

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made on this ____ day of _____, 2012, by _____, having an address at _____, (“Grantor”), and LAND LEGACY, INC., an Oklahoma nonprofit public benefit corporation authorized to do business in Oklahoma, having an address at 406 South Boulder Avenue, Suite 280, Tulsa, OK 74103 (“Grantee”).

WITNESS THAT:

WHEREAS, Grantor is the sole owner of such surface property, which consists of approximately _____ acres, legally described as real property located in _____ County, Oklahoma, more particularly described in **Exhibit A**, with map in **Exhibit B** attached hereto and incorporated by this reference (the “Property”);

WHEREAS, the Property possesses natural, scenic, and open space values (collectively, “conservation values”) of great importance to Grantor, the people of _____ County, and the people of the State of Oklahoma;

WHEREAS, Grantor wishes to maintain the Property in its present state for its present conservation values and for the benefit of future generations;

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to traditional ranching or agriculture existing at the time of this grant, that do not significantly impair or interfere with those values;

WHEREAS, the State of Oklahoma has recognized the importance of both public and private efforts to conserve and protect natural values of real property by enacting the Oklahoma Uniform Conservation Easement Act (60 O.S. §§ 49.1 - 49.8), and both parties believe the Property has significant natural, scenic, and open space values as recognized under the Act;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee and it assigns the right and duty to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, Grantee is a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and is a qualified conservation easement holder under the Oklahoma Uniform Conservation Easement Act (60 O.S. §§ 49.1 - 49.8) and is a qualified organization under Section 170(h)(3) of the Internal Revenue Code to receive and to hold conservation easements; and

WHEREAS, Grantee 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;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oklahoma, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and

character and to the extent hereinafter set forth (“Easement”):

1. Purpose.

It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the 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 traditional ranching or other agricultural uses that are consistent with the purpose of this Easement. The duration of this Easement shall be in perpetuity.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Easement. However, nothing in this Easement shall require the Grantor to take any action to restore the condition of the property after any act of God or other causes, activities, or events over which Grantor had no control.

2. Rights of Grantee.

To accomplish the purpose of this Easement the following rights are perpetually conveyed to Grantee by this Easement:

- (a) To preserve and protect the conservation values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor’s compliance with and otherwise to enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6.

3. Oil and Gas Extraction.

Grantor shall make reasonable efforts to require any third party who owns subsurface rights on the Property to extract subsurface oil or gas only by extraction methods that will have a limited and localized impact on, and not significantly impair or interfere with the conservation values of the Property and the purposes of this Easement. Grantor shall make reasonable efforts to require the extractor at all times to use best efforts and practices to prevent damage or impairment of natural values and to restore any area damaged to its original condition within one year from the initial date of disturbance. Grantor shall request through reasonable efforts that all extraction facilities are to be concealed or otherwise located as to be compatible with existing topology and landscape to the greatest extent practicable and that any erection of oil or gas facilities to be low profile and to be painted in earth tones to blend into the landscape.

In the event that Grantor cannot prevent surface area harm by the extraction of subsurface minerals, all monetary damages shall be paid to Grantor, not Grantee.

4. Perpetually Prohibited Uses and Activities.

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited.

Without limiting the generality of the foregoing, the following activities are expressly prohibited:

- (a) The right to establish or maintain any residential, commercial, recreational, or industrial facility on the Property or any other structure not specifically reserved herein;
- (b) Surface mining or quarrying of soil, sand, or other minerals; except that the Grantor may extract soil, sand, gravel solely for a permitted use of the Property in a manner consistent with the conservation purpose of this deed, minimal in scope and impact.
- (c) Agricultural uses that are inconsistent with sound conservation practices. An optional Conservation Plan prepared by the NRCS is recommended and/or may be required for this property.
- (d) Subdivision of the Property, whether by physical or legal process;
- (e) Erection of commercial, institutional or other signs;
- (f) Erection of any improvements or construction of paved roads and other structures; other than water wells and their pumps, water tanks, ponds, small corrals for livestock, a hay barn, and unimproved agricultural or pasture roads/tracks;
- (g) Any future dumping or accumulation of any kind of trash, or refuse, or hazardous waste on the Property. However, this shall not prevent the storage of agricultural products and by products on the property, so long as it is done in accordance with all applicable government laws and regulations, and the values of this conservation easement;
- (h) Electrical power lines that are not below grade, where practical; if any utility construction is conducted on or through the Easement area, the physical features of the Property will be restored to original condition within one year from the initial date of disturbance.
- (i) Erection of electrical generating windmills or solar arrays for commercial electricity generation or sale;
- (j) Construction or continued maintenance of confined animal feeding lots or operations;
- (k) Recreational uses: resort structures, golf courses, sport fields, and other public or commercial facilities. However, passive recreational uses maybe utilized by the landowner; and
- (l) Selling an additional easement to a third party for an activity that, in Grantee's discretion, is not consistent with the purposes of this Deed of Conservation Easement.

However, Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

5. Reserved Rights.

Grantor reserves to himself, and to his personal representative, heirs, successors, and assigns, all rights accruing from their ownership of the property, including the right to engage in or permit or invite others

to engage in all uses of the Property that are not expressly prohibited herein, are consistent with traditional ranching, and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing passive recreation such as: fishing, hiking, and camping on the Property, is expressly reserved to the Grantor and his assigns.

6. Grantee's Remedies.

If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice by certified mail or email to Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be reasonably cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

Without limiting Grantor's liability there for, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement.

7. Acts Beyond Grantor's Control.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from any act of God or causes, activities, or events 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.

Nothing in this Easement shall require the Grantor to take any action to restore the condition of the property after any act of God or other causes, activities, or events over which Grantor had no control.

8. Costs of Enforcement.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suits and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

9. Grantee's Discretion.

Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by

Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee 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.

10. Waiver of Certain Defenses.

Grantor hereby waives any defense of laches, estoppel, or prescription.

11. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the property taxes, insurance, ownership, operation, upkeep, and maintenance of the Property.

12. Extinguishment.

If circumstances arise in the future such as to render the purpose of this Easement impossible to accomplish or obsolete, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee 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 by the court, unless otherwise provided by Oklahoma or Federal law at the time.

13. Condemnation.

If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation, by the entity declaring power of eminent domain, in accordance with applicable law, policy and procedures.

14. Assignment of Easement.

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under Oklahoma Uniform Conservation Easement Act (60 O.S. §§ 49.1 - 49.8) (or any successor provision then applicable), or any public entity, such as the United States. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out. The Grantee shall notify the Grantors prior to any reassignment.

15. Subsequent Transfer of Property Interest.

Grantor agrees to incorporate the terms of this Easement in any deed, other legal instrument, subsurface mineral lease, or permitted surface extraction agreement by which Grantor enters into or divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor shall notify Grantee prior to the transfer of this interest.

Should Grantor transfer the Property, Grantor shall no longer be required to perform the duties and obligations herein, but shall confirm that the subsequent landowner or lessee is aware of this Deed of Conservation Easement and the responsibilities and obligations as relates to this Easement. Grantee shall agree to hold new grantor for compliance with this Easement terms, through any such conveyance instrument.

16. Amendment of Easement

This easement may be amended only with the written consent of the Grantor, the Grantee, and pursuant any State or Federal agency requirements. Any amendment shall be consistent with the purposes of this Deed and with the Grantee’s easement amendment policies, and shall comply with Internal Revenue Code or any Federal or State regulations promulgated with Conservation Easements.

17. Baseline Data

The parties acknowledge that an inventory of baseline data relating to the Property shall be completed for the Property, and keep on file in the Grantee’s office, and that a copy shall be furnished to the Grantor. The parties acknowledge that this collection of baseline data contains accurate representation of the Property’s condition and natural resources as of the date of execution of this Easement.

18. 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:

To Grantee:

Land Legacy
406 South Boulder Ave., Suite 280
Tulsa, Oklahoma 74103
Attn: Executive Director

19. Recordation.

Grantee or Grantor shall record this instrument in timely fashion in the office records of _____ County, Oklahoma and may re-record it at any time as may be required to preserve its rights in the Easement.

20. Subsequent Liens on Property.

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Easement.

21. Access.

No right of access by the general public to any portion of the Property is conveyed by this Easement.

22. General Provisions.

- (a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oklahoma.
- (b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Grantee to affect the purpose of this Easement and the policy and purpose of Oklahoma Uniform Conservation Easement Act (60

O.S. §§ 49.1 - 49.8). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- (c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, 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 not be affected thereby.
- (d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- (e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (f) Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.
- (g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- (h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.
- (i) 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.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

[Remainder of page intentionally left blank]

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

Grantor: _____

Subscribed and sworn before me this ____ of _____, _____.

Notary Public

My Commission Expires:

Grantee: _____

by _____

its _____

Subscribed and sworn before me this ____ of _____, _____.

Notary Public

My Commission Expires:

Exhibit “A”

(Property Description)

A tract of real property located in _____ County, Oklahoma, described as follows: