

SAMPLE DEED OF CONSERVATION EASEMENT

Conservation Easements are drafted to address the specific Conservation Values intended for protection and the specific objectives of Grantor (the landowner) and Grantee (here Colorado Open Lands). This Sample Deed of Conservation Easement may contain elements not applicable to a particular property or to a particular landowner's conservation objectives. As a result, this document is only a starting point from which a tailored easement for a particular property can be created. COL is also continuously reviewing and updating this document.

[EASEMENT NAME]

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a fee of ¼ of 1% of the sale price to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this ____ day of _____, 200_, by _____ ("Grantor"), whose address is _____, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228 (collectively, the "Parties").

RECITALS:

A. **Description of Property.** Grantor is the owner of the fee simple interest in the subject Property legally described in **Exhibit A** and depicted in **Exhibit B**, both attached hereto and made a part of this Deed, which consists of approximately ____ acres of land, together with

[Insert as appropriate: existing improvements (as further described in Section 4(A)), water and mineral rights owned by Grantor associated with or appurtenant to the Property]

located in _____ County, State of Colorado ("Property").

B. **Qualified Organization.** Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under § 38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

C. **Conservation Purposes.** According to Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, the Conservation Purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by or education of the general public; (2) to protect relatively natural

habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures. The Conservation Purposes set forth in this Section and referred to hereafter in this Deed are collectively referred to as the "Conservation Values."

The Conservation Values of the Property are as follows:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains **[wetlands, riparian areas, shortgrass prairie, etc.]** that provide food, shelter, breeding ground, and migration corridors for several wildlife species, including **[list names of species]**. **[Add additional language as needed]**

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved **[for the scenic enjoyment of the general public and/or pursuant to a clearly delineated federal, state or local governmental conservation policy]** and will yield a significant public benefit.

Scenic enjoyment. The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visible to the general public from **[list roads, rivers, trails, etc.]**, which are open to and actively utilized by residents of _____ County and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including **[irrigated or dryland crop production, cattle grazing, etc.]**. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

Significant public benefit. There is a foreseeable trend of intense development in the vicinity of the Property in the near future **[list nearby cities, towns, commercial or residential developments, etc.]**. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

Recreation or Education [§ 1.170A-14(d)(2)].

Historical [§ 1.170A-14(d)(5)].

These Conservation Values are of great importance to Grantor, Grantee, the residents of _____ County, and the State of Colorado.

D. **State Policy Concerning Conservation Easements.** C.R.S. § 33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment

are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. § 35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." C.R.S. § 38-30.5-102 provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land ..."

E. **Other Supporting Government Policy.** [Fill in as appropriate].

F. **Documentation of Present Conditions.** Pursuant to §1.170A-14(g)(5) of the Treasury Regulations and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by _____ and dated _____ ("Present Conditions Report"). The Present Conditions Report contains a natural resources inventory and also documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Report is acknowledged by Grantor and Grantee as an accurate representation of the Property at the time of the transfer. The Present Conditions Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

G. **Charitable Donation.** Grantor intends to create a conservation easement pursuant to §170(h) of the Internal Revenue Code of 1986 (as amended), §1.170A-14 of the Treasury Regulations, and §38-30.5-101 of the Colorado Revised Statutes, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee.

ACKNOWLEDGEMENT OF INTENT:

As a guide to the interpretation of this Deed and administration of the conservation easement created by this Deed by future generations, Grantor and Grantee, for themselves, and for their successors and assigns, herein expressly declare their agreement and dedication to the following purpose and intent:

1. **Purpose.** The purpose of this Deed is to preserve and protect the Conservation Values in perpetuity ("Purpose"). This Purpose is in accordance with §170(h) of the Internal Revenue Code. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values will be preserved and protected in perpetuity.

2. **Intent.** Subject only to the Purpose set forth above, the intent of the parties is to permit all other uses of the Property that are not inconsistent with the preservation and protection of the Conservation Values, as determined by Grantee in its sole discretion, or that are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation

Values.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Grantor and Grantee mutually agree as follows:

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual conservation easement in gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and of the nature and character described in this Deed ("Easement"), for the purpose of preserving and protecting the Conservation Values in perpetuity.

