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**DEED OF CONSERVATION EASEMENT IN GROSS  
 SCHOONMAKER CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT IN GROSS (“Easement Deed”) is granted this 18<sup>th</sup> day of December, 2003, by Schoonmaker Preserve LLC, a Colorado Limited Liability Company (“Grantor”), to and for the benefit of Aspen Valley Land Trust , a Colorado nonprofit corporation, having an address at 320 Main Street, Suite 204, Carbondale, Colorado 81623, (the “Trust”)(collectively, the “Parties”).

**RECITALS**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property in an area known as Dry Hollow, , Garfield County, State of Colorado, more particularly described in Exhibit A and Exhibit B (hereinafter the “Property”). The Property to be conserved is shown as Parcel B on Exhibit B, and is comprised of approximately 104.677 acres of land at the address 6536 County Road 331, Silt, Colorado 81652;

**WHEREAS**, the Property possesses natural, scenic, open space, wildlife, and agricultural values that are worthy of preservation (collectively, “Conservation Values”), as defined in C.R.S. § 38-30.5-101 *et seq.*, of great importance to the Grantor, the Trust, the people of Garfield County, and the people of the State of Colorado;

**WHEREAS**, in particular, the Property has unique characteristics as wildlife habitat that contributes to a biologically diverse ecosystem including various species of birds, mammals, reptiles, insects, and plants set against a scenic backdrop dominated by views of the Elk Range;

**WHEREAS**, the Property is located in Garfield County, Colorado 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 Property and surrounding area;

**WHEREAS**, the specific Conservation Values of the Property will be documented in an inventory of relevant features of the Property kept on file at the office of the Trust (“Baseline Documentation”), which consists of reports, maps, aerial and ground photographs, and other documentation that the Parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

**WHEREAS**, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns on the Property existing at the time of this grant, including, without limitation, those relating to agricultural purposes which the Trust acknowledges and agrees do not significantly impair or interfere with the Conservation Values;

**WHEREAS**, Grantor intends, as owner of the Property, to convey to the Trust the right to preserve and protect the Conservation Values of the Property in perpetuity;

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**WHEREAS**, the Trust agrees by accepting this grant to honor the intentions of Grantor 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;

**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 Roaring Fork and Colorado River Valleys, 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;

**WHEREAS**, the people of the State of Colorado have 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.*;

**WHEREAS**, Garfield County has expressed the importance of protecting and conserving agricultural lands, open space, and scenic vistas through passage of a Garfield County Comprehensive Plan of 2000; 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 above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. 38-30.5-101 *et seq.*, Grantor hereby voluntarily grants, assigns, sells, and conveys to the Trust, its successors and assigns, a Conservation Easement in Gross in perpetuity, consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement"). This Deed of Conservation Easement shall be subject to prior reservations, easements, encumbrances, and exceptions of record related to the property, except as otherwise set forth herein.

**1. Purposes.** The purposes of this Easement are to assure that the Property will remain forever predominantly in its agricultural, scenic, natural and open space condition, subject to the uses of the Property permitted hereunder, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property and, in the event of their degradation or destruction, to restore such Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving ranching, farming, and general conservation purposes, as are consistent with the purposes of this Easement. Pursuant to the terms of C.R.S. 38-30.5-101, *et seq.*, the Property preserved hereby may not be converted or directed to any uses other than those provided herein.

**2. Baseline Documentation.** The Parties acknowledge that Dawn Keating, a person familiar with Conservation Easements, the Property, and its environs, has prepared a primary Baseline Documentation of the Property. The Baseline Documentation has been reviewed and approved by the Trust and the Grantor as an accurate representation of the biological and physical condition of the Property at the time of this grant. Grantor will retain a copy of the Baseline Documentation for its records and a copy of the Baseline Documentation will be on file with the Trust.

