

## DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement (this "**Deed**") is entered into by \_\_\_\_\_, whose address is \_\_\_\_\_ (the "**Landowner**") and the Santa Fe Conservation Trust, a New Mexico nonprofit corporation, whose address is \_\_\_\_\_ (the "**Land Trust**") as of \_\_\_\_\_.

### BACKGROUND RECITALS

The Landowner grants this Deed, and the Landowner and the Land Trust enter into the agreements contained within this Deed, on the basis of the following facts, understandings, and intentions.

- A. Property. The Landowner is the sole owner in fee simple of the property commonly known as \_\_\_\_\_ (the "**Property**") and more particularly described in Exhibit 1, which consists of \_\_\_\_\_ acres of land, more or less, located in \_\_\_\_\_ County, New Mexico.
- B. Conservation Purpose. The Purpose of this Deed (the "**Conservation Purpose**") is to protect, enhance, and preserve in perpetuity the [scenic, biological, historical, recreational, and open space] values of the Property described herein (collectively, the "**Conservation Values**"). The Conservation Values of the Property are recited in detail in paragraphs \_ through \_ below.
- C. Survey. The Property, and its current improvements, are shown in the survey prepared by \_\_\_\_\_, and recorded \_\_\_\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_, as Instrument No. \_\_\_\_\_ of the Official Records of \_\_\_\_\_ County, New Mexico, and attached as Exhibit 2 (the "**Survey**").
- D. Water Rights. The Property has water rights for the irrigation of and appurtenant to \_\_\_\_\_ acres of land, from \_\_\_\_\_, with a priority date of \_\_\_\_\_, which are more particularly described in Exhibit 4 (the "**Water Rights**"). In addition, the term Water Rights as used in this Deed includes all of the Landowner's right, title, and interest in any and all water or water rights of any kind or nature appurtenant to or arising on, under, or from the Property (including stock tanks, domestic wells, and supplemental wells) whether or not adjudicated, permitted, or decreed. Any and all water associated with the Water Rights is sometimes referred to in this Deed as the "**Water**".
- E. Mineral Rights. The mineral rights associated with the Property have not been separated from the Property and are subject to the terms of this Deed.  
{OR, if mineral rights have been severed from the Property, use the following provision and include a geologist's report in the Baseline Documentation Report: }

Certain mineral rights may have been separated from the Property, but the possibility of future mining is so remote as to be negligible. All other mineral rights associated with the Property and owned by the Landowner as of the date of this Deed are subject to the terms of this Deed.

F. Property Rights. The Property has not been, and may not be, used for the purpose of fulfilling density requirements to obtain subdivision or building permits or credits on the Property or on any other property. This Deed and the conveyance of the Easement (defined below) do not and will not adversely affect any other landowner's existing property rights.

G. Scenic Values. The Property includes scenic open space as defined in §1.170A-14(d)(4) and described in 170(h)(4)(A)(iii)(I) of the Internal Revenue Code, consisting of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ {Describe  
location. Describe views.} The Property is visible from  
\_\_\_\_\_

\_\_\_\_\_  
*{Describe visibility from public roads and public lands. Cite scenic designations if any.}*

H. Biological Values. The Property contains significant relatively natural habitat and represents a high-quality example of a {terrestrial/aquatic} ecosystem as defined in §1.170A-14(d)(3) and described in 170(h)(4)(A)(ii) of the Internal Revenue Code.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. *{List flora and fauna, highlighting any that are threatened or endangered. Reference riparian areas. Reference adjacent natural areas. Reference biologist report, if any.}*

I. Historical Values. The Property contains historical features including

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ {If  
listed, cite historical listing or criteria for historical listing and use language “as defined in §1.170A-14(d)(5)”. Historical and Cultural Values—Cite historic or cultural features such as land area, significant historic structures or places, and archaeological features or sites.}

J. Recreational Values. The Property provides recreational opportunities to the general public as defined in §1.170A-14(d)(2) and described in 170(h)(4)(A)(i), including

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*{To  
qualify under this criterion some controlled access by the general public is required.}*

- K. Educational Values. The Property provides educational opportunities to the general public as defined in §1.170A-14(d)(2) and described in 170(h)(4)(A)(i), including

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*{To  
qualify under this criterion some controlled access by the general public is required.}*

- L. Open Space {and Agricultural} Values. The Property includes open space consisting of {farmland/ ranchland/ forestland /scenic /biological /etc.}, as defined in §1.170A-14(d)(4) and described in 170(h)(4)(A)(iii)(II) of the Internal Revenue Code, including

