

[Note: Conform for number of grantors and gender]

## CONSERVATION EASEMENT

This Conservation Easement (this "Easement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2007, by and between \_\_\_\_\_, the "Grantor" *[although plural, for convenience referred to as the "Grantor"]*, and \_\_\_\_\_, the "Grantee." The Grantor and the Grantee are sometimes referred to in this Easement as the "Party" or the "Parties."

## DEFINITIONS

For purposes of this Easement, the following terms shall have the meaning given to them below. Additional definitions are occasionally expressly provided in the body of this Easement.

- The term "Property" shall mean the real property, and any portion thereof, that is to be made subject to this Easement, a legal description of which is contained in Exhibit A, attached hereto, and as more particularly described below.
- The term "Grantor" shall mean the Grantor, and the Grantor's successors in title to the Property, including tenants, lessees, and licensees of the Property or any portion thereof.
- The term "Grantee" shall mean \_\_\_\_\_ and its successors and/or assigns.
- The terms "existing" or "currently," and variations thereof, shall mean existing or current at the time of the recordation of this Easement.
- The term "overgrazing" shall mean grazing resulting in denuding the land of vegetation, or grazing resulting in undesirable changes in plant communities that lead to decreased productivity, and decreased wildlife/livestock values.
- The term "use" shall mean physical use of the Property or any part thereof, or an activity on the Property or any part thereof.
- The terms "Code" and "Regulations" shall mean the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, respectively, and shall include reference to the comparable provisions of any subsequent revision of the Code and/or Regulations.
- The term "necessary" shall be interpreted to limit the use to which it applies to that which is essential to the accomplishment of such use.

- The term “feedlot” shall mean an enclosed area where livestock is fed and fattened for commercial slaughter as opposed to the grazing of livestock on growing vegetation in open fields or pastures.

- The term “Indemnified Parties” shall refer to the Grantee’s officers, employees and Board members, and their heirs, successors and assigns.

- The term “principal residence” shall refer to a structure occupied by the owners of the Property, their guests or tenants, that is the largest dwelling unit on the Property. There can be only one principal residence within a designated Building Envelope, as hereinafter defined, at one time.

- The term “guesthouse” shall refer to a structure used to house the guests of the occupants of the principal residences.

- The term “impervious surface” shall mean any paved surface (by concrete, asphalt and the like, but excluding gravel or packed earth) and the area covered by any building footprint (exclusive of roof overhangs); impervious surface shall not be deemed to include permitted roads, drives, pathways, and vehicle trails outside of designated Building Envelopes, but shall include such areas, if paved, within Building Envelopes.

- The term “paragraph” shall refer to the referenced paragraph or subparagraph, and any and all of its subparagraphs, if any, unless otherwise specifically stated.

## BACKGROUND STATEMENT

### Description of the Parties.

*The Grantor.* The Grantor is the owner of the Property. Grantor is a [*describe legal status of Grantor*]. The Grantor’s mailing address is \_\_\_\_\_.

*The Grantee.* The Grantee is a \_\_\_\_\_ non-profit corporation, and a charitable organization recognized under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code. The mailing address of the Grantee is \_\_\_\_\_. The Grantee is qualified to acquire and hold conservation easements under Section 170(h)(3) of the Code.

### Description of the Purpose of the Conveyance.

*General.* The conveyance below provides for the permanent conservation of the Property. The conveyance is made pursuant to the provisions of \_\_\_\_\_ (the “Act”), and this Easement is intended by the Parties to be a “conservation easement,” as defined by, and for all purposes within the meaning of, the Act.

Mutual Consideration. This Easement irrevocably and unconditionally conveys a real property interest in the Property, to the Grantee. In exchange, the Grantee binds itself to monitor the use of the Property, and to enforce the restrictions on the future use of the Property imposed by this Easement, in perpetuity. The Parties recognize that acceptance of the responsibility to permanently monitor and enforce these restrictions represents a substantial commitment, requiring the expenditure of significant time and financial resources, by the Grantee.

Easement is a Real Property Right. This Easement conveys to the Grantee a bundle of property rights that are, by the terms hereof, irrevocably and unconditionally removed from the Property. These rights are defined by the list of reserved and prohibited uses below. The Parties intend, by thus controlling and limiting the rights to the future use of the Property, to permanently protect the Conservation Values (hereinafter defined) of the Property for the benefit of the public, and to permanently conserve the Property, according to the terms of this Easement.

No Conveyance of Use Rights. Neither the Grantee, nor the public, acquires through this conveyance any rights to the physical use of the Property. However, the Grantee does acquire the right to prevent the Grantor from using the Property in ways that are inconsistent with the terms of this Easement, and the right to enter the Property for purposes of monitoring and enforcement, as expressly hereinafter provided.

Restrictions to Run With the Land. The Parties intend that the restrictions on the future use of the Property imposed by this Easement shall run with the land, and bind all future owners of the Property and any portion thereof, and that this Easement shall be enforceable by the Grantee, in perpetuity.

### **Description of the Property.**

The Property consists of approximately \_\_\_\_ acres of land located in \_\_\_\_\_ County, \_\_\_\_\_. The Property is currently improved with \_\_\_\_\_ *[or is unimproved]*. A more detailed description of these improvements is contained in the natural resources inventory of the Property (the “Inventory”) attached as Exhibit B and described in paragraph 5 of the “Easement Terms” below.