**3. Rights of Trust.** To accomplish the purposes set forth herein for this Easement, Grantor conveys the following rights to the Trust, with such rights to be exercised subject to Trust's reasonable judgment:

- A. The right to identify, preserve, and protect the Conservation Values of the Property in perpetuity;
- B. The right to enter upon the Property at reasonable times, to inspect the Property thoroughly, to monitor Grantor's compliance with and otherwise enforce the terms of this Easement Deed; provided that such entry shall be upon twenty-four hour prior notice to Grantor, and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property, and 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;
- C. The right to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement, or which may threaten or significantly impair 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;
- D. The right to enhance the Conservation Values of the Property with Grantor's prior written approval as may be necessary to restore or enhance the Conservation Values of the Property, at the discretion of the Trust; and
- E. Any other rights that both Parties may approve that are consistent with the purposes of this Easement and the Conservation Values.

**4. Prohibited Uses.** Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, unless specifically allowed elsewhere in this Easement Deed:

- A. Any change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within and upon the Property, except as provided herein;
- B. The Property is part of a larger parcel of land. The Property may not be subdivided, but the Grantor may subdivide the larger parcel of which the Property is a part and sell the Property burdened by this Easement;
- C. The construction or placement of any buildings, structures, parking lots, camping accommodations, golf courses, mobile homes, billboards or commercial signs, except as expressly provided herein and except those existing on the date of this grant and as documented in the Baseline Documentation;
- D. The conveyance of easements, rights-of-way, the paving or grading of roadways or the construction of any roadways except as set forth herein;



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- E. The removal, destruction, or cutting of native vegetation;
- F. The intentional introduction, or failure to prevent the introduction or spread of noxious weeds such as those as identified by the Colorado Weed Management Association, or the intentional introduction of or failure to prevent the introduction or spread of non-native plant or animal species, other than for agricultural uses consistent with generally accepted practices as defined by the U.S. Department of Agriculture Natural Resources Conservation Service (hereinafter "NRCS"), or other such governmental entity as may be qualified at the time to oversee such practices;
- G. The overgrazing of livestock as determined by an expert in livestock management, or other ranching or farming practices which results in "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;
- H. The use of pesticides other than for the control of noxious weeds and/or pests in a manner consistent with sound environmental conservation practices, such as those determined by the NRCS;
- I. Subsurface Mineral Rights: Grantor shall not transfer, lease or otherwise separate Grantor's share of the mineral rights to the oil or natural gas from the Property. The exploration for or extraction of oil and gas below the surface of the Property is permitted only in a manner that is consistent with the meaning of Section 170(h) of the Code and Section 1.170A-14(g) of the Treasury Regulations. Any disturbance of the surface of the Property for the exploration of subsurface minerals in a manner that is inconsistent with the meaning of Section 170(h) of the Code and Section 1.170A-14(g) is prohibited.
- J. Surface Mineral Rights: Grantor shall not transfer, lease or otherwise separate Grantor's share of the mineral rights in the soil, sand, gravel, rock, or any other mineral substance from the Property; nor shall Grantor explore for or extract soil, sand, gravel, rock, or other minerals on the surface of the Property not specifically allowed herein;
- K. The use of any motorized vehicles off roadways now existing or new roadways permitted herein, with the exception of the use of motorized vehicles incidental and necessary to the use of the Property for agricultural purposes;
- L. The establishment or maintenance of any commercial feed lot, which shall be defined for purposes of this Easement Deed as a permanently constructed 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;



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- M. The establishment or maintenance of any commercial or extractive tree farm;
- N. The storage, dumping or other disposal of trash, ashes, garbage, toxic and/or hazardous materials on the Property, other than the collection and disposal of agricultural products and byproducts on the Property including tree limbs, scrap lumber and other organic materials and incidental and necessary to the use of the Property for agricultural purposes and in accordance with all applicable governmental laws and regulations. This prohibition does not impose any liability on the Trust, nor shall the Trust be construed as having liability as a “responsible party” under The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar federal or state statutes;
- O. The degradation, pollution, or drainage of any naturally occurring surface or sub-surface water;
- P. Any change in the topography of the Property through the placement therein of soil, land fill, dredging spoils, or other material, except as incidental and necessary to the activities permitted herein;
- Q. Any use that would increase, or substantially add to the risk of soil erosion;
- R. Any commercial or industrial uses, except those incidental and necessary to the use of the Property for agricultural purposes, which are specifically permitted;
- S. The erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element or any other telecommunication facilities, equipment or material that may be used for telecommunications or to provide such services, except for in-home networking, wireless telecommunications access, or other low-impact telecommunications services, and except for condemnation of rights-of-way by duly authorized public utilities;
- T. Utility lines or substations not necessary and directly related to uses of the Property permitted by this Easement Deed and except any pre-existing lines;
- U. Wind-powered electric generators to produce electricity for off-site use;
- V. Trapping of native wildlife species;



