or limit its enforceability in any way.

17. Notices. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows or to such other address as either party from time to time shall designate by written notice to the other:

To Grantors: Glenwood Legacy Partnership LLLP, Stephen S. Balcomb,
Katharine Rippey and Mark Balcomb
c/o Scott Balcomb
P.O. Draweer 790
Glenwood Springs, CO 81601

To the Trust: Aspen Valley Land Trust
320 Main Street, Suite 204
Carbondale, CO 81623

18. Recordation. The Trust shall record this instrument in timely fashion in the official records of Garfield County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement Deed.

19. Amendment. If circumstances arise under which an amendment to this Easement Deed would be appropriate to promote the purposes of the Easement, Grantors and the Trust may jointly amend this Easement Deed. However, the Trust is under no obligation to amend this Easement Deed, and may decline any amendment in its sole discretion and exclusive judgment. Notwithstanding the foregoing, no amendment shall be permitted that would allow any additional residential structures to be constructed on the Property; provided, however, that Grantor may rebuild existing residential structures in the event of destruction after a natural disaster or accident in a manner consistent with the preservation and protection of the Conservation Values of the Property. Further, no amendment shall be allowed that will affect the qualifications of the Easement under any applicable law. Any amendment must be consistent with, and protect, the purposes of the Easement and the Conservation Values and may not affect the Easement's perpetual duration. Any amendment must be in writing, signed by all the Parties, and recorded in the records of the Clerk and Recorder of Garfield County, Colorado.

20. Subordination. The Property is not subject to any mortgages or liens.

21. General Provisions.

21.1. Exhibits. The following Exhibits are attached to and incorporated by reference into this Easement Deed.

Exhibit A: Property Legal Description,
Exhibit B: Baseline Documentation Summary,
Exhibit C: Property Map.

21.2. Definitions. The terms "Grantors" and "the Trust," wherever used herein, and any pronouns used in place of those terms, shall refer to, respectively, Grantors and its heirs, personal representatives, executors, administrators, successors and assigns, and the Trust, its successors and assigns. The term "Property," wherever used herein, shall refer to the land described in Exhibit A. The terms "Easement" and "Conservation Easement in gross" refer to the immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101 *et seq.* The term "Easement Deed" refers to this legal document, consisting of the rights and restrictions enumerated herein, by which said Easement is granted

21.3. Controlling Law. The interpretation and performance of this Easement Deed shall be governed by the laws of the State of Colorado;

21.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement Deed shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purpose of C.R.S. §38-30.5-101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with ensuring continuation of the purposes of the Easement and the preservation and protection of the Conservation Values that would render the provision valid shall be favored over any interpretation that would render it invalid. The common law rules of disfavoring restrictions on the use of real property and construing restrictions in favor of the free and unrestricted use of real property shall not apply to interpretations of this Easement Deed or to disputes between the Parties concerning the meaning of particular provisions of this Easement Deed;

21.5. Severability. If any provision of this Easement Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement 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 be deemed severable and remain in full force and effect;

21.6. Entire Agreement. This instrument sets forth the entire agreement between the Parties with respect to the Easement Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Deed, all of which are merged herein;

21.7. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect;

21.8. Joint Obligation. The obligations imposed by this Easement Deed upon Grantors shall be joint and several (in the event that there is more than one Grantor);

21.9. Successors. The covenants, terms, conditions, and restrictions of this Easement Deed shall be binding upon, and inure to the benefit of, the Parties hereto and Grantors' respective personal representatives, heirs, successors, transferees, and assigns, and the Trust's successors, transferees, and assigns, and shall continue as a servitude running in perpetuity with the Property;

21.10. Termination of Rights and Obligations. A Party's rights and obligations under this Easement Deed terminate upon transfer of the Party's interest in the Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer;

21.11. 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;

21.12. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling;

21.13. Merger. Unless the Parties expressly state that they intend a merger of estates or interests to occur, no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement Deed.