### **Description of the Conservation Values of the Property.**

The “Conservation Values” of the Property are partially described below, and in the Inventory. *[Description of values should be tailored to each property, the following are examples.]*

Wildlife Habitat and Open Space Values. The Property contains a significant, relatively natural, habitat for wildlife and plants. Protection of the Property by the Easement will preserve this habitat, and will also preserve the open space represented by the Property pursuant to specific, clearly delineated governmental policies, and for the

scenic enjoyment of the general public, as partly described in the Inventory. The terms contained in this paragraph are intended by the parties to have the meaning accorded them by Section 170(h)(4) of the Code and accompanying Regulations.

Governmental Conservation Policy. \_\_\_\_\_ County, \_\_\_\_\_ land use policies recognize, and seek to protect, the Conservation Values.

***[Add additional descriptions of “clearly delineated governmental conservation policies, if any.]***

Scenic Values.

**[Describe in terms of Regulatory criteria.]**

## THE CONVEYANCE

Conveyance of the Easement. The Grantor CONTRIBUTES, GRANTS and CONVEYS to the Grantee this Easement over and across the Property, pursuant to the Act, for the Conservation Purposes (as hereinafter defined), and upon the terms described below. This Easement shall be enforceable by the Grantee in perpetuity. This Easement shall bind the Grantor unconditionally and in perpetuity.

Warranty of Title for Easement. The Grantor warrants (a) that at the time of the execution and delivery of this Easement it was lawfully seized of an indefeasible estate in fee simple in and to the Property, and has a good right and power to convey this Easement; (b) that the Property was, at such time, free from all encumbrances except for matters of record in the \_\_\_\_\_ County, \_\_\_\_\_, Clerk’s Office that were legally enforceable at such time; and (c) that the Grantee, and its successors and assigns in title to the Easement, shall have the quiet and peaceful possession of this Easement. The Grantor warrants that it will defend the title to the Property, and its right to convey this Easement, according to the terms hereof, against all persons who may claim such title or challenge its right to make this conveyance.

The Grantor further warrants that there are no mortgages, liens, encumbrances, or other matters of record affecting the Property that would prevent the Grantee from enforcing the terms of this Easement.

Possession and Control. The Grantor shall have the sole possession, control, and use of the Property, except for the rights of the Grantee to enforce the provisions of this Easement. Furthermore, this Easement does not grant to, or create in, any person, or the public, any right of access to, or possession of, the Property, except for the rights of the Grantee as provided for in this Easement.

## EASEMENT TERMS

### 1. Conservation Purposes.

The “Conservation Purposes” of this Easement are (i) to preserve the Conservation Values, and other significant conservation interests (to the extent that it is not necessary to impair such other interests in order to protect the Conservation Values), and (ii) to restrict the use of the Property to those uses that are consistent with such values and interests.

### 2. Rights of the Grantee.

The affirmative rights conveyed to the Grantee by this Easement include the following:

2.1. *The Right to Preserve the Conservation Values in Perpetuity.* To identify, and to preserve and protect in perpetuity, the Conservation Values, and to advance the Conservation Purposes, subject to the terms of this Easement.

2.2. *The Right to Enter the Property to Monitor and Enforce.* To enter the Property to monitor the use of the Property, and to enforce compliance with the terms of this Easement. The Grantee’s right to enter the Property shall not be exercised in a manner that unreasonably interferes with the proper uses being made of the Property at the time of such entry. Prior to any entry upon the Property, the Grantee shall give seven (7) days written notice to at least one of the then owners of the Property.

2.3. *Access to the Property Without Notice.* No notice to any Grantor shall be required if the Grantee determines that immediate entry is essential to prevent, or mitigate, a violation of this Easement, or if the then owner of the Property has not provided the Grantee with an address to which such notice can be provided.

2.4. *The Right to Enjoin Violations and to Seek Restoration, Damages, and Costs.* To enjoin any activity on, or use of, the Property that violates the terms of this Easement, and to enforce the restoration of such areas or features of the Property that may be damaged by any such activity or use, and to seek, and recover, damages and costs, pursuant to paragraph 7 below.

Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to, or change in, the Property, resulting from causes beyond the Grantor’s control, including acts of trespassers, the unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and tree disease, or from any prudent action necessarily taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from any of such causes. However, this paragraph shall not apply to a Grantor who may reasonably be expected to have knowledge of an impending, or on-

going, violation of the terms of this Easement by a trespasser or third party, and fails to take reasonable and prudent steps to prevent or stop such violation.

**3. Rights Reserved by the Grantor.** The Grantor currently uses the Property for \_\_\_\_\_ . The Grantor expressly reserves the right to continue these existing uses in a manner that is consistent with the Conservation Purposes.

The following uses are consistent with the Conservation Purposes, and are reserved by the Grantor, subject to the conditions that such uses are undertaken in a manner that is consistent with the Conservation Purposes, and other specific standards that may be provided in connection with a particular use below. In some cases the right to undertake a reserved use is conditioned upon prior approval by the Grantee, in which cases notice and approval, in accordance with the provisions of paragraph 6 below, are required. *[Uses reserved must be tailored to each property. The following are typically reserved.]*

3.1. *Agricultural Use.* To graze livestock (including pasturing of horses and grazing leases), and to grow and harvest hay, and other crops, on the Property. Such activities shall be managed to protect the important riparian and wetland habitat on the Property, as well as the existing mix of native vegetation and, to the extent possible, to enhance all of the wildlife and plant habitat on the Property. Grazing shall be managed at a level that maintains vegetation for wildlife foraging and does not result in overgrazing, as defined previously.