- W. External lighting, including landscape and driveway lighting, which impairs the Conservation Values of the Property, with the exception of lighting for agricultural, security and safety purposes;

**5. Consistent Uses of the Property.** The following uses and practices by Grantor, though not an exhaustive recital, are consistent with this Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions, to the notice provision as described in Section 7 herein, and/or to the requirement of and procedures for prior approval by the Trust as described in Section 8 herein:

- A. Grantor may repair or replace existing fences. New fences may be built for purposes incidental and necessary to the management of livestock and wildlife in compliance with the current Colorado Division of Wildlife (hereinafter "DOW") specifications for fencing in wildlife migration areas. Fencing constructed for the purpose of excluding wildlife from haystacks, gardens, orchards, and the like must not block or hinder normal wildlife movement or migration, and should not exceed eight (8) feet in height;
- B. Leasing of lands for agricultural purposes;
- C. Hunting by Grantor and the leasing of the Property to responsible commercial hunting outfitters.
- D. Such cutting and removal of dead, dying or diseased timber as may be reasonably necessary for fire protection, disease prevention, safety or agricultural purposes;
- E. The taking of such reasonable steps as are necessary to control erosion on the Property;
- F. Changes in agricultural use, including row crops or horse farming, that do not threaten or significantly impair the scenic, open space or environmental Conservation Values of the Property;
- G. The right to restore damage to the Property that may be caused by fire, flood, storm, earth movements, or acts beyond the Grantor's control;
- H. The right, mutually with the Trust, to enforce against and prevent any prohibited action set forth herein on the Property against any individual or entity;
- I. The right to erect appropriate signage and fencing, upon review and approval of the Trust, indicating the presence of the Easement and the boundaries thereof; and
- J. Rights of access on, over and across the Property in a manner consistent with the maintenance and preservation of the Property and the Conservation Values set forth herein.

**6. Reserved Rights.** Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to reside on the Property and to engage in, or permit or invite others to engage in, all uses of the Property that are not prohibited herein and that are consistent with the purposes of this Easement, including the following rights:

- A. To erect and maintain one (1) single-family home within the building and disturbance envelope shown as Lot A on Exhibit B (hereinafter "Building Envelope"). The Building Envelope shall not to exceed one (1) acre in size, with a building footprint, inclusive of all structures, not to exceed four-thousand (4,000) square feet (hereinafter "Building Footprint"). Within the Building Envelope and subject to the Building Footprint, Grantor has the right to construct additional improvements reasonably necessary to the residential and other uses of the Property, including one (1) accessory dwelling unit, garages, greenhouses, barns, sheds, art and craft studios, fences, gardens, decks, lawns, roads and other disturbances;
- B. Utilities and utility easements over and across the Property as needed for the development and maintenance of Lot A. Such utilities and utility easements may include, without limitation, water and sewer lines, telephone and communications lines, electric and gas lines, and other utilities necessary to the development of such homesites. The location of such utilities and utility easements is not specifically described herein, and does not require Trust's approval. Grantor has the right to clear vegetation on the Property as is reasonably necessary to construct and maintain such utilities; provided, however that such action is designed to minimize impacts to the Conservation Values of the Property, and is subject to remediation to restore the Property to its condition prior to such action as closely as possible. All utilities, including electric and telephone lines, shall be buried wherever and whenever possible, and shall be located within access easements wherever and whenever possible;
- C. A maximum of two (2) access roads, not to exceed twelve (12) feet in width (except as necessary for cul de sacs, pull outs, or other County land use requirements, in which case road width may not exceed sixteen (16) feet across). Such roads shall be located within two (2) access easements not to exceed thirty (30) feet in width, each, over and across the Property as needed to access Lot A. The location of such roads and access easements does not require Trust's prior approval. However, one of such access easements shall follow the alignment of the current access road to Lot A. Grantor has the right to clear vegetation and alter the surface of the Property as is reasonably necessary to construct and maintain these roads within the access easements; provided, however such alterations are designed to minimize impacts to the lands traversed and to the Conservation Values of the Property. Such roads shall be built at surface grade whenever and wherever possible, and may not be paved;
- D. To construct, maintain, and improve irrigation fixtures, headgates, ditches, water wells, and other water systems on the Property consistent with the uses permitted hereunder. Grantor, or any other interest holder in the East Lateral and Flynn 2 branch of the