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IN WITNESS WHEREOF, Grantors and the Trust have executed this Deed of Conservation Easement as of the date first written above.

GRANTORS

Glenwood Legacy Partnership, LLLP
a Colorado Limited Liability Limited Partnership

By Angela K. Parkison
Name: Angela K. Parkison
Title: General Partner

By Donald H. Parkison
Name: Donald H Parkison
Title: General Partner

St S.B.L
Stephen S. Balcomb

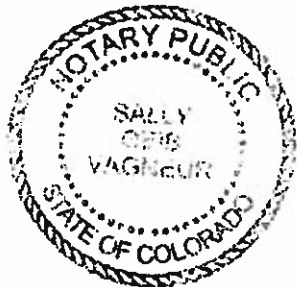
KR
Katharine Rippy

Mark Balcomb
Mark Balcomb

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 29th day of December 2005, by Angela K. and Donald H. Parkison as General Partners of Glenwood Legacy Partnership, LLLP, and Stephen S. Balcomb, Katharine Rippy and Mark Balcomb as Grantors.

WITNESS my hand and official seal.
[SEAL]



Sally Gills Vagneur
Notary Public
My commission expires: _____

818 Colorado Avenue
Glenwood Springs, CO 81601
My Commission Expires May 1, 2009

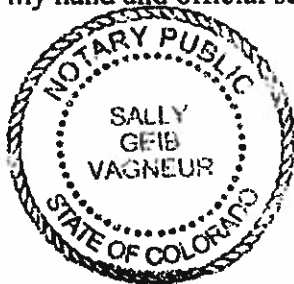
ACCEPTED by TRUST:
ASPEN VALLEY LAND TRUST,
a Colorado nonprofit corporation,

By: Martha Cochran
Martha Cochran, Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF Garfield)

The foregoing instrument was acknowledged before me this 29th day of December 2005, by Martha Cochran as Executive Director of ASPEN VALLEY LAND TRUST, a Colorado nonprofit corporation.

WITNESS my hand and official seal.
[SEAL]



Sally Geib Vagneur
Notary Public
My commission expires: _____

818 Colorado Avenue
Glenwood Springs, CO 81601
My Commission Expires May 1, 2009

EXHIBIT A
Legal Descriptions

First Donation Parcel

A parcel of land situate in Section 7, Township 6 South, Range 92 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel of land being more particularly described as follows:

Beginning at the East 1/4 of Section 7, a county surveyor brass cap found in place; thence S. 00E38'12" E. along the east line of said Section 7, a distance of 1136.80 feet to a point whence the southeast corner of said Section 7, a county surveyor brass cap found in place bears S. 00E38'12" E. 1504.88 feet; thence departing said east line S. 90E00'00" W. 148.96 feet to a point on the northerly boundary line of a parcel of land as described in Book 591, Page 421 as filed with the Clerk and Records Office of Garfield County, Colorado; thence along said Northerly line the following six (6) courses:

1. S. 90E00'00" W. 250.00 feet;
2. N. 00E36'00" W. 200.00 feet;
3. N. 82E18'00" W. 373.04 feet;
4. N. 64E43'00" W. 253.67 feet;
5. N. 76E23'00" W. 424.25 feet;
6. S. 83E17'00" W. 288.30 feet;

thence departing said northerly line N. 00E04'46" W. 2296.52 feet; thence S. 86E09'43" E. 745.04 feet; thence N. 77E16'24" E. 673.32 feet; thence N. 54E39'47" E. 324.20 feet to a point on the east line of said Section 7, (whence the northeast corner of said Section 7, an aluminum cap LS No. 19598 in place bears N. 00E45'22" W. 792.76 feet); thence S. 00E45'22" E. 1870.39 feet to the point of beginning, said parcel of land containing 96.032 acres more or less.