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*{Describe attributes of property corresponding to different governmental policies cited. Cite soil classifications, if any.}* The preservation of these values is pursuant to the following clearly delineated governmental policies:

*{Quote County and Municipal ordinances. Tailor to agricultural values if appropriate.}*

1. **The Santa Fe County General Plan**, adopted December 17, 1997, **Santa Fe County Growth Management Plan**, adopted October 26, 1999, **the Santa Fe County Open Land and Trails Plan**, adopted May 22, 2000, **Santa Fe County Open Space, Trails, and Parks Strategic Management Plan**, adopted Jan. 8, 2019, which stress the importance of open space to the County and commit substantial public resources to acquiring and protecting open space and the **Santa Fe County Sustainable Growth Management Plan**, adopted November 9, 2010, which stresses “the importance of conserving Santa Fe County’s vast natural resources, archaeological, historic, cultural, and scenic view-shed resources; protect vegetation and wildlife habitats, including rare, native species, threatened and endangered species; establish an interconnected system of trails and parks, with continuous regional trail and park connections for pedestrians, equestrians, and cyclists; protect environmentally sensitive areas and areas of archaeological and historic significance.” And also states under **Policy 22.6** “Create new permanently protected private open space in coordination with private landowners, non-profits and relevant agencies through the use of development or conservation easements.”

OR

**The San Miguel County Comprehensive Plan 2004-2014**, adopted June 8, 2004, States Policy Seven: The County will support and cooperate with nonprofits in the acquisition of conservation easements designed to protect agricultural and range lands, environmentally sensitive lands, scenic and cultural resources, to provide visual separation and open space between traditional villages, and to protect scenic corridors.

OR

**The Rio Arriba County Comprehensive Plan**, amended and adopted July 29, 2010, which states under Natural Resources **Goal 1: Strategy 18**: “Encourage the charitable donation of historic, cultural, and scenic conservation easements by interested landowners to qualified non-profit land banks/land trust and other organizations to reduce State and Federal income and inheritance taxes under NM Laws 1995, Schedule PIT-CR, Form RPD-14282 and IRS Form 990 and IRS Form 8283”. **Strategy 20**: “Partner with community organizations such as the Northern Rio Grande National Heritage Area, New Mexico Acequias Association, and Vecinos del Rio, etc ..., to develop community based strategies for the preservation of agrarian, historical, cultural, and archeological resources.”

OR

**The Taos County Comprehensive Plan**, adopted October 4, 2004 states under “**Goal 3**. Enhance wildlife opportunities and protect riparian areas and wildlife habitat and migration corridors. **Strategy 34**. Promote land conservation easement and land trusts that protect riparian areas and critical wetlands and springs. **Goal 10**. Encourage preservation and restoration of historical and traditional buildings. **Strategy 52**. Encourage the charitable donation of land by landowners for historic, cultural, and scenic easements to non-profit land banks/land trust organizations to reduce state and federal income and inheritance taxes under NM Laws 1995, Chapter 137. **Goal 11**. Direct development away from irrigated agricultural lands. **Strategy 53**. Identify and map significant agricultural lands, prioritize lands for preservation, and work with the Taos Land Trust and other non-profit conservation organizations to place conservation easements where appropriate. **Strategy 54**. The County, in partnership with the USDA and Cooperative Extension Service, will inform and encourage ranchers and farmers to place conservation easements on their property and take advantage of the tax benefits offered by State and Federal legislation.”

2. **The New Mexico Land Conservation Incentives Act**, Sections 7-2-18.10, 9-1-5(E), 9-11-6.2, and 75-9-1 through 75-9-6 (NMSA 1978), which encourages private landowners

to be stewards of lands that are important habitat area or contain significant natural, open space, and historic resources and which provides financial incentives that encourage the protection of private lands for open space, natural resources, biodiversity conservation, outdoor recreation, farmland and forest land preservation, historic preservation, and land conservation purposes.