Highline Ditch, may manipulate, enlarge, relocate, or change diversion points and/or ditch alignment or otherwise alter ditch(es) for irrigation purposes.

**7. Notice of Intention to Undertake Certain Permitted Actions.** When specifically required herein, Grantor, its successors and assigns, shall provide reasonable notice to the Trust prior to undertaking any new permitted activities within the Easement Property in order to afford the Trust an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify the Trust in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period for the giving of notice is approved by the Trust for the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Trust to make an informed judgment as to its consistency with the purposes of this Easement and the Conservation Values.

**8. Trust's Approval.** Whenever a provision of this Grant requires that Grantor obtain the Trust's approval of any activity on or use of the Property, such approval shall not be unreasonably withheld or delayed. Where the Trust's approval is required, the Trust shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. The Trust's approval may be withheld only upon a reasonable determination by the Trust that the action as proposed would be inconsistent with the Conservation Values or the purposes or terms of this Easement Deed and the reason(s) for such a determination shall be set forth with specificity by the Trust in a written notice to Grantor. Where a reasonable modification of the proposed use or activity by Grantor would render the same consistent with the purposes of this Grant and the Conservation Values, the Trust shall specify, in such written notice to Grantor, such required modifications. In the event such grant, denial, or conditional approval is not made by the Trust within such a time period, the Trust shall be deemed to have approved the action giving rise to the notice.

**9. 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 Grant. The Trust may enter the Property for the purpose of inspecting for violations in accordance with Subsection 3B above. If the Trust finds what it believes is a violation, or a threat of a violation, the Trust shall notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately discontinue any activity that could increase or expand the alleged violation and shall either: (1) restore the Property as 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 Grantor's written explanation, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute pursuant to Section 9.1 below.

Should Grantor not immediately discontinue any activity that could increase or expand the alleged violation; or should mediation fail to resolve the dispute within sixty (60) days of Trust's written notice to Grantor of the alleged violation, or by such other date as the parties may mutually agree, the parties may take appropriate legal action pursuant to the Sections below. 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 Trust to discover a violation or to take immediate legal action shall not bar Trust from doing so within one year from the date upon which the violation occurred pursuant to C.R.S. § 38-41-119.

9.1 Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Grant, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such request, the parties shall select a single trained and impartial mediator with experience in conservation easements and other land preservation tools. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator with experience in conservation easements and other land preservation tools. Mediation shall then proceed in accordance with the following guidelines:

- A. Purpose. The purpose of the mediation is to: (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. 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.

9.2 Injunctive Relief. The Trust may bring an action at law or in equity as necessary, including *ex parte* as allowed by the Colorado Rules of Civil Procedure, in a court of competent jurisdiction, to enforce the terms of this Easement Deed and to enjoin by temporary or permanent injunction a violation, including to require or cause the restoration of the Property to the condition that existed prior to the violation, under the following circumstances:

- A. If the Grantor, after receipt of a notice of violation from the Trust, fails immediately to discontinue any activity that could increase or expand an alleged violation; or
- B. If Grantor, after receipt of a notice of violation from the Trust, fails within ten (10) days either to provide a written explanation to the Trust of the reason why the alleged violation should be permitted, or to begin restoring the Property as best as possible to its condition prior to the violation; or
- C. If Grantor, after commencing to restore the Property to its condition prior to a violation, fails to continue diligently to cure the violation.

9.3 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 Grantor's liability therefor, the Trust, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

9.4 Emergency Enforcement. If the Trust reasonably believes an ongoing or threatened imminent activity violates the Easement, the Trust may, in its sole discretion, take immediate legal action as set forth in this Section 9 without prior notice to Grantor and without waiting for the period provided for cure to expire.