3.2. *Improved Land Management Methods.* To implement new, improved methods for uses reserved in paragraph 3.1 above, and in general for management of the natural resources of the Property, as those methods become available. Prior to implementing any substantial change in current land management practices, the Grantor shall obtain approval of such proposed change from the Grantee, which approval shall not be unreasonably withheld.

3.3. *Structures, Building Envelopes and Building Design.* To construct, own, use, lease, maintain, repair, renovate, remove, relocate, replace and reconstruct (collectively, “to use”) structures on the Property, subject to the following provisions:

3.3.1. *Use of Existing and Permitted Structures.* The Inventory describes the existing structures on the Property. The Grantor reserves the rights to use these structures, and any additional structures allowed on the Property by this Easement.

3.3.2. *Building Envelope and the Use of Building Envelope.* Exhibit C is a map of the Property, showing the location of one *[or more]* “Building Envelope[s].” The *[Each]* Building Envelope contains \_\_\_ acres.

Within the *[each]* Building Envelope, the Grantor reserves the right to use, in addition to the existing buildings, one (1) principal residence, one (1) guest house, landscaping including ponds and other water features, non-native species

(provided that such species are not allowed to spread beyond the Building Envelope), and such other structures as are accessory to the principal residence reserved within the *[each]* Building Envelope, subject to the impervious surface limitation set forth below.

Except for structures expressly reserved anywhere on the Property by the terms of the following subparagraphs, all structures on the Property shall be located within the *[a]* Building Envelope.

3.3.3. *Alternate Building Envelope.* The Grantor reserves the right to designate an “Alternate Building Envelope” for the *[each]* Building Envelope shown on Exhibit C (referred to in this subparagraph as an “Initial Building Envelope”), subject to the following provisos: (i) The Grantor shall obtain the prior, written approval of the Grantee for such Alternate Building Envelope, which approval shall not be unreasonably withheld; (ii) the Grantee’s approval shall be obtained prior to commencement of work on, or in preparation for, any structure within such proposed Alternate Building Envelope; (iii) no Alternate Building Envelope may be approved if structures required by this Easement to be located in a Building Envelope are already located within the Initial Building Envelope for which the alternate is sought, unless those structures are removed and the Initial Building Envelope containing such structures is restored, to the reasonable satisfaction of the Grantee; (iv) prior to the commencement of work on, or in preparation for, any structure within such approved Alternate Building Envelope, the location of such Alternate Building Envelope shall be staked on the ground, and recorded in the Office of the Clerk of \_\_\_\_\_ County, \_\_\_\_\_, at the Grantor’s expense.

3.3.4. *Limitation on Residential Structures and Impervious Surface.* Only one (1) principal residence and one (1) guest house may be located on the Property *[within an approved Building Envelope]* at one time.

The total amount of impervious surface coverage for all structures on the Property, including, but not limited to the footprints of buildings and other structures such as decks, drives, vehicle trails, parking areas, etc., shall not exceed \_\_\_\_\_ acre. The Grantor shall have the right to utilize and allocate this impervious surface coverage within and between reserved structures *[and approved Building Envelopes]* in its sole and absolute discretion.

No additional impervious surface is permitted on the Property once the total allowable impervious surface coverage has been utilized unless existing impervious surface is removed in an amount equal to or greater than that of such proposed additional impervious surface, and the area occupied by such removed impervious surface has been re-vegetated to the reasonable satisfaction of the Grantee.

3.3.5. Building Design and Lighting. No structure on the Property shall exceed thirty (30) feet in height, measured from the highest point of the roof or top of such structure (excluding chimneys) to the lowest point of finished grade adjoining such structure. Fill that is not necessary to achieve positive drainage or slope stabilization, which is otherwise proposed clearly to raise the finished floor elevations(s) for any other purposes, shall not be considered finished grade.

All new construction (including renovations) shall utilize non-reflective, earth-tone materials for exterior surfaces. For this purpose, windows shall be considered “non-reflective.”

Except for existing lighting not in conformity with this requirement, all external lighting (including the replacement of existing lighting fixtures) shall be located within the Building Envelope[s], and shall be 90° horizontal cutoff downcast fixtures, and shall only produce light that is incandescent in color. No light shall be more than eight (8) feet above the ground unless attached to a building.

3.3.6. Earth Disturbance and Storage. Areas disturbed for any work on any structure required to be located within an approved Building Envelope, and all related site work, shall be limited to the approved Building Envelope(s) where such structure is, or will be, located.

3.3.7. Temporary Storage of Construction Materials, Construction Debris, and Equipment. The Grantor reserves the rights to store construction materials and non-garbage, non-toxic construction debris, and to park equipment, within the approved Building Envelope[s] ***[where such construction is being undertaken]***. The Grantee may approve other locations, in its reasonable discretion.

3.3.8. Notice Required. The Grantor agrees to provide the Grantee with written notice prior to commencement of any exterior work on, or site work for, any structure, including the removal of any structure. This notice shall include a sketch plan of the proposed work, and the area to be disturbed (if any) during the work. No notice shall be required for routine maintenance.