3. **The New Mexico Land Use Easement Act**, Sections 47-12-1 through 47-12-6 (NMSA 1978), which aids the landowner who wishes to voluntarily protect their land through the use of a conservation easement intended to restrict the use of a specific parcel of land so as to maintain in perpetuity the character of the land
4. **The Natural Heritage Conservation Act**, Sections 75-10-1 through 75-10-9 (NMSA 1978), which declares the purpose “to protect the state’s natural heritage, customs and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.”
5. **The New Mexico Watershed District Act**, Sections 73 20 1 through 73 20 49 (NMSA 1978), which articulates the desire of the State of New Mexico to further the "conservation ... of water, and thereby preserve and protect New Mexico's land and water resources."
6. **The New Mexico Cultural Properties Preservation Easement Act**, Sections 47 12A 1 through 47 12A 6 (NMSA 1978), which aids the landowner who wishes to voluntarily protect their land through the use of a conservation easement intended to restrict the use of a specific parcel of land so as to maintain in perpetuity the significant archeological, historical, or cultural character of that land.
7. **The "Comprehensive Wildlife Conservation Strategy for New Mexico"**, prepared by the New Mexico Department of Game and Fish in cooperation with over 170 public agencies, conservation organizations, commodity interests, municipalities, private partners, and tribal representatives, which expresses the desired outcome "that New Mexico's key habitats persist in the condition, connectivity, and quantity necessary to sustain viable and resilient populations of resident [Species of Greatest Conservation Need] and host a variety of land uses with reduced resource use conflicts."
8. **The "New Mexico Statewide Natural Resource Assessment & Strategy Response Plan"**, prepared by the New Mexico Department of Energy, Minerals, and Natural Resources, State Forestry Division, which seeks to conserve "working landscapes" so as to provide ecosystem services such as clean air and water, wildlife habitat, and recreational

opportunities, as well as "provide economic benefits through sustainable forests products, grazing, and jobs, particularly for rural communities."

9. **The New Mexico State Trails System Act**, Sections 16-3-1 through 16-3-9 (NMSA 1978), which seeks to provide public access to, and the enjoyment and appreciation of, the New Mexico outdoors in order to conserve, develop, and use the natural resources of the state for purposes of health and recreation, and to encourage horseback riding, hiking, bicycling, and other recreational activities.
10. **Senate Memorial 96 (2015) and House Memorial 88 (2015)**, which declare that it is the clearly delineated governmental policy of the State of New Mexico to encourage, support, and facilitate the conservation of irrigated farmland, including small parcels of productive farmland; and that the Legislature finds that conservation of irrigated farmland, including small parcels of productive farmland, is significant and important to the State of New Mexico.
11. **The New Mexico Night Sky Protection Act**, Sections 74-12-1 through 74-12-11 (NMSA 1978), which seeks to preserve and enhance the state's dark sky while promoting safety, conserving energy, and preserving the environment for astronomy.
12. **The New Mexico Right to Farm Act**, Sections 47-9-1 through 47-9-4 (NMSA 1978), which declares the purpose "to conserve, protect, encourage, develop and improve agricultural land ... and to reduce the loss to the state of its agricultural resources [.]"
13. **The New Mexico Industrial and Agricultural Finance Authority Act**, Sections 58-24-1 through 58-24-23 (NMSA 1978), which evidences the Legislature's concern for the maintenance of agriculturally productive resources, and its intention to encourage an increase in the inventory of agricultural lands and a resultant increase in the gainful employment of the citizens of the state.
14. **The New Mexico Property Tax Code**, specifically Section 7-36-20 (NMSA 1978), which provides for tax relief for agricultural properties through a special method of valuation of land used primarily for agricultural purposes.
15. **The National Trails System Act**, (P.L. 90-543, as amended through P.L. 111-11, March 30, 2009) Section 7 (k), which states "For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code

of 1954, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541."

16. **The Galisteo Basin Archaeological Sites Protection Act**, 16 U.S.C. 470aa, the purpose of which is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico."

17. **The Federal Farmers Home Administration Instruction 1951-S** (7 C.F.R. 1951 Subpart S), which states a public policy to "keep the farmer on the farm."

18. **The Federal Farmland Protection Policy Act** (7 U.S.C. §§ 4201 through 4209), which describes the Nation's farmland as a "unique natural resource" that is being irrevocably converted to non-agricultural purposes, the loss of which threatens the ability of the United States to produce sufficient food to meet its needs and undermines the economic base of many rural areas, and which commits the federal government to the goal of conserving farmland in carrying out its public works and other development projects.

M. Baseline Documentation Report. The characteristics of the Property and its current use and state of improvement are described in a Baseline Documentation Report prepared by the Landowner with the cooperation of the Land Trust. The Baseline Documentation Report has been acknowledged by the Landowner and the Land Trust to be complete and accurate as of the date of this Deed. Both the Landowner and the Land Trust have copies of this report, and a copy will be retained in the Land Trust's files. The Baseline Documentation Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with terms of this Deed.