COUNTY OF GARFIELD
STATE OF COLORADO

Second Donation Parcel

A parcel of land situate in Section 7, Township 6 South, Range 92 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel of land being more particularly described as follows:

Commencing at the East 1/4 of Section 7, a County Surveyor brass cap found in place; thence S. 67°05'58" W. 1830.39 feet to a point on the northerly boundary line of a parcel of land as described in Book 591, Page 421 as filed with the Clerk and Recorder's office of Garfield County, the true point of beginning; thence along said northerly line the following fifteen (15) courses:

1. S. 83°17'00" W. 288.30 feet;
2. N. 03°59'00" E. 27.00 feet;
3. N. 82°43'00" W. 569.90 feet;
4. S. 49°23'00" W. 208.77 feet;
5. S. 57°20'00" W. 205.89 feet;
6. S. 65°21'00" W. 95.30 feet;
7. S. 71°55'00" W. 167.92 feet;
8. S. 77°20'00" W. 65.01 feet;
9. S. 84°22'00" W. 186.13 feet;
10. S. 73°21'00" W. 114.94 feet;
11. S. 78°22'30" W. 134.58 feet;
12. S. 52°11'00" W. 264.54 feet;
13. S. 79°08'00" W. 92.50 feet;
14. S. 70°13'00" W. 186.87 feet;
15. S. 89°20'00" W. 136.35 feet to a point on the west line of said section 7; thence departing said northerly line N. 00°38'56" W. along said west line 738.49 feet; thence departing said west line N. 52°21'27" E. 556.49 feet; thence N. 43°27'16" E. 454.39 feet; thence N. 26°17'52" E. 1210.58 feet; thence N. 46°40'58" E. 438.99 feet; thence N. 83°05'09" E. 933.48 feet; thence S. 00°04'46" E. 2296.52 feet to the true point of beginning, said parcel of land containing 99.360 acres.

COUNTY OF GARFIELD
STATE OF COLORADO



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EXHIBIT B

Baseline Documentation Summary, Inventory of Relevant Features of Property

Scenic Features:

Scenic features include mature cottonwood trees, a small lake, windbreaks, herbaceous and woody fencerows, the south channel of the Colorado River, several small cattail wetlands, and a very dense vegetated secluded area (*i.e.*, island in the river.) As land along the Colorado River continues to be developed, it will be important to preserve scenic and open space values.

Wildlife Habitat and Ecological Features:

Wildlife habitat includes cottonwood-willow associations, a small lake, a river, a renovated field, fence rows, several marshes, riparian areas, and security/thermal/escape areas on the island. Cottonwood-willow woodlands characteristic of riverine habitat are one of the most important habitats for wildlife in Colorado. More species of wildlife occur in this habitat than in any other single habitat in the state. Riparian habitat occupies only three percent (3%) of Colorado's landscape but attracts up to eighty percent (80%) of wildlife species. Vegetation diversity is high in both vertical and horizontal zones and habitat structure is ver diverse.

The subject property is home to may important species of wildlife, including the bald eagle, osprey, cormorant, wild turkey, great blue heron, sandhill crane, mule deer, avocet, and many species of water fowl, shorebirds, raptors, and wading birds.

Agricultural Features:

A sagebrush-dominated field was renovated several years ago and planted with oats. Cheatgrass and rabbitbrush dominate the field. A tree nursery previously existed to the south of the small lake in the southeastern portion of the Property.

Soils:

Only one (1) soil type occurs on the subject property that is classified as torrifluvents.

Recreational Values:

Recreational values are immense on the subject property. Many boats float the south channel each year. Occupants fish, canoe, picnic, and kayak. Recreation is extensive and at times intensive, on the subject property. Current recreation includes waterfowl hunting, pheasant hunting, deer hunting, asparagus picking, lake fishing, river fishing, hiking, bird-watching, picnicking, walking, camping, canoeing, swimming, firewood cutting (dead wood), dog training, bicycling, and star gazing.