3.3.9. Scheduling of Work. Insofar as practical, all construction on the Property shall be scheduled and/or managed to minimize the impact of such construction on animal migration and bald eagle nesting.

3.4. Fencing. To build, use, maintain, repair, and relocate fences anywhere on the Property, as necessary for permitted agricultural uses and to protect landscaping within the approved Building Envelope[s], provided that any new or replacement fencing does not unreasonably interfere with the movement of wildlife on or across the Property. ***[The Grantor agrees that existing fencing on the Property will be modified, in the event of any substantial repair or replacement thereof, to accommodate the movement of wildlife on and across the Property.]***

3.5. Utilities. To construct, use, repair, replace, and maintain utility systems anywhere on the Property, provided that such systems are within existing, or currently identified utility easements, or rights of way, or are necessary to serve structures reserved on the Property, or for reserved agricultural uses. Other than existing utilities, utilities shall be located underground to the extent practical. What is practical shall not depend primarily upon financial considerations.

In addition, the Grantor reserves the rights to construct, use, repair, replace, relocate, and maintain, headgates and ditches necessary for reserved agricultural uses, and as necessary to manage water on the Property.

3.6. Drives, Vehicle Trails, and Pathways. To use and maintain existing drives, vehicle trails and pathways as shown in the Inventory anywhere on the Property and to construct, use and maintain new drives, vehicle trails, and pathways as necessary to provide access to reserved structures, and for hiking, jogging, horseback riding, and cross-country skiing. Pathways shall not be hard-surfaced, but may be provided with a wood chip surface.

3.7. Use of Vehicles. To use motorized vehicles, including snowmobiles and ATVs, for access to buildings and structures permitted on the Property, over existing and permitted drives and vehicle trails. Off-road use of vehicles shall be limited to uses necessary (1) for fire suppression; (2) for emergency or severe weather winter access when ordinary vehicle access is not available; (3) for normal maintenance; (4) for reserved agricultural uses; and (5) to establish and maintain cross-country ski trails on the Property.

3.8. Planting. To plant and maintain native, non-noxious, plant species or other plant species common to current ranching practices in the \_\_\_\_\_ region, on the Property, for the purpose of maintaining existing plant and animal habitat and for permitted agricultural uses.

3.9. Chemical Use. To use agricultural chemicals for reserved agricultural uses, and for the control of noxious weeds and pests on the Property, including spraying from aircraft for the control of mosquitoes. Chemicals shall be used only in those amounts necessary for such purposes, and according to manufacturer's instructions.

3.10. Recreational Use. To use the Property for non-commercial recreational uses such as hiking, fishing, horseback riding, cross-country skiing, wildlife observation, photography (including commercial photography), or other traditional non-motorized, non-commercial recreational activities.

3.11. Scientific Study. To use the Property for scientific study of wildlife, plant and animal habitat, and agricultural and forestry practices.

3.12. Removal of Vegetation. To remove dead trees that pose a threat of injury to

people, animals or structures, and to cut firewood for use in buildings reserved on the Property. In addition, the Grantor reserves the right to clear vegetation as necessary (i) to maintain existing pastures for permitted agricultural use; (ii) for work on reserved structures on the Property; (iii) for the installation of reserved utilities; (iv) for the construction of reserved drives; (v) for fire prevention; and (vi) to stop the spread of insect infestation or disease. Activities undertaken pursuant to provisos (v) and (vi) shall be subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld.

3.13. *Animal Control.* To control problem animals on the Property, using only selective methods limited in their effectiveness to specific animals reasonably believed to have caused damage to livestock, or other property. The use of cyanide, or other non-selective techniques, is not permitted.

3.14. *Grading and Filling.* To grade, fill, level, berm or ditch on the Property, but only as necessary for uses expressly reserved in this paragraph 3. Any area disturbed by such work, including any parking or storage of equipment, materials, or debris, shall be promptly restored to a condition roughly equivalent to the surrounding undisturbed land, to the reasonable satisfaction of the Grantee, or to such other condition as the Grantee may approve in writing, in its absolute discretion, upon the completion or non-seasonally related interruption of such work exceeding sixty (60) days.

3.15. *Habitat Enhancement.* To undertake enhancement of existing plant and animal habitat, including the construction of ponds. Outside of the [a] Building Envelope such enhancement shall require the advance written approval of the Grantee, which approval shall not be unreasonably withheld.

3.16. *Home Occupancy Uses.* To undertake home-occupancy commercial, or professional, uses contained entirely within a reserved principal residence, and generating no more than a minimal increase in traffic on the Property. Such uses shall involve no outside storage of materials, or storage, or parking of equipment on the Property.

3.17. *Boundary Adjustments.* To adjust the boundaries of the Property and to convey separately any portions of the Property absorbed into adjoining parcels as a result of such adjustment, provided that (i) all land subject to this Easement prior to such adjustment remains subject to this Easement after the adjustment; and (ii) the boundary adjustment does not result in any development that could not occur but for such adjustment. The Grantor shall notify the Grantee in writing prior to undertaking any such boundary adjustment, and shall include with the notice a map showing the existing and proposed new boundary resulting from the adjustment.

3.18. *Division of the Property.* To divide the Property into as many individual parcels as there are Building Envelopes reserved on the Property, provided that at least one (1) Building Envelope is included within each such new parcel, and to

convey such parcels separately, but subject to the terms of this Easement. The Grantor agrees to provide advance written notice of any division to the Grantee, including a map showing the boundaries of all new parcels that will result from the proposed division.