9.5 Actual or Threatened Non-Compliance. The Trust's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement Deed. Grantor agrees 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 9.3, 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 Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

9.6 Costs of Enforcement. All reasonable costs incurred by the Trust in enforcing the terms of this Easement Deed against Grantor including, without limitation, costs and expenses of injunction or suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement Deed shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

9.7 The Trust's Discretion. 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 in the event of any breach of any term of this Easement Deed by Grantor 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. No delay or omission by the Trust in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9.8 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 four (4) years from

the date of the violation for which the action is sought to be brought or maintained. To the extent that any defense available to Grantor pursuant to C.R.S. Section 38-41-119 is inconsistent with the foregoing, such defense is waived by Grantor. Grantor waives the defenses of laches, estoppel and prescription with regard to the enforcement of all other terms of this Easement Deed.

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

10. Access. Nothing contained herein shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the terms of this Easement Deed.

#### 11. Costs, Liabilities, Taxes and Environmental Compliance.

11.1 Costs, Legal Requirements and Liabilities. 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 the maintenance of adequate liability insurance coverage, which names the Trust as an additional insured. Grantor 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. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

11.2 Taxes. Grantor 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 Grantor, 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 Grantor to the Trust at the lesser of fifteen percent (15%) per annum, or the maximum rate allowed by law.

11.3 Noxious Weeds. Grantor, its successors and assigns, shall comply with the Colorado Noxious Weed Act (hereinafter "Act"), C.R.S. 35-5.5-101, as the same now exists or may be amended from time to time, in connection with the Property. Should Grantor, pursuant to the Act, be required to eradicate any "undesirable plants" (as that term is described in the Act), Grantor shall work to create a control method of integrated management of such eradication which results in the least possible impact (environmental, biological, or otherwise) to the non-noxious biology and Conservation Values of the Property, whether such management requires cultural control, mechanical control,



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chemical control, or any combination thereof. Any and all costs incurred as a result of any required eradication process initiated pursuant to the Act shall be the sole obligation of Grantor.

**11.4 Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

- A. 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, lubricants and other substances customarily used or transported in connection with camping, wrangling, agricultural and construction activities on the Property;
- B. 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;
- C. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- D. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;
- E. 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 Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and
- F. Grantor warrants that Grantor has good and sufficient title to the Property, that Grantor has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement Deed, and Grantor hereby promises to warrant and forever defend the title to the Easement against all and every person or persons lawfully claiming by, through or under Grantor, 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 the Easement Deed.

**11.5 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

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contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Trust, in which case the Trust shall be responsible therefor.

11.6 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 Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA, and any Colorado state law counterpart.

11.7 Hold Harmless. Grantor shall hold harmless, indemnify and defend the Trust and its members, directors, officers, employees, agents, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable 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 Indemnified 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, CERCLA, by any person other than any of the Indemnified 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 Indemnified Parties; (4) tax benefits or consequences of any kind which result from entering into this Deed of Easement; and (5) the obligations, covenants, representations, and warranties of Sections 11.1 through 11.6.

## 12. Extinguishment and Condemnation.

12.1 Extinguishment. In granting this Easement, Grantor has 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 Grantor and the Trust that any such changes shall not be deemed circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, or Grantor's 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 or be considered grounds for its termination or extinguishment.

If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. 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 Section

12.2, below. The Trust shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.

12.2 Proceeds. This Easement constitutes a real property interest immediately vested in the Trust. The parties stipulate that the Easement has a fair market value of **60 %** of the value of the Property, defined for this purpose as the value of the property unencumbered by the Easement and minus any future increase in value to the Property attributable to improvements. For the purposes of this Section, this percentage shall remain constant in relation to any future fair market value of the Property. If an appraisal has been done at the time of this grant, the percentage is equal to the percentage of reduction in value to the Property after the Easement is granted, as shown in the appraisal. The appraisal substantiating the reduction in value shall be provided to, and shall remain on file with, the Trust.

12.3 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 this 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 formula set forth in Subsection 12.2.

12.4 Application of Proceeds. The Trust shall use any proceeds received under the circumstances described in this Section 12 in a manner consistent with its conservation purposes, which are exemplified by this grant.