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PROPERTY DESCRIPTION EXHIBIT

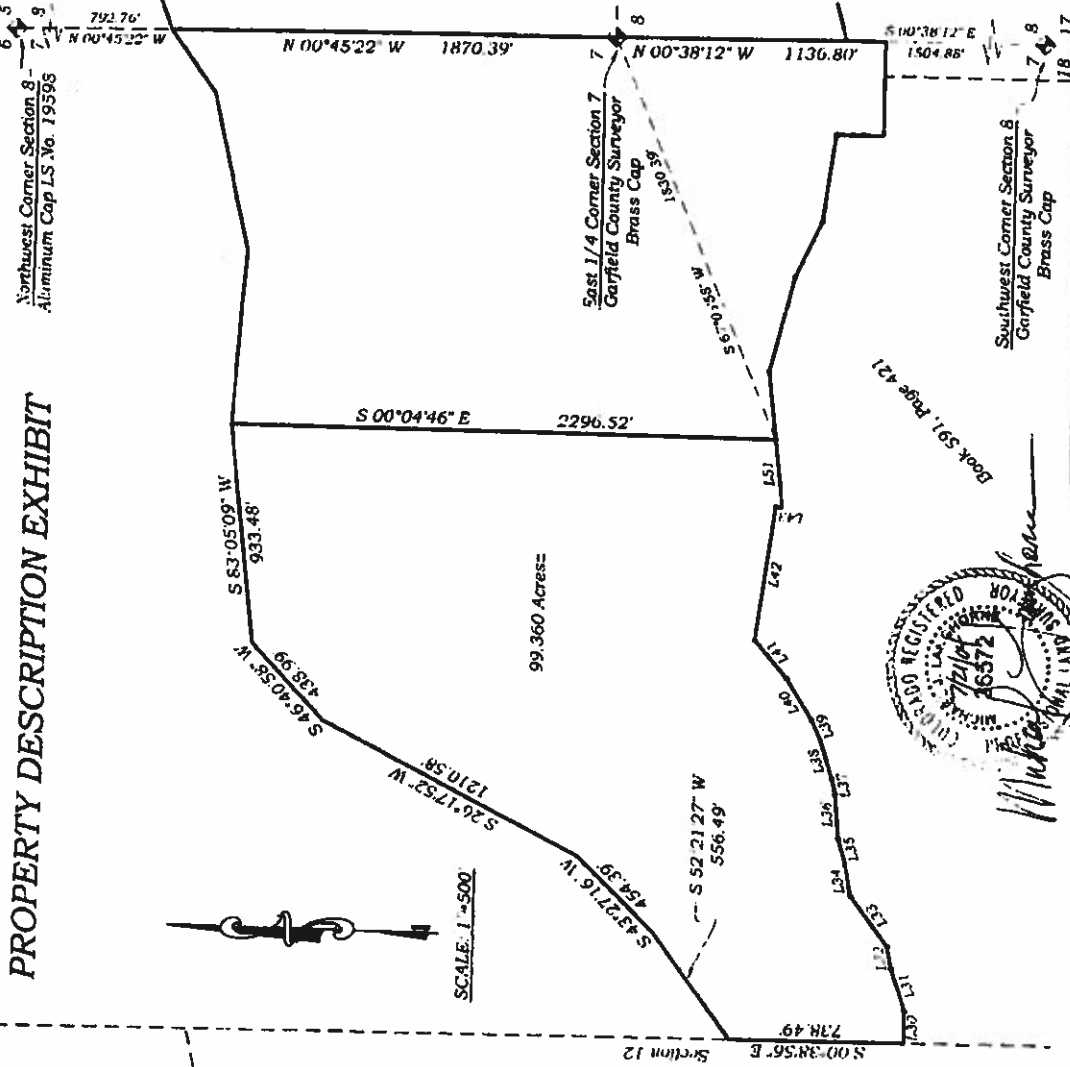


EXHIBIT C
Property Map

Book 591, Page 421



W. J. [Signature]

BOOKCLIFF
SURVEY SERVICES, INC.

BORDERLINE SURVEY SERVICES, INC.
120 E. Third Street
Bldg. Colorado State
Building 200-1200 P.O. Box 666-875

PROPERTY DESCRIPTION EXHIBIT

LA. 0248 & 0251
P. 17601
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