N. Qualifications. The Land Trust is a nonprofit, tax-exempt organization qualified under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Internal Revenue Code; a "qualified organization" as defined by Section 170(h)(3) of the Internal Revenue Code; a "holder" as defined by Section 47-12-2A of the Land Use Easement Act; and a "private conservation agency" as defined by Section 75-9-3C of the Land Conservation Incentives Act. The Land Trust has the right to use the value of the Easement donation as matching value for government grants provided that such grants do not impose any additional burdens on the Property or the Landowner.

- O. Public Benefit. Conserving the {scenic, biological, historical, recreational, educational, agricultural, and open space} values of the Property, collectively, the Conservation Values, as defined in §1.170A-14(d)(4) of the Regulations, is consistent with, and important to, the history, culture, and economy of the area, which is under increasing threat of development and fragmentation, and will result in a significant public benefit to the people of \_\_\_\_\_ County, the people of the State of New Mexico, and the people of this nation.
- P. Intent & Conservation Purpose. The intent and purpose of this Deed is to assure that the Conservation Values, as they exist and as they may evolve, will be forever preserved and protected and that uses of the Property that are inconsistent with or to the detriment of the Conservation Values will be prevented or corrected.

#### *AGREEMENT & CONVEYANCE*

Based on the background recitals set forth above, and in consideration of the mutual promises and covenants contained in this Deed, the Landowner grants and conveys to the Land Trust an easement over the Property (the "**Easement**"), which is a "land use easement" as defined by Section 47-12-2B of the Land Use Easement Act, an "interest in real property" as defined by Section 75-9-3A of the Land Conservation Incentives Act, and a "qualified real property interest" as defined by Section 170(h)(2)(C) of the Internal Revenue Code, the conveyance of which to the Land Trust is the gift of a "qualified conservation contribution" as defined by Section 170(h) of the Internal Revenue Code.

1. Retained Rights. The Landowner reserves all rights to the Property not conveyed by this Deed, including all rights accruing by virtue of ownership of the Property, the right to engage (and to invite others to engage) in all uses of the Property consistent with and not to the detriment of the Conservation Values, the right to prevent trespassing on the Property, and the right to sell, lease, encumber, or bequeath the Property. Further, no provision of this Deed should be construed as impairing the ability of the Landowner to use the Property as collateral for subsequent borrowing, as long as any mortgage, deed of trust, or other lien arising from such borrowing is subordinate to this Deed.
2. General Prohibition. The Landowner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with or to the detriment of the Conservation Values. All rights reserved by the Landowner under this Deed shall be exercised, if at all, in a manner consistent with and not to the detriment of the Conservation Values. The Landowner and the Land Trust acknowledge that the current uses of the Property and the improvements to the Property described in this Deed and in the Baseline Documentation Report are consistent with the Conservation Values.



3. Construction.*{Tailor to specific situation. Can include language about permitted agricultural structures, home sites, lighting, color of structures, reflective surfaces, size and height limitations, mobile homes/temporary structures, etc.}*

(a) Generally. The construction or placement of any temporary or permanent buildings, facilities, equipment, or structures of any kind is prohibited except as described below. The Landowner may maintain, repair, and replace buildings, facilities, equipment, and structures currently located on the Property and described in the Baseline Documentation Report. Except where expressly permitted by this deed, no new buildings, facilities, equipment, or structures of any kind are allowed outside of the \_\_acre building envelope (the "Building Envelope") more particularly described in Exhibit 3 attached hereto. Prior to any construction permitted herein, and prior to applying for a building permit for such construction, the Landowner shall request approval from the Land Trust in writing and provide the Land Trust with the opportunity to review the proposed construction for compliance with the terms of this Deed.

(b) Permitted Structures. The Landowner may construct a single-family house, guest house, and associated outbuildings *{add agricultural buildings as appropriate}* as permitted by applicable \_\_\_\_\_ County zoning ordinances, all wholly contained within the Building Envelope. Structures within the Building Envelope shall not exceed a cumulative total footprint of \_\_\_\_ square feet, and no structure shall be more than \_\_\_\_ feet in height. Temporary construction trailers may be placed in the Building Envelope during construction with prior approval of the Land Trust, but in no event may be used for longer than twelve (12) consecutive months. *{Allow for minor and/or temporary agricultural structures outside of the Building Envelope, with size limitations, as appropriate.}*

(c) Footprint. As used herein, the term "footprint" means the total area of the land occupied by a structure, calculated on the basis of the exterior dimensions of the outermost perimeter walls or bounds of the structure whether at ground level or above, and includes the land area occupied by any attached or associated porches, steps, stairs, patios, terraces, balconies, roofs, eaves, pergolas, breezeways, carports, ground-mounted solar arrays, courtyards, or decks, whether enclosed or open air, but does not include the ground area affected by roadways, unpaved parking areas, or subsurface waste disposal systems, wells, and utilities.