**13. Assignment.** This Easement is transferable by the Trust, but the Trust may assign its rights and obligations under this Easement Deed only with Grantor's consent, which consent shall not be unreasonably withheld, 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 the Trust's mission. 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 this 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 of and seek consent from Grantor for an assignment at least sixty (60) days prior to the date of such assignment.

**14. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement Deed, by reference or otherwise, in any Deed or other legal instrument by which it divests itself of any interest in the Property, including, without limitation, a leasehold interest. Grantor further agrees 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. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

**15. Estoppel Certificates.** Upon request by Grantor, the Trust shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of the Trust's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of the Trust's most recent inspection. If Grantor requests more current documentation, the Trust shall conduct an inspection, at Grantor's expense, within sixty (60) days of receipt of Grantor's written request therefor. However, in the event that weather, or other circumstances outside of the Trust's control, prevent the Trust from conducting an inspection within sixty (60) days of receipt of Grantor's written request, the Trust shall conduct such inspection within a timely manner once such weather or circumstances which prevent the inspection no longer exist.

**16. 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 Grantor: Judith Schoonmaker  
6536 County Road 331  
Silt, CO 81652

With a copy to: Calvin Lee, Esq.  
811 Blake Avenue  
Glenwood Springs, CO 81601

To the Trust: *Return to:*  
Aspen Valley Land Trust  
Shannon Meyer, Associate Director  
320 Main Street, Suite 204  
Carbondale, CO 81623

**17. 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.

**18. Amendment.** If circumstances arise under which an amendment to or modification of this Easement Deed would be appropriate to promote the purposes of this Easement and the protection of the Conservation Values of the Property, Grantor and the Trust may jointly amend this Easement Deed (in accordance with the Policies of the Trust.) However, the Trust is under no obligation to amend this Easement Deed, and may decline to amend this Easement Deed in its sole and exclusive judgment. No amendment shall be allowed that will affect the qualifications of this Easement under any applicable law. Any amendment must be consistent with the purposes of this Easement and the Conservation Values and may not affect the Easement's perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of Garfield County, Colorado.

**19. Subordination.** At the time of conveyance of this Easement, the Property is subject to a Deed of Trust. Before execution of this Easement Deed, the trustee shall have agreed by separate instrument to subordinate its rights in the Property to the extent necessary to permit the Trust to enforce the purposes of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights under the Trustee Deed.

**20. General Provisions.**

- A. Exhibits. The following Exhibits are attached to and incorporated by reference into this Deed of Conservation Easement:
- Exhibit A: Property Legal Description;
- Exhibit B: Survey (Easement is on Parcel B only); and
- B. Definitions. The terms "Grantor" and the "Trust," wherever used herein, and any pronouns used in place of those terms, shall be deemed to include, respectively, Grantor and its heirs, personal representatives, executors, administrators, successors and assigns, and the Trust, its successors and assigns.
- C. Controlling Law. The interpretation and performance of this Easement Deed shall be governed by the laws of the State of Colorado.
- D. 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 this 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 the purposes of this Easement 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.
- E. 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.
- F. Entire Agreement. This instrument sets forth the entire agreement between the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein.



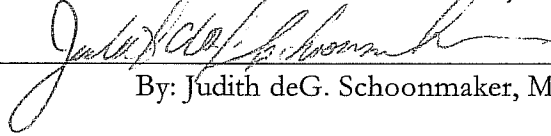
- G. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- H. Successors. The covenants, terms, conditions, and restrictions of this Easement Deed shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns.
- I. Termination of Rights and Obligations. A party's rights and obligations under this Easement Deed terminate upon transfer of the party's interest in this Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. 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.
- K. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both 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.
- L. Merger. Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Grant.