3.19. *Other Uses.* To make any other use of the Property that is consistent with the Conservation Purposes, provided that the Grantor shall obtain the written approval of the Grantee prior to undertaking such uses, which approval shall not be unreasonably withheld. Uses reserved pursuant to this paragraph 3.19 shall not be deemed “expressly reserved” for any other purpose of this Easement.

#### **4. Prohibited Uses.**

In general, the Grantor hereby relinquishes, in perpetuity, the right to use the Property in ways that are inconsistent with the Conservation Purposes, and all such uses are prohibited. Specifically, the following uses of the Property are deemed to be inconsistent with the Conservation Purposes, and are prohibited, except for uses expressly reserved in paragraph 3 above, and/or to the extent reasonably necessary for uses expressly reserved in said paragraph 3.

- 4.1. *Structures.* The construction or placement of any structures on the Property.
- 4.2. *Removal of Vegetation.* The removal, destruction, or cutting of native vegetation on the Property.
- 4.3. *Alteration of Habitat.* The change, disturbance, alteration, or impairment of the existing natural habitat for plants and wildlife on the Property.
- 4.4. *Grading and Filling.* Grading, filling, and any other alteration of the existing topography of the Property.
- 4.5. *Introduction of Non-native Species.* The introduction of non-native plant or animal species on the Property.
- 4.6. *Use of Chemicals.* The use of chemicals on the Property.
- 4.7. *Roads, etc.* The construction of any roads, drives, vehicle trails, or pathways on the Property.
- 4.8. *Use of Vehicles, etc.* The non-emergency use of motorized vehicles or aircraft on the Property.
- 4.9. *Land Division.* The division or *de facto* division of the Property (through sales, partition, long-term leases, or otherwise), including the transfer of any part of the Property separate from the remainder of the Property.
- 4.10. *Feedlots.* The location or operation of feedlots on the Property.

4.11. Mining and Mineral Extraction. Mining by strip or surface mining, or any other method, and drilling and exploring for oil and/or gas or the recovery of coal-bed methane, on the Property.

4.12. Commercial or Industrial Use. The construction, location, or operation of any commercial or industrial facilities or uses on the Property.

4.13. Water Rights. Transferring, encumbering, leasing, selling, or otherwise separating any water rights from the Property without the prior written approval of the Grantee, in the sole and absolute discretion of the Grantee. The Grantor shall use *[his/her/its]* best efforts to retain any and all water rights, now or in the future, appurtenant to the Property.

4.14. Outdoor Storage and Dumping. The outdoor storage of materials, equipment and/or vehicles (not to preclude temporary parking of vehicles actively engaged in work on the Property such as snowplowing, etc.), and the dumping, disposal or storage of refuse, trash, toxic or other materials on the Property. This prohibition does not impose liability on the Grantee with respect to the Property, nor shall the Grantee pursuant to this, or any other provision of this Easement, with respect to the Property, be construed as having liability as an “owner or operator” or other “responsible party” within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar federal, state, or local laws.

Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Grantor’s activities on the Property, or otherwise to “participate in management” of the Property, within the meaning of CERCLA, or similar federal, state, or local laws.

4.15. Manipulation of Watercourses. The manipulation, diversion, or other alteration of natural watercourses, or riparian areas, or any practice that degrades or destabilizes natural banks or shorelines.

## **5. Inventory.**

The Inventory, attached as Exhibit B, describes the existing condition and character of the Property. The Parties hereby acknowledge the accuracy of the Inventory, and they acknowledge receipt of the Inventory prior to the execution of this Easement. The Inventory may be used to monitor compliance with the terms of this Easement, and to assist in the enforcement of its terms. However, the Parties shall not be foreclosed from using other relevant evidence to assist in the resolution of any controversy regarding compliance.

## 6. Notice and Approval Requirements.

6.1. *Form of Notice.* Any notices, demands or other communications required or permitted to be given by the terms of this Easement shall be given in writing and shall be delivered (i) in person (such delivery to be evidenced by a signed receipt); (ii) by certified mail, postage prepaid, return receipt requested; (iii) by U.S. Express Mail or commercial overnight courier; (iv) by regular U.S. Mail; (v) by telephone facsimile; or (vi) by electronic mail.

Such notices shall be deemed to have been “given” (i) when actually delivered, in the case of personal delivery; (ii) when delivered as confirmed by an official return receipt if sent by certified mail; (iii) within two (2) business days of deposit with a courier in the case of U.S. Express Mail, or commercial overnight courier; (iv) when actually received, in the case of U.S. Mail; (v) when sent, with a confirmation of delivery if sent by telephone facsimile; or (vi) when received, if sent by electronic mail. Such notices shall be sent to the addresses of the Parties set forth above, or such other address as a Party may, pursuant to the notice provisions of this paragraph 6.1, direct, or to the facsimile telephone number or electronic mail address of the Party to whom it is directed.

Notice of change of address shall be effective only when done in accordance with this paragraph 6.

6.2. *Written Notice to the Grantee Required.* The Grantor hereby relinquishes any right to use the Property in ways that may be inconsistent with the Conservation Purposes, or with respect to which permission of the Grantee is expressly required by the terms of this Easement, until [*he/she/it*] has notified the Grantee in accordance with this paragraph 6, and obtained approval therefor from the Grantee.