2. **Rights of Grantee.** To accomplish the Purpose of this Easement, the following rights are hereby conveyed to Grantee, its employees and its representatives:

A. To preserve and protect the Conservation Values;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, 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, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent activity or use.

Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values or any other provisions of this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or restricted by this Easement, provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values. These retained rights include, but are not limited to, the retention of the economic viability of the Property.

4. **Property Improvements.** The Parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. Without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:

A. **Inside the Building Envelope.** The location of the following improvements ("Improvements") is limited to within the Building Envelope ("Building Envelope") on the Property. The location of the Building Envelope is generally depicted on **Exhibit B** attached hereto and made a part of this Deed. Grantor may maintain and

repair the Improvements at their current location without further permission of Grantee. In addition, Grantor may locate, construct, replace and enlarge the Improvements subject to Section 4A(3) below. Any other Improvements are prohibited unless Grantee determines in its sole discretion that the proposed Improvement is not inconsistent with the preservation and protection of the Conservation Values.

(1) **Existing Improvements.** At the time of granting of this Deed, there are on the Property:

a. **Residential Improvements.** [List and describe the current residential improvements with square footage as “Existing Residential Improvements”].

b. **Agricultural Improvements.** [List and describe the current agricultural improvements with square footage as “Existing Agricultural Improvements”].

(2) **New Improvements Construction.** The following New Improvements are permitted within the Building Envelope:

a. **Residential Improvements. Insert as appropriate:**
Grantor may construct or otherwise locate _____ additional single-family residence(s), including associated appurtenances such as garages and sheds (“New Residential Improvements”).

b. **Agricultural Improvements. Insert as appropriate:**
Grantor may construct or otherwise locate new agricultural buildings such as barns, silos, and machine shops (“New Agricultural Improvements”).

(3) **General Construction Restrictions and Procedures.** In no case shall any New Residential Improvement that is constructed, replaced or enlarged or any Existing Residential Improvement that is replaced or enlarged exceed thirty-five (35) feet in height as defined by local building code ordinance. No single New Residential Improvement shall be greater than _____ square feet of enclosed Floor Area and no single New Agricultural Improvement shall be greater than _____ square feet of enclosed Floor Area. The square footage of enclosed Floor Area within the Building Envelope shall not exceed a cumulative maximum of _____. [Insert other language as necessary regarding materials, design, location, footprint, etc.]

Prior to the location, construction, replacement or enlargement of any Improvement as permitted in this Section 4A, Grantor shall request and obtain Grantee’s approval prior to any replacement or construction pursuant to Sections 15 (Grantor’s Notice) and 16 (Grantee’s Approval) of this Deed.

B. ***Outside the Building Envelope.*** New Agricultural Improvements with a Floor Area of less than _____ square feet or other minor New Agricultural Improvements such as corrals, hayracks, stock tanks or center-pivot sprinklers may be constructed anywhere on the Property without permission of Grantee. All other construction is prohibited.

C. ***Definition of Floor Area.*** For purposes of Sections 4A, Floor Area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

D. ***Other Improvements.***

(1) ***Road Construction and Paving.*** For purposes of this Section, roads shall be defined as any permanent road that is graded, improved or maintained and shall exclude any seasonal unimproved roads that may or may not be depicted on **Exhibit B**.

a. ***Within the Building Envelope.*** Construction, paving or otherwise surfacing of roads or parking areas within the Building Envelope(s) is permitted.

b. ***Outside the Building Envelope.*** No roads shall be constructed or established outside the Building Envelope(s) except for those existing or new roads depicted on **Exhibit B**. Said roads shall be no wider than necessary to provide access or to meet local codes for width of access to Improvements. Said roads may be paved or otherwise surfaced provided that Grantee determines that said surfacing is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(2) ***Fences.*** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property, provided that said fences are not inconsistent with the preservation and protection of the Conservation Values.

(3) ***Utility Lines.*** Existing utility lines may be repaired and replaced in the same location with a similar structure. New utility lines may be installed within the Building Envelope(s). New utility lines may be installed outside the Building Envelope(s), provided that said utility lines are installed underground within those roads depicted on **Exhibit B**. Other utility lines may be constructed or significantly upgraded provided that Grantee determines that said utility lines are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(4) **Signs.** Grantor may place and maintain signs on the Property provided that no individual sign exceeds twelve (12) square feet. Larger signs may be permitted provided that Grantee determines that said signs are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(5) **[List additional examples, as appropriate, of other permitted, prohibited, or restricted improvements.]**

5. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. **Agriculture.** All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. The construction and maintenance of agricultural ditches, stock ponds, wells or other agricultural water features is permitted.

B. **Timber.** On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted buildings and fences. Tree thinning activities may take place to maintain the character and nature of the habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor's expense, provided that Grantee determines that said activities and management plan are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

C. **Relatively Natural Habitat.** Major habitat management activities such as removing tamarisk, chaining juniper or sagebrush, constructing ponds and wetlands, and conducting controlled burns may be permitted provided that Grantee determines that said management activities are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's

Approval) of this Deed.

D. **Minerals and Other Deposits.** Grantor does not own all of the mineral rights on or under the Property, therefore, a minerals assessment report has been completed by _____, dated _____, 200____, in compliance with §170(h)(5)(B)(ii) of the Internal Revenue Code and §1.170A-14(g)(4) of the Treasury Regulations. The report concludes that the probability of extraction or removal of minerals from the Property by any surface mining method is so remote as to be negligible. **[or an alternative conclusion]**

Grantor's current and future ownership of mineral rights on or under the Property shall be subject to the following provisions:

(1) **Mining.** The exploration, development, mining or other extraction of minerals, coal, peat, sand, gravel, rock or soil is prohibited.

(2) **Oil, Gas, and Geothermal Resources.** The exploration, development, mining or other extraction of geothermal resources and hydrocarbons is prohibited.

E. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. These uses are specifically excluded from the Restricted Practices in Section 6D.

F. **Water Rights.** **[Insert one of the following three Sections as appropriate:]** Pursuant to C.R.S. § 38-30.5-102, which authorizes the inclusion of "water rights beneficially used upon the land...owned by Grantor" in a conservation easement, the Property subject to this Easement includes any and all right, title and interest in and to water rights, ditches and ditch rights, ponds, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights, including contracts, permits, easements, and rights-of-way, related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights (collectively, the "Water Rights"). The Water Rights are described in **Exhibit C** attached hereto and made a part of this Deed.

Permitted Uses of Water Rights. The Parties agree that the Water Rights are hereby dedicated and restricted exclusively to be used for the preservation and protection of the Conservation Values, and that Grantee shall continue to maintain their historic use.

Restrictions on Water Rights. Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not abandon or

allow abandonment of the Water Rights by action or inaction. Grantor shall not change the historic use or point of diversion of the Water Rights unless Grantee determines that said change is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property, unless Grantee determines that said action is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

Protection of Water Rights. Grantor shall cooperate with Grantee to help assure the continued historical use of the Water Rights in order to preserve and protect the Conservation Values. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner. Grantor shall also provide Grantee with a copy of any written notice received by Grantor from any state water official concerning the use or possible abandonment of the Water Rights. If Grantor shall fail to maintain the historic use of the Water Rights upon the Property, or those rights necessary to preserve and protect the Conservation Values, Grantee shall have the right, but not the obligation, to consult with a mutually agreed upon resource management professional as referenced above in this Section.

Abandonment of Water Rights. If the Water Rights appear on the decennial abandonment list or Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat of abandonment. If and only if Grantor fails to cure the threat of abandonment within 90 days of receipt of said notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or by law, have the right to (1) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (2) seek removal of the Water Rights from the decennial abandonment list; (3) seek to change the Water Rights to another Permitted Water Use; and (4) convey all or part of the Water Rights to Grantee for continued use on the Property or elsewhere in _____ water district or otherwise consistent with Grantee's mission. Grantor agrees to cooperate in any manner necessary to accomplish Grantee's election, and at Grantee's request, agrees to authorize and appoint Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.

Ditch or Reservoir Company. **[include as necessary]** Colorado Revised Statutes §38-30.5-104(5) requires that, when a conservation easement encumbers a water right represented by shares in a mutual ditch or reservoir company, sixty (60) days notice must be given to said company before the conservation easement may be conveyed. This

requirement has been fulfilled.

Or

F. ***Water Rights.*** Pursuant to C.R.S. Section 38-30.5-102, which authorizes the inclusion of “water rights beneficially used upon the land...owned by Grantor” in a conservation easement, the Property subject to this Easement includes any and all right, title and interest in and to certain water rights, ditches and ditch rights, ponds, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights, including contracts, permits, easements, and rights-of-way, related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights (collectively, the “Dedicated Water Rights”). The Dedicated Water Rights are described in **Exhibit C** attached hereto and made a part of this Deed.

Permitted Uses of Dedicated Water Rights. The Parties agree that the Dedicated Water Rights are hereby dedicated and restricted exclusively to be used for the preservation and protection of the Conservation Values, and that Grantee shall continue to maintain their historic use.

Restrictions on Dedicated Water Rights. Grantor shall not transfer, encumber, sell, lease or otherwise separate the Dedicated Water Rights from the Property. Grantor shall not abandon or allow abandonment of the Dedicated Water Rights by action or inaction. Grantor shall not change the historic use or point of diversion of the Dedicated Water Rights unless Grantee determines that said change is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor’s Notice) and 16 (Grantee’s Approval) of this Deed. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property, unless Grantee determines that said action is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor’s Notice) and 16 (Grantee’s Approval) of this Deed.

Protection of Dedicated Water Rights. Grantor shall cooperate with Grantee to help assure the continued historical use of the Dedicated Water Rights in order to preserve and protect the Conservation Values. Grantor shall annually report to Grantee the nature and extent of use of the Dedicated Water Rights during the prior year, which report need not be in writing but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner. Grantor shall also provide Grantee with a copy of any written notice received by Grantor from any state water official concerning the use or possible abandonment of the Dedicated Water Rights. If Grantor shall fail to maintain

the historic use of the Dedicated Water Rights upon the Property, or those rights necessary to preserve and protect the Conservation Values, Grantee shall have the right, but not the obligation, to consult with a mutually agreed upon resource management professional as referenced above in this Section.

Abandonment of Dedicated Water Rights. If the Dedicated Water Rights appear on the decennial abandonment list or Grantee determines that the Dedicated Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat of abandonment. If and only if Grantor fails to cure the threat of abandonment within 90 days of receipt of said notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or by law, have the right to (1) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Dedicated Water Rights; (2) seek removal of the Dedicated Water Rights from the decennial abandonment list; (3) seek to change the Dedicated Water Rights to another Permitted Water Use; and (4) convey all or part of the Dedicated Water Rights to Grantee for continued use on the Property or elsewhere in _____ water district or otherwise consistent with Grantee's mission. Grantor agrees to cooperate in any manner necessary to accomplish Grantee's election, and at Grantee's request, agrees to authorize and appoint Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.

Ditch or Reservoir Company. **[include as necessary]** Colorado Revised Statutes §38-30.5-104(5) requires that, when a conservation easement encumbers a water right represented by shares in a mutual ditch or reservoir company, sixty (60) days notice must be given to said company before the conservation easement may be conveyed. This requirement has been fulfilled.

Or

F. ***Water Rights.*** No water rights are associated with or included in the Property subject to this Easement.

6. ***Restricted Practices.***

A. ***Subdivision.*** Grantor and Grantee agree that the division, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times the Property shall be owned and conveyed as a single parcel which shall be subject to the terms and conditions of this Easement. Ownership of the single parcel by joint tenancy or tenancy in common is permitted; provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the single parcel.

B. ***Surface Disturbance.*** Except as permitted within this Deed, any alteration of the surface of the land, including without limitation, the movement, excavation or removal of soil, sand, gravel, rock, peat or sod, that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

C. ***Existing Water Features.*** Except as permitted within this Deed, alteration, impairment, modification or adverse change in or to existing ponds, wetlands or stream channels that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

D. ***Commercial or Industrial Activity.*** Commercial or industrial uses of the Property that are inconsistent with the preservation and protection of the Conservation Values are prohibited.

E. ***Feed Lot.*** The establishment or maintenance of a feed lot is prohibited. For purposes of this Deed, "feed lot" is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of warm-up or fattening large numbers of livestock for market. Nothing in this section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for warm-up or feeding, or from leasing pasture for the grazing of livestock owned by others.

F. ***Public Access.*** Nothing contained herein shall be construed as affording the public access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is not inconsistent with the preservation and protection of the Conservation Values.

G. ***Trash.*** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. ***Hazardous Materials.*** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition does not impose any liability on Grantee for hazardous materials, nor does it make Grantee an owner of the Property, nor does it permit or require Grantee to control any use of the Property that may result in the treatment, storage, disposal or release of hazardous

materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible.

J. **Other Restricted Uses.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers in excess of 35 feet in height are prohibited unless Grantee determines the proposed tower is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible and Grantee shall have no obligation for the upkeep and maintenance of the Property and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

B. **Liability.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due solely by the willful and wanton act or omission (as defined by C.R.S. 13-21-102(1)(b)) of the Indemnified Parties; (ii) the obligations under this Section or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) 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 and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable

attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

8. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In the event the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement, each Party shall be responsible for their own costs. The parties will share equally in the mediation fees. Grantee's remedies described in this section 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 Conservation Values. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

9. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. **Transfer of Property.** Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a fee of $\frac{1}{4}$ of 1% of the purchase price to Grantee to be used for the purpose of the defense of conservation easements or for other purposes consistent with Grantee's mission. Grantor shall notify Grantee in writing within (5) business days after closing using the form in **Exhibit D** attached hereto and made a part of this Deed. The document of conveyance shall expressly refer to this Deed of Conservation Easement and shall include a

copy of the new ownership deed. Said fee shall be waived if the Property is transferred to Grantor's heirs or beneficiaries.

11. ***Real Property Interest.*** The granting of this Deed immediately vests Grantee with a property interest. Grantor and Grantee also agree, as to the value of the Property, an appraisal has been completed that indicates the fair market value of this property interest is ____ percent (____%) of the full fair market value of the Property. Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant.

12. ***Termination of Easement.*** This Easement may only be terminated or extinguished by judicial proceedings by a court of competent jurisdiction. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

13. ***Perpetual Duration.*** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

14. ***Change of Circumstance.***

A. ***Economic Value.*** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined by Grantee to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 12. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 12.

B. ***Agricultural Value.*** In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee develop an acceptable plan to ensure appropriate land cover consistent with the preservation and protection of the Conservation Values. The expense of developing and implementing said plan shall be paid for by Grantor.

15. **Grantor's Notice.** Where Grantor's notice is required in this Deed, Grantor shall notify Grantee in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. The written notice shall describe the proposed activity in sufficient detail (i.e. location, size, scope, design, nature) to allow Grantee to evaluate the consistency of the proposed activity with the pertinent terms of this Easement.

16. **Grantee's Approval.** Where Grantee's approval is required in this Deed, Grantee shall grant or withhold its approval in writing within thirty (30) calendar days of receipt of Grantor's written notice thereof. Grantee's decision may be withheld if Grantee is unable to immediately evaluate the proposed action.

17. **Notices.** Any notice that either party is required to give to the other in writing shall be transmitted via fax, U.S. mail, delivery service or served personally to the following addresses which addresses may change from time to time:

Grantor: _____

Phone: _____

Grantee: Colorado Open Lands
274 Union Blvd., Suite 320
Lakewood, CO 80228
(303) 988-2373

18. ***Liens on the Property.***

A. ***Current Liens.*** [Insert if applicable: Grantor certifies that all mortgages and deeds of trust (collectively "Liens"), if any, affecting the Property are subordinate to the rights of Grantee under this Easement as evidenced by that certain Subordination Agreement dated _____, between Grantor and [name of bank] and recorded on _____, at Reception No. _____ [or Book ____ Page ____] in the _____ County Clerk and Recorder's Office.]

B. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Easement.

19. ***No 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 Easement.

20. ***Grantor's Representations and Warranties.***

A. Except as provided in Section 18, Grantor warrants that Grantor has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property;

(2) Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;

(3) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(4) 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.

21. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed.

22. **General Provisions:**

A. **Severability.** If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this 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 not be affected thereby.

B. **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.

C. **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the one-year statute of limitation provided under C.R.S. § 38-41-119 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

D. ***Controlling Law and Interpretation.*** This Easement shall be performed and broadly interpreted under the laws of State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

E. ***Counterparts.*** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. ***Amendment.*** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will confer a private benefit to Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values and shall not affect the perpetual duration of the Easement. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any amendment must be in writing, signed by both parties, and recorded in the official records of _____ County, Colorado.

G. ***Entire Agreement.*** This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which are merged herein.

23. ***Development Rights.*** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished.

24. ***Recording.*** Grantor shall record this Deed in timely fashion in the official records of _____ County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

25. ***No Third Party Enforcement.*** This Deed is entered into by and between Grantor and Grantee and does not create rights or responsibilities for the enforcement of the terms of this Deed in any third parties except as expressly reserved herein.

26. ***Joint and Several Liability.*** If Grantor at any time owns the Property in joint tenancy or tenancy in common, Grantor shall be jointly and severally liable for all obligations set forth in this Easement.

27. **Ownership by Single Entity Consisting of Multiple Parties.** If Grantor at any time is an entity which consists of shareholders, partners or members, such Grantor entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess such shareholders, partners or members for any monetary or other obligations set forth in this Easement. Grantor shall provide a copy of such documentation at any time upon Grantee's request.

TO HAVE AND TO HOLD, this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

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

GRANTOR:

By: _____
(type name here)

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ (*Grantor name*) _____ in his/her individual capacity as a ____ owner of the Property.

Witness my hand and official seal.

My commission expires: _____

Notary Public

COLORADO OPEN LANDS,
a Colorado non-profit corporation

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

My commission expires: _____

Revised 08/05/07

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Building Envelopes / Map of Property

EXHIBIT C

Water Rights or Dedicated Water Rights

EXHIBIT D

Sample Notice of Transfer of Property

To: Colorado Open Lands ("Grantee")
From: **[Insert name of fee owner]** ("Grantor")

Pursuant to Section 10 of the Deed of Conservation Easement recorded (date) under reception number _____, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective **[insert date of closing]** to **[insert name of new Grantor]**, who can be reached at **[insert name, legal address, phone and fax number]**. Also pursuant to Section 10 of the aforementioned Deed of Conservation Easement, a copy of the new ownership deed is attached.

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Date: _____

DEED OF CONSERVATION EASEMENT

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2009, by LANDOWNER, ("Grantors"), to the West Virginia Land Trust, ("Grantee"). For purposes of this agreement, references to the rights, duties and obligations of the Grantors and Grantee apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, grantors are the sole owners in fee simple of certain real property in _____ County, West Virginia, consisting of _____ acres of land, more or less, and more particularly described in Exhibit A, incorporated herein by reference (the "Property"). The Property is also described in a deed of record in the office of the Clerk of the County Commission, _____ County at Deed Book _____ Page _____;

WHEREAS, the property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to the Grantors, the people of _____ County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantors and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to support the irreversible loss of agricultural land. The legislature authorizes the state of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the Legislature has declared that the agriculture community of West Virginia provides sources of agriculture products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with

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traditional farming; and controls the urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the Grantee is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes;

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in _____ County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come in the future.

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors hereby voluntarily grant, bargain, and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, 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, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantors reserve to themselves, and to their personal representatives, 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 and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of the Grantor and Grantee:

1. **Use and Quiet Enjoyment.** The Grantor has the right to reside on the property and to benefit from all aspects of the quiet enjoyment of the Property. The Grantor has the right to engage in any and all personal recreational uses of the property, including but not limited to hiking; touring; swimming; biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. **Agricultural Uses of the Land.** The Grantor may engage in any and all agricultural uses of the Property. These agricultural uses include the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl

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products; bees and apiary products; fruits nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instructions or related activities, shall be considered an agricultural activity. Such activities or businesses must be undertaken in the permitted agricultural or residential structures, and must be consistent with the Conservation Values.

3. **Agricultural Structures.** The Grantor has the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property. Structures related to a secondary agricultural activity as described in 5(c) below shall be considered an agricultural use of the land. Agricultural structures shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. **Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales. Such sales shall take place in permitted agricultural structures described in 3 above.

5. **Activities for Religious, Charitable or Education Purposes or to Foster Tourism.** Activities or businesses undertaken for charitable or education purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or education purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) The stables, horseback riding areas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors shall take place within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests shall take place within permitted residential structures.
- (e) Any commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism shall be prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism shall be prohibited.

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- (g) "More than a de minimus use for commercial recreational activity", as such phrase is used in Section 2031(c)(8)(B) of the Code, is prohibited. (THIS SHOULD BE PUT IN ONLY IF THE LANDOWNER NEVER WANTS TO DO TOURISM; COMMERCIAL HORSEBACK RIDING; OR CONDUCT CHARITABLE OR EDUCATIONAL FUNDRAISING ACTIVITIES ON THE PROPERTY)

6. **Home-based Businesses.** Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, except that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. **Residential Dwellings.** The Grantors and Grantee acknowledge the existence of _____ single residential dwelling(s) ("Existing Dwellings") currently existing on the property, as more fully described in Exhibit B.

- (a) Each Existing Dwelling shall be contained in a building envelope ("Residential Area") no greater than two (2) acres per each dwelling. In addition, Grantors reserve the right to install a septic drain field or replacement field solely for the benefit of the single residential dwellings on the Property adjacent to the designated residential areas without further permission from the Grantee.
- (b) The Grantor has the right to maintain, repair, enlarge or replace each single residential dwelling as they so desire, except that the single residential dwelling, appurtenances and other impervious surfaces defined in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage* shall not exceed _____ square feet.
- (c) The Grantor has the right to construct appurtenances such as garages, sheds and recreational facilities within the two-acre building envelope, subject to the impervious surface restrictions outlined in (b) above.
- (d) Notwithstanding the above, each single residential dwelling may house one or more families or occupants.
- (e) Development rights which have been extinguished through this Easement shall not be transferred to any other properties pursuant to a transfer of development rights program.

8. **Subdivision.** It is the intention of the Grantors to protect the open space values of the Property. Accordingly, subdivision of land shall not be permitted except for the Existing Dwellings.

9. **Maximum Impervious Surface Coverage.** The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) The impervious surface area for single residential dwellings and structures considered as an appurtenance to such dwellings, and structures associated with agricultural uses shall not exceed _____ square feet.

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- (c) The total surface coverage of the Property by all impervious surfaces, including all single residential dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways and parking areas, shall not exceed _____ square feet.

10. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Protected Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

11. Commercial Forestry. The harvesting of timber, either existing naturally on the Property or grown for commercial purposes, for trade or profit shall be prohibited. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry or harvesting of timber. However, such activities must be carried out in accordance with a conservation plan in order to minimize soil erosion and other impacts to the soils. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry or harvesting of timber.

12. Non-Commercial Forestry. The use of timber and woodland products on site is permitted, providing any such usage in excess of one percent (1%) of the available timber during any two-year period is subject to prior approval by the Grantee. Any on site use for trade or profit shall be considered commercial forestry. Nothing in this paragraph shall prohibit the right to cut and remove dead trees or to cut emergency fire breaks. Diseased or insect-infected trees may be removed subject to a written evaluation by a qualified forester and approval of the Grantee.

ALTERNATE:

Removal, destruction and cutting of trees, shrubs, and other woodland resources is prohibited except:

- (a) Non-commercial forestry activities which shall include the following: agriculturally related low-impact timber harvest including management of the forest for wildlife and forest health that are conducted in accordance with a Forest Stewardship Plan that is prepared or reviewed by a licensed, registered West Virginia forester and is updated no less than every ten (10) years and is approved by the Grantee; growing and sale of Christmas trees, orchard products and nursery stock; growing and sale of ornamental plants and woodland products grown for human consumption. Commercial timber harvest shall be prohibited.
- (b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;
- (c) To control or prevent fire, damage to improvements, and the endangerment of life;
- (d) To cut firewood for use on the Property; and

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- (e) For construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement.

13. Other Construction. Except for the single residential dwellings and appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*, the agricultural structures allowable under *Terms, Conditions and Restrictions—Agricultural Uses of the Land*, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

14. Signs. Except for no trespassing signs, for-sale signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet.

15. Hazardous Wastes. There shall be no storage or dumping of garbage, hazardous substance or toxic waste, nor any placement of underground storage tanks in, on or under the Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils.

16. Utilities. The Grantor shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground public utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations and cellular telephone or other communication towers. The Grantor may install utilities necessary for the permitted residential and agricultural structures.

17. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds.

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II. GENERAL PROVISIONS

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

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or their agent by this Easement:

- (a) To preserve and protect the conservation values of the Property;
- (b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' 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 *General Provision—Grantee's Remedies*.

3. **Grantee Notification/Approval.** The Grantors reserve for themselves the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

4. **Grantee's Remedies.**

- (a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action within 60 days 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 to its prior condition in accordance with a plan approved by Grantee.
- (b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require the Grantors to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- (c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including without limitation costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys'

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fees, shall be borne by Grantee. Any costs incurred by Grantee in enforcing the terms of this Easement against any third party shall be borne by Grantee.

- (d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors 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 Grantors shall impair such right or remedy or be construed as a waiver.

5. Grantee's Rights and Obligations. The Grantee shall have the primary responsibility for stewardship and monitoring of this Easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement.

The Grantee is responsible for any costs incurred in enforcing the terms of the Easement, including any attorney's fees and any costs of a suit. Grantee can recover cost from Grantor or third party as described in 4 (c) above.

6. Acts Beyond the Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantors agree that Grantee has the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements and Liabilities. Grantors, their heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. Control. Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

10. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (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:

- (a) 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

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- Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection;
- (b) the result of a violation or alleged violation of, the enforcement of an/or any contribution action relating to any state or Federal environmental statute or regulation and statutes or regulation concerning the storage or disposal of hazardous or toxic chemicals or materials; and
 - (c) the presence or release in, on, from, 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 and only that negligent party shall be deprived of this protection.

11. Proceeds for Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the 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 an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed, or _____ % of the net proceeds. The Grantors are entitled to _____ % of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantors believe that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantors and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

12. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantors shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

13. Assignment. The Grantee may assign its rights and obligations under the Easement only with the written approval of both the Grantee and the Grantor.

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantors.

14. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

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15. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors.

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 certified mail, return receipt, addressed as follows:

To Grantors: LANDOWNER

To Grantee: West Virginia Land Trust

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation. Grantee shall record this instrument in timely fashion with the office of the Clerk of the County Commission of _____ County, West Virginia 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 would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

19. Other Provisions.

- (a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia.
- (b) **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.
- (c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantor's title in any respect.
- (d) **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.

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- (e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.
- (f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.
- (g) **Title and Environmental Warranties.** Grantor warrants that Grantor has good title to the Property; that the Grantor has the right to convey this Easement, and that the Property is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.
- (h) **Merger.** If the Grantee at some future time acquires the underlying fee title in the property, the interest conveyed by this Easement will not merge with fee title but will continued to exist and be managed as a separate estate.

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DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of property right to Federal and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real property.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTOR:

Landowner Name

Signature

Date

GRANTOR:

Landowner Name

Signature

Date

GRANTEE:

WEST VIRGINIA LAND TRUST

Signature

Date

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STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ ,
_____ by LANDOWNER .

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ ,
_____ by _____ , President on behalf of the WEST VIRGINIA LAND
TRUST.

My commission expires: _____

Notary Public

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SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement
- B.** Residential Dwelling(s)