643443 12/19/2003 03:07P B1548 P727 M ALSDORF  
18 of 21 R 106.00 D 0.00 GARFIELD COUNTY CO

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

**GRANTOR: Schoonmaker Preserve LLC, a Colorado Limited Liability Company**

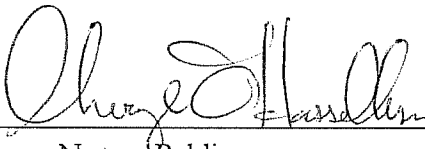
  
By: Judith deG. Schoonmaker, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GARFIELD )

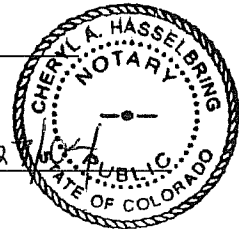
The foregoing instrument was acknowledged before me this 18th day of December, 2003, by Judith deG. Schoonmaker as Manager of Schoonmaker Preserve, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

[SEAL]

  
\_\_\_\_\_  
Notary Public

My commission expires: 10/27/04

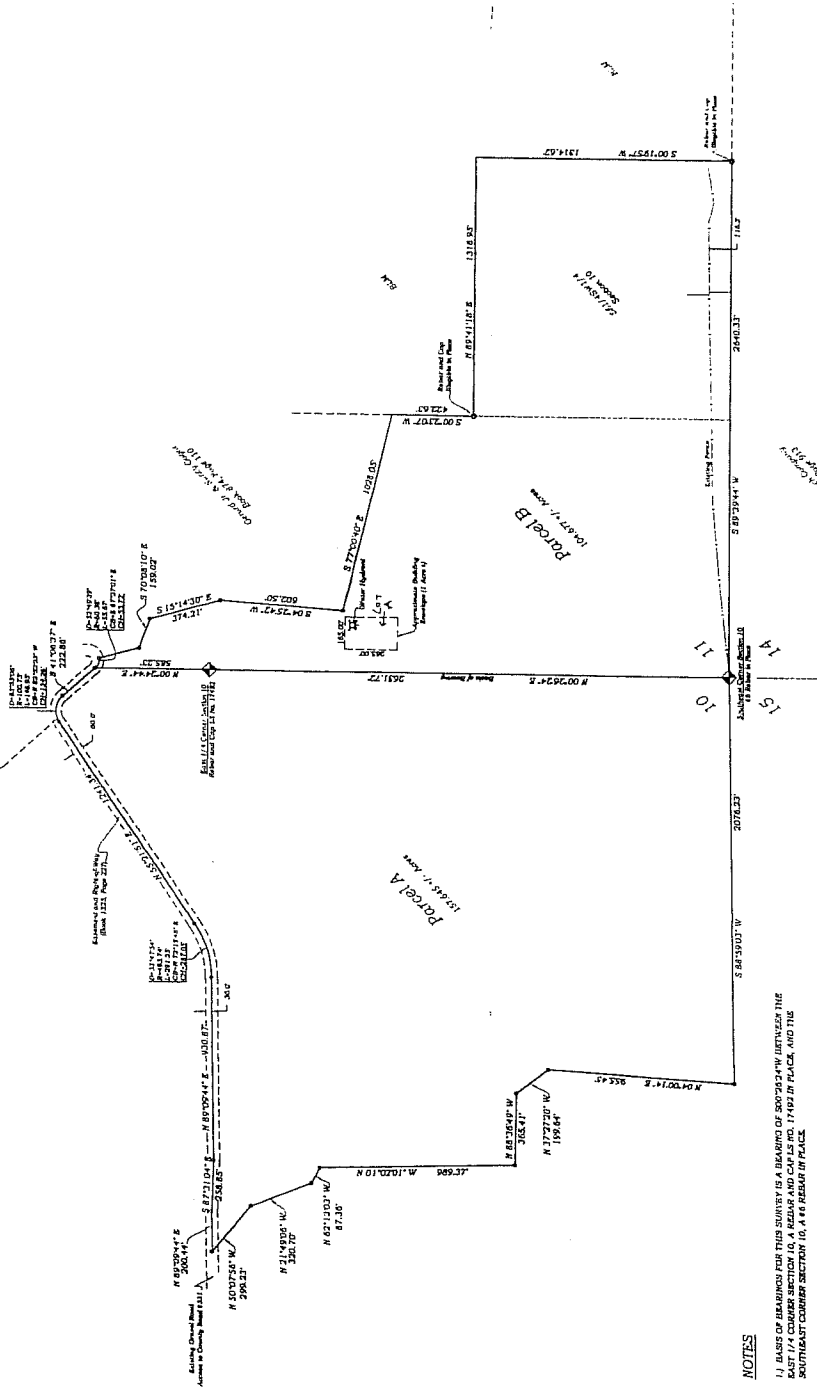


MY COMMISSION EXPIRES:  
OCTOBER 27, 2004

643443 12/19/2003 03:07P B1548 P730 M ALSDORF  
21 of 21 R 106.00 D 0.00 GARFIELD COUNTY CO

# BOUNDARY SURVEY

Parcels of Land Situated in Sections 10 and 11, Township 7 South, Range 92 West of the 6th P.M.  
County of Garfield, State of Colorado



### PROPERTY DESCRIPTION

**PARCEL A**  
A PARCEL OF LAND SITUATED IN SECTIONS 10 AND 11, TOWNSHIP 7 SOUTH, RANGE 92 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF GARFIELD, STATE OF COLORADO, AS DESCRIBED IN BOOK 1153, PAGE 394, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTHWEST CORNER OF SECTION 10, THENCE S 7° 20' 17\"/>

**PARCEL B**  
A PARCEL OF LAND SITUATED IN SECTIONS 10 AND 11, TOWNSHIP 7 SOUTH, RANGE 92 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF GARFIELD, STATE OF COLORADO, AS DESCRIBED IN BOOK 1153, PAGE 394, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTHWEST CORNER OF SECTION 10, THENCE S 7° 20' 17\"/>

### SURVEYOR'S STATEMENT

I, MICHAEL J. LANDORCKE, A REGISTERED LAND SURVEYOR, LICENSED UNDER THE LAWS OF THE STATE OF COLORADO, HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS PREPARED ON THE DATE 12/19/03 BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING THAT THIS MAP IS A TRUE REPRESENTATION THEREOF.

MICHAEL J. LANDORCKE, COLORADO REGISTRATION NO. 18372  
FOR AND ON BEHALF OF  
BOOKKOPPEL SURVEY SERVICES, INC.



BOOKKOPPEL SURVEY SERVICES, INC.  
1015 WEST 13TH STREET  
GLENWOOD, COLORADO 81600  
PH: (970) 688-1330  
FAX: (970) 688-8773

BOUNDARY SURVEY

CUSTODIAN: BRUCE  
RAYMOND BOCHORNAKER  
8536 COUNTY ROAD 331  
BLT, COLORADO 80433

FILED/CORRECTED	PROJECT NO.
OK / NO	BOUNDARY SURVEY
DATE / TIME	3/4/11
BY	0
REVISION	

### NOTES

- 1) PART OF PARCELS 10 AND 11, TOWNSHIP 7 SOUTH, RANGE 92 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF GARFIELD, STATE OF COLORADO, AS DESCRIBED IN BOOK 1153, PAGE 394, ARE BEING RE-SURVEYED.
- 2) DATE OF SURVEY WAS OCTOBER 27, 2003.
- 3) THIS SURVEY IS BASED ON THE RECORD PROPERTY DESCRIPTION BOOK 1153, PAGE 394, DOCUMENTS OF RECORD AND MONUMENTS FOUND IN PLACE AS INDICATED THEREON.
- 4) THE PURPOSE OF THIS BOUNDARY SURVEY IS TO SUBDIVIDE THIS PROPERTY INTO PARCEL A AND PARCEL B.
- 5) THIS BOUNDARY SURVEY WAS PREPARED WITHOUT BENEFIT OF A CURRENT TITLE COMMITMENT AND DOES NOT REPRESENT A TITLE SEARCH BY THIS SURVEYOR OR HIS/HERS. COMPATIBILITY WITH ADJOINING PARCELS, OR ENCUMBRANCES OR ENCUMBRANCES OF RECORD AFFECTING THIS PARCEL.
- 6) THIS BOUNDARY SURVEY DOES NOT REPRESENT ANY OTHER TYPE OF SURVEY SUCH AS AN IMPROVEMENT SURVEY, EXISTING CONDITIONS OR IMPROVEMENT LOCATION COMMITMENT, ETC.
- 7) ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED ON SUCH DEFECT, IN NO EVENT MAY ANY ACTION BE BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.