6.3. *Response by the Grantee.* The Grantee shall, within thirty (30) days from receipt of a request hereunder, respond in writing to any request for approval by the Grantor made in compliance with this paragraph 6. Until expressly permitted in writing by the Grantee, the Grantor shall not commence the activity described in the notice. In the event that the Grantee fails to respond to such a request within such period, the requested approval shall be “deemed” granted.

All activities requiring prior written approval by the Grantee shall be conducted consistently with such approval when granted, or, in the case of a “deemed” approval, according to the preceding paragraph, conducted consistently with the terms of the request. Nevertheless, no such “deemed” approval shall allow any activity on the Property that is inconsistent with the Conservation Purposes.

In the event that the Grantee objects to the proposed activity it shall inform the Grantor in writing of the manner, if any, in which the proposed activity can be modified to satisfy its objections. Thereafter, the Grantor may submit a revised

proposal accommodating the objections, and the Grantee shall review and respond to such revision in the same manner as to the original notice.

Any objection by the Grantee to a proposed activity shall be based upon its opinion that the proposed activity is inconsistent with this Easement, and/or upon any specific standards provided for herein. The Grantee shall have reasonable discretion in determining whether or not a proposed activity is consistent with the terms of this Easement, and/or any such standards.

In no event may the Grantee permit any activity on the Property that would be inconsistent with the Conservation Purposes.

6.4. *Content of Notices.* All required notices hereunder shall be in writing, and shall provide sufficient information, in addition to any information required by other provisions of this Easement, to allow, in the case of notice to the Grantee, the Grantee to determine whether the proposal is consistent with the Conservation Purposes. In the case of notice to the Grantor, the notice shall inform the Grantor of the purpose of the notice, and the provision(s) of this Easement with respect to which the notice has been sent.

## **7. Enforcement of this Easement.**

7.1. *Right to Injunction, etc.* The Parties recognize that money damages, or other non-injunctive relief, may not adequately remedy a violation of the terms of this Easement. Therefore, the Parties hereby agree that any violation shall be subject to termination through injunctive proceedings, including the imposition of temporary restraining orders, preliminary injunctions, specific performance, or any other legal means. The Parties also agree that no proof of damages, or the inadequacy of other remedies, shall be required of either Party, in seeking any such injunctive relief.

7.2. *Right to Restoration.* In addition, the Grantee shall have the right, but not the obligation, to enforce the restoration of any, and all, of the Conservation Values damaged by activities inconsistent with the Conservation Purposes. Such restoration shall be, as nearly as possible, to the condition that existed on the date of the recordation of this Easement, except for such changes as may have been made to the Property that are consistent with the terms of this Easement.

7.3. *Right to Recover Damages.* In the event of a violation of the terms of this Easement, in addition to the other remedies provided for in this paragraph 7, and any other remedies available in law or equity, the Grantee shall also be entitled to recover all damages necessary to place the Grantee in the same position that it would have been in but for the violation. The Parties agree that in determining such damages the following factors, among others, may be considered (i) the costs of restoration of the Property as provided in subparagraph 7.2 above, and (ii) the full market cost of purchasing a conservation easement containing terms comparable to the terms of this

Easement on land in the vicinity of the Property, of a size, and with conservation values, roughly comparable to those of the Property.

7.4. Costs and Attorney's Fees. In addition to any other damages to which it may be entitled, the Grantee shall be entitled to recover the costs of enforcement of any of the terms of this Easement, including reasonable attorney's fees, expenses and court costs, provided that it is, at least in substantial part, the prevailing party in any such action.

7.5. Right to Proceed Against Third Parties. The Grantee has the right to proceed against any third party or parties whose actions threaten or damage the Conservation Values, including the right to pursue all remedies and damages provided in this paragraph 7. The Grantor shall cooperate with the Grantee in such proceeding.

7.6. Right to Require Assignment of Trespass Claims. If requested by the Grantee, the Grantor shall assign to the Grantee any cause of action for trespass resulting in damage to the Conservation Values that may be available to such Grantor. The Grantor may condition such assignment to provide for the (i) diligent prosecution of any such action by the Grantee and (ii) division according to the proportionate values determined pursuant to subparagraph 11.1 below, between the Grantee and such Grantor of any recovery, over and above the Grantee's attorney's fees and expenses incurred, resulting from such action.

7.7. The Grantor's Right to Recover Damages. In the event that the Grantee is found by a court having jurisdiction in the case to have willfully or wantonly, and in direct contravention of this Easement, violated the terms of this Easement, the Grantor shall be entitled to recover such damages as it may have incurred as a result of such violation, together with [his/her/its] reasonable attorney's fees, expenses and court costs.

7.8. No Waiver. Failure by either Party, for any reason, to exercise the rights granted to it by this Easement, in the event of any violation of its terms, shall not be deemed or construed to be a waiver of such Party's rights hereunder as to that, or any subsequent, violation. The Parties hereby expressly waive any defense of laches, estoppel, or prescription.

## **8. Payment of Costs, Taxes or Assessments.**

8.1. Payment of Costs of Operation, etc. The Grantor shall bear all costs of operation, upkeep and maintenance of the Property.

