

Sample Conservation Easement (7/98)

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this _____ day of [month] . [year] . by _____ and _____, husband and wife, having an address at _____ ("Grantors"), in favor of _____, a nonprofit [state of incorporation] corporation [qualified to do business in (state where property is located)]. having an address at _____ ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in _____ County, [state], more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property possesses [e.g., natural, scenic, open space, historical, educational, and/or recreational] values (collectively, "conservation values") of great importance to Grantors, the people of [county, locale, or region] and the people of the State of _____; and

WHEREAS, in particular, [describe specific conservation values] _____; and]

WHEREAS, the specific conservation values of the Property are further documented in an inventory of relevant features of the Property, dated _____ [on file at the offices of Grantee—or— attached hereto as Exhibit B] and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring

compliance with the terms of this grant; and

WHEREAS, Grantors intend that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses relating to [e.g., farming, ranching, or timber production] existing at the time of this grant; and

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; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Internal Revenue Code"), whose primary purpose is [e.g., the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition]:

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of [state where Property is located] and in particular (specific state statutory authority). Grantors hereby voluntarily grant and convey 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 [e.g., natural, scenic, historical, agricultural, forested, and/or open space] condition and to prevent any use of the Property that will [significantly] impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving [e.g., farming, ranching, timber production, public recreation, or education], as are not inconsistent with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are 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 compliance with and otherwise enforce the terms of this Easement in accordance with section 6; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case 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 the remedies set forth in section 6.

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3. Prohibited Uses. 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 and uses are expressly prohibited:

- a. Accumulation of trash, refuse, junk, hazardous chemicals or waste, or other unsightly material is not permitted on the Property.
- b. Display of billboards, signs or other advertisements is not permitted on or over the Property except to state the name and/or address of the owners, to advertise the sale or lease of the property, to advertise the sale of goods or services produced incidental to a permitted use of the property or to provide notice necessary for the protection of the property and for giving directions to visitors. No such sign shall exceed three by three feet in size.
- c. The legal or *de facto* division, subdivision or partitioning of the Property in any manner is prohibited [or, subdivision of the Property into more than ___ parcels is prohibited; or subdivision of the Property into parcels of less than ___ acres in size is prohibited].
- d. Management and cutting of timber shall be in accord with sound forestry practices under a plan approved by the Grantee [or, by the Natural Resource Conservation Service, or the U.S. Forest Service, or the state forestry department, or a registered professional forester]. [Selective cutting may be practiced so as not to alter the character of forest lands except such as will be cleared for cultivation or grazing.]
- e. Grading, blasting or earth removal shall not alter the topography of the Property except for dam construction to create private conservation ponds or lakes, or as required in construction of permitted buildings and connecting private roads described in paragraph f, below [and except as required for normal agricultural operations and to implement conservation practices approved by

the Natural Resources Conservation Service or by the local soil conservation district]. Mining on the Property is prohibited.

f. No permanent or temporary building or structure, shall be built or maintained on the Property other than (i) a permanent single family dwelling and outbuildings commonly and appropriately incidental thereto [or, one principal, permanent single family dwelling and ___ dwellings for farm labor] and (ii) farm buildings or structures. [Farm buildings or structures exceeding ___ square feet in area may not be constructed on the property, unless prior written permission for said building or structure is obtained in writing from Grantee.] [In the event of subdivision of the Property as provided in paragraph c, above, permitted buildings and connecting private roads may be constructed on each subdivided parcel.]

g. Industrial or commercial activities other than farming, silviculture or horticulture are prohibited except those which can be and in fact are conducted from buildings permitted under paragraph f, above, without alteration of the external appearance of same [and, other than home occupations (defined as _____), recreational activities (defined as _____) and agriculturally related businesses (defined as or limited to _____)].

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h. The establishment or maintenance on the Property of any commercial feedlot or other concentrated animal feeding operation housing at any one time more than ___ animal units (defined as _____) is prohibited. A concentrated animal feeding operation is defined as _____.

i. Any use of or activity on the Property that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited; provided that this prohibition shall not be construed as extending to agricultural operations and practices (including, without limitation, the use of agrichemicals such as fertilizers, pesticides, herbicides and fungicides) that are substantially in accordance with a farm conservation plan prepared by the _____ County District Conservationist of the United States Department of Agriculture Natural Resource Conservation Service, or any successor or equivalent agency, which is reviewed and updated whenever a substantial change in operations is contemplated but, in any case, no less often than every ten (10) years; [or]

[any use of or activity on the Property that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited; in addition, all agricultural operations and practices on the property including, but not limited to, the growing of crops, the feeding of livestock, the growing of fruits and vegetables, and _____ shall be conducted in accordance with organic farming standards promulgated by the United States Department of Agriculture, specifically those standards set forth in ___ CFR _____, entitled _____, or such other organic farming standards that may be promulgated by USDA in the future, or should there be no USDA organic farming standards in effect at any given time, then, for that period of time when there are no USDA organic farming standards in effect, in accordance with the organic farming

standards published by _____. All agricultural operations and practices not in accordance with such organic farming standards are prohibited on the Property.

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4. Reserved Rights. 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. [Without limiting the generality of the foregoing, and subject to the terms of paragraph 3, the following rights are expressly reserved:]

[a. To reside on the Property;

b. Except as prohibited by paragraph 3 above, to engage in any and all agricultural uses of the Property. Agricultural uses are defined as _____

c. To engage in any business that is conducted by, and in the home of, a person residing on the Property or that involves the provision of goods or services incidental to, and occupies structures used principally for, the agricultural uses of the Property; and

d. To engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting and fishing, that require no surface alteration or other development of the land.]

5. Notice and Approval.

5.1 Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs _____ [if applicable], is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required Grantors shall notify Grantee in writing not less than [e.g., thirty (30)/sixty (60)] days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

5.2 Grantee's Approval. Where Grantee's approval is required, as set forth in paragraphs _____ [if applicable], Grantee shall grant or withhold its approval in writing within [e.g., thirty (30)/sixty (60)] days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

6. Grantee's Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors 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 to its prior condition in accordance with a plan approved by Grantee.

6.2 Injunctive Relief. If Grantors fail to cure the violation within [e.g., thirty (30)] days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a [thirty (30)] day period, fail to begin curing such violation within the [thirty (30)] day period, or fail 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, and to require the restoration of the Property to the condition that existed prior to any such injury.

6.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 Emergency Enforcement. 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 section 6 without prior notice to Grantors or without waiting for the period provided for cure to expire.

6.5 Scope of Relief. Grantee's rights under this section 6 apply equally in the event of either

actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.2, both prohibitive and mandatory, 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. Grantee's remedies described in this section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

6.7 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.

6.8 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

6.9 Acts Beyond Grantors' 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.

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

8. Costs, Liabilities, Taxes, and Environmental Compliance.

8.1 Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and

maintenance of the Property, including the maintenance of adequate liability insurance coverage [with Grantee named as an additional insured on all such liability insurance policies]. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

8.2 Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

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

(a) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination;

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

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

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

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any

covenants, representations, and warranties of paragraphs 8.1 through 8.5.

9. Extinguishment and Condemnation.

9.1 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, by judicial proceedings in a court of competent jurisdiction. 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 the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 9.2.

9.2 Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) [x/y, which is] the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. [The values at the time of this grant {are—or—shall be} those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.]

9.3 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 9.2.

9.4 Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this section 9 in a manner consistent with its conservation purposes, which are exemplified by this grant.

10. Assignment. This Easement is transferable, but Grantee may assign its rights and

covenants, representations, and warranties of paragraphs 8.1 through 8.5.

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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 (or any successor provision then applicable), and authorized to acquire and hold conservation easements under [state statute] (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least [e.g., twenty (20)] days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

11. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement by reference 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. Grantors further agree to give written notice to Grantee of the transfer of any interest at least [e.g., twenty (20)] days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. Estoppel Certificates. Upon request by Grantors, Grantee shall within [e.g., twenty (20)] days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within [e.g., thirty (30)] days of receipt of Grantors' written request therefor.

13. 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:

To Grantors:

To Grantee:

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

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of _____ County, [state] and may re-record it at any time as may be required to preserve its rights in this Easement.

15. General Provisions.

15.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of [state] .

15.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of [state statute]. 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.

15.3 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.

15.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. [No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph ____.]

15.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

15.6 Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.

15.7 **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. The terms "Grantors" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

15.8 **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 transfer shall survive transfer.

15.9 **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.

15.10 **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.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Grantors _____

Grantee _____

by _____

its _____
[official capacity]

[Acknowledgments]