8.2. Payment of Taxes. The Grantor shall pay all real estate taxes or assessments lawfully levied upon the Property and/or this Easement and/or upon the Grantee as a result of its holding this Easement, and the Grantee shall have no obligation, or responsibility, for the payment of such taxes or assessments. The Grantee shall have

the right to make any payment or to participate in any foreclosure or similar proceeding resulting from any delinquency, as necessary to protect its interest in the Property. Any costs incurred by the Grantee in case of any such payment or participation shall be reimbursed promptly by the Grantor.

8.3. *Indemnification.* The Grantor shall indemnify the Grantee and the Indemnified Parties from any liability for or expenses incurred by the Grantee in connection with the payment of the costs and/or taxes that are the subject of this paragraph 8.

## **9. Grantee Indemnified from Damages.**

The Parties acknowledge and agree that the Grantee has neither possessory rights in the Property, nor any right or responsibility to control the use of the Property (except to enforce the restrictions on use of the Property provided for in this Easement), nor to maintain, or keep up the Property, and the Parties agree that the Grantor retains all such rights and control exclusively.

The Grantor shall indemnify and hold the Grantee, and the Indemnified Parties, harmless from any court awarded damages, together with reasonable attorney's fees and expenses incurred by the Grantee and/or the Indemnified Parties, and all attorney's fees and expenses assessed against the Grantee and/or the Indemnified Parties, resulting from any and all of the following:

- Personal injury or property damage that occurs on the Property not due to the negligence of the Grantee or its agents;
- Liability, including, but not limited to, liability under CERCLA, and/or similar local, state or federal laws, relating to cleanup of hazardous substances that were released or in any way deposited on the Property, other than by the Grantee or its agents.

## **10. Assignment of Easement.**

This Easement may be transferred by the Grantee, on the following terms and conditions:

10.1. *Transfer Limited to Qualified Organizations.* If the Grantee decides to transfer this Easement, or ceases to be a qualified organization under Section 170(h)(3) of the Code, it shall promptly transfer this Easement to a non-profit, non-governmental organization qualified under Section 170(h)(3) of the Code that is able and willing to carry out the Conservation Purposes in perpetuity.

It shall be a precondition to the transfer of this Easement that the transferee organization shall be required, and shall agree in writing, to carry out the Conservation Purposes in perpetuity.

10.2. Notice to the Grantor Prior to Transfer. The Grantee shall give thirty (30) days written notice to the then owner of the Property prior to transferring the Easement. The Grantee shall, whenever reasonably practical, honor such owner's preferences regarding a transferee of the Easement, provided that they are made known to the Grantee within such thirty-day period, and provided that any suggested transferee meets the criteria of this paragraph 10.

## **11. Extinguishment of this Easement.**

In the event that this Easement is extinguished as to all, or a portion, of the Property, the Grantee shall be entitled to a share of any proceeds resulting from the conveyance of the underlying Property on the terms contained in this paragraph 11. This provision is required by Section 1.170A-14(g)(6)(ii) of the Regulations for a "qualified conservation contribution," and is intended by the Parties to comply with such Regulations, and to entitle the Grantee to all of the rights that such Regulations require that a "donor" grant to a "donee organization."

11.1. Value of this Easement. This Easement constitutes a real property interest immediately vested in the Grantee with a fair market value that is at least equal to the proportionate value that this Easement, as of the date of conveyance, bears to the value of the Property as a whole at that time. This proportionate value shall remain constant. The values applicable for purposes of the calculations required by this subparagraph 11.1 shall be the values finally used to determine the value of this Easement for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement.

11.2. Payment in the Event of Extinguishment. In the event of an unexpected change in circumstances surrounding the Property that makes impossible or impractical the continued use of the Property for the Conservation Purposes, and any or all of the restrictions of the Easement are extinguished by a judicial proceeding, or if for any other reason this Easement is terminated as to all, or a portion, of the Property, the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property, or any portion thereof, shall be entitled to a percentage of the proceeds of such sale, exchange or involuntary conversion, equal to the proportionate value determined according to paragraph 11.1. In the event that such proportionate value was determined without regard to structural improvements existing on the Property at the time of the conveyance, then such improvements shall be disregarded in determining the amount of such proceeds, etc. to which the Grantee is entitled hereunder. In any event, the value of structural improvements made to the Property after the date of conveyance shall be disregarded in determining such amount.

11.3. Use of Proceeds by the Grantee. Any proceeds received by the Grantee pursuant to this paragraph 11 shall be used by the Grantee in a manner that is consistent with the Conservation Purposes.

## **12. Notice to the Grantee of Property Transfer.**

The Grantor shall provide the Grantee with thirty (30) days written notice prior to conveying the Property or any portion thereof or interest therein. The notice shall include the address of the transferee. Failure to provide this notice shall not in any way affect the validity or enforceability of this Easement against any subsequent owner of the Property, or the validity of the conveyance.

## **13. Access and Control of Trespass.**

Nothing contained in this Easement shall be construed to give the public any right of access to, or use of, the Property, and the Grantor reserves the right to post the Property against trespassing, hunting, or fishing and to prosecute trespassers, subject to the provisions of paragraph 7.6 above.

## **14. Miscellaneous Provisions.**

14.1. *Severability.* If any provisions of this Easement or the application thereof to any person, or circumstance, are found to be invalid, the remainder of this Easement, and the application of such provisions to other persons, or circumstances, shall not be affected.

14.2. *Limitation on Liability.* A Party's rights and obligations pursuant to this Easement shall terminate upon transfer of that Party's interest in the Easement or in all of the Property, except that liability for the acts or omissions of such Party shall survive transfer with respect to such Party.

**Or** The rights and obligations of any owner of this Easement pursuant to this Easement shall terminate upon transfer of that owner's interest in the Easement. The rights and obligations of any owner of the Property, or portion thereof, pursuant to this Easement, shall terminate upon transfer of all of the Property, with respect to the Property, or in the event of transfer of a portion of the Property, with respect to such portion. Nevertheless, liability for the acts or omissions of any owner of the Easement, or the Property, or any portion of the Property, shall survive any such transfer.

14.3. *Recordation.* This Easement shall be recorded in the Office of the Clerk of \_\_\_\_\_ County, \_\_\_\_\_, and may be re-recorded at any time by either Party.

14.4. *Reference to Easement Required.* Reference to this Easement shall be made in a separate paragraph of any subsequent deed, or other legal instrument, by which any interest (including a leasehold interest) in the Property is conveyed. Such reference shall include the recording data pertaining to this Easement. Failure to provide this reference shall not in any way affect the validity or enforceability of this Easement against any subsequent owner of the Property, or the validity of such conveyance.

14.5. *Construction.* This Easement shall be construed according to the laws of the State of \_\_\_\_\_ and the United States of America. Nevertheless, any general rule of construction notwithstanding, the Parties agree that this Easement shall be liberally construed in favor of the grant to the Grantee to effect the Conservation Purposes, and the policy and purpose of the Act.

The Parties also intend that the conveyance provided for in this Easement qualify under Section 170(h) of the Code as a “qualified conservation contribution” of a “perpetual conservation restriction,” within the meaning accorded those phrases by Section 1.170A-14 of the Regulations, for federal income and estate and gift tax purposes. The provisions of this Easement shall be construed accordingly. Notwithstanding the foregoing, the Grantee does not hereby provide any warranty or other assurance as to the deductibility of the interests hereby conveyed, and the provisions of this Easement are in no way conditioned upon such deductibility.

If any provision of this Easement is found to be ambiguous, an interpretation consistent with advancing the Conservation Purposes and the qualification under Section 170(h) of the Code, as aforesaid, shall be favored over any other interpretation.

Neither of the Parties shall be deemed the draftsman of this Easement or any part thereof, each having had the benefit of counsel of their own choosing in negotiating its terms.

14.6. *Venue and Jurisdiction.* The Parties agree that venue and jurisdiction for the trial of any dispute between them or any third party relating to the enforcement or violation of any of the terms of this Easement shall be the state trial court serving \_\_\_\_\_ County, \_\_\_\_\_, and no proceeding shall be initiated in any other court, except for appeals from the decision of such trial court.

14.7. *Extinguishment of Development Rights.* The Grantor hereby grants to the Grantee all of the development rights pertaining to the Property, except for those development rights expressly reserved by the Grantor herein. Development rights shall be deemed to include, but not be limited to, all development rights and development potential that are now or hereafter allocated to, implied, reserved or inherent in the Property, including, but not limited to (i) all subdivision and development density rights and potential and (ii) the right to use any of the acreage of the Property in any acreage calculation having the effect of creating, or contributing to, additional development on or off the Property, whether such rights exist now or in the future under federal, state or local law, or otherwise.

The Grantor unconditionally and irrevocably relinquishes the right to transfer such development rights to any other property adjacent or otherwise, or to use them for the purposes of calculating permissible lot yield, density, and development potential etc., of the Property or any other property.

The Parties agree that all such development rights are hereby terminated and extinguished in perpetuity.

As an elaboration, but not a limitation, of the foregoing, for purposes of this subparagraph 14.7, the Property shall be considered to be non-existent for purposes of all non-reserved development rights and/or development potential, or calculations pertaining thereto, of any and every nature.

14.8. *Relation to Governmental Land Use Regulations.* The restrictions imposed by the terms of this Easement are independent of any and all governmental regulations that apply to the use of the Property, including the Land Development Regulations of \_\_\_\_\_ County, \_\_\_\_\_. The relationship of this Easement and any such regulations is such that, although the terms of this Easement and such regulations apply simultaneously to the Property, on a case-by-case basis, the more restrictive regulation or Easement restriction will govern the use of the Property. This provision is intended by the Parties as a clarification of the relationship of the restrictions of the Easement and applicable governmental regulations only, and is not intended to, and does not impose any additional restrictions on the use of the Property.

14.9. *[For individual grantors only] Waiver of Homestead Exemption.* \_\_\_\_\_ joins in the execution of this Easement for the sole purpose of joining with the Grantor in releasing and/or waiving any and all rights under and by virtue of the homestead exemption laws of the State of \_\_\_\_\_, insofar as any of such rights affect the conveyance set forth herein, and *[he/she]* and the Grantor do hereby release and/or waive such rights. *[or]* The Grantors do hereby release and/or waive, any and all rights under, and by virtue of, the homestead exemption laws of the State of \_\_\_\_\_, insofar as any of such rights affect the conveyances set forth herein.

IN WITNESS WHEREOF, the Grantor has executed this Easement the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_, Grantor

Accepted this \_\_\_ day of \_\_\_\_\_, 2007.

NAME OF LAND TRUST

By: \_\_\_\_\_  
\_\_\_\_\_, President

NOTARIES