(d) Archeological Survey. Prior to any construction of permitted structures, the Landowner shall contract with a state permitted archeologist to conduct an archeological resource inventory of the area of potential effect that conforms with

the standards and requirements of 4.10.15 NMAC Cultural Properties and Historic Preservation Standards for Survey and Inventory. Conformance with the state standards requires: a pre-inventory site files check, archaeological inventory field methods, site and isolated occurrence documentation including Laboratory of Anthropology forms, significance recommendations for any cultural resources found on the property, requisite report content and quality, and inventory registration, including registering the survey in the New Mexico Cultural Resources Information System files and with the New Mexico Historic Preservation Division, Archaeological Records Management Section in Santa Fe. The Landowner shall submit the completed survey to the Land Trust for review prior to construction. It is the intent of the parties that any construction shall to the greatest practical extent, avoid or minimize any adverse impact on any significant cultural resource discovered in the course of the survey.

(e) Permitted Fences. The Landowner may construct perimeter fences and fences within the Building Envelope without prior approval of the Land Trust. The Landowner may construct interior fences outside of the Building Envelope only with prior approval of the Land Trust and provided such fences are necessary for agriculture or other permitted uses of the Property. Any new fences outside of the Building Envelope shall incorporate wildlife-friendly design elements to the extent practical for the intended purpose of the fence.

4. Subdivision. The Property consists of \_\_\_\_\_ legal lot(s) of record. The separate sale, transfer, or ownership of any [lot or] portion of the Property from any other [lot or] portion of the Property is prohibited. The further division or subdivision of the Property into additional parcels, whether by physical or legal process, is prohibited. Condominium ownership, leasing portions of the Property less than the entire Property, family transfers, or any de facto division of the Property is prohibited. The Landowner may transfer joint or undivided interests in the Property, however no cotenant, joint tenant, tenant in common, or owner of an undivided interest shall have the right, either independently or through legal action, to have the Property physically or legally divided. Lot line adjustments may only be made pursuant to a judicial proceeding to resolve a *bona fide* dispute regarding a lot line's location. In no event shall a lot line adjustment be permitted that removes land from the Property or is to the detriment of the Conservation Values.

5. Water.

- (a) *Beneficial Use.* The Landowner shall continue to use the Water Rights in a manner and for a use consistent with the Conservation Values and shall take all prudent measures to avoid loss of the Water Rights, including: (i) beneficially using the

Water; (ii) timely paying applicable assessments; (iii) complying with permit requirements, if any, and (iv) applying for extension of time in which to complete any of the foregoing.

- (b) *Alternative Uses.* The Landowner may sell Water or temporarily lease the Water Rights to a third party or participate in a conservation program approved by the Office of the State Engineer, acreage reserve program or conservation reserve program established by federal law and recognized under state law, water bank authorized by state law, strategic water reserve administered by the Interstate Stream Commission, or any similar program under which the Water Rights will not be lost, forfeited, or abandoned. Any such alternative use of Water or the Water Rights, however, may only be done with the prior written approval of the Land Trust, in a manner and for a use consistent with the Conservation Values, and in no event for a domestic, municipal, or industrial use.
  - (c) *No Abandonment.* Abandoning the Water Rights or taking any action on the Property from which abandonment might reasonably be implied is prohibited.
  - (d) *No Forfeiture.* If the Landowner is ever notified or aware of any possible forfeiture of any of the Water Rights, the Landowner shall immediately notify the Land Trust in writing and: (i) arrange for the beneficial use of the Water; (ii) arrange for an extension of time to put the Water to beneficial use; and/or (iii) establish, to the Land Trust's reasonable satisfaction, entitlement to a lawful exemption from the requirements of beneficial use as provided by state law. Similarly, if the Land Trust ever independently becomes aware of any possible forfeiture of any of the Water Rights, the Land Trust may require that the Landowner take advantage of one or more of the options described above.
  - (e) *No Severance.* Changing any element of the Water Rights (including priority, amount, purpose, and place of use) is prohibited. In no event shall any use or disposition of the Water or the Water Rights permitted by this paragraph (Water) be allowed to result in the severance of the Water Rights from the Property.
6. Agriculture. All farming, ranching, and agricultural practices shall be conducted in a sustainable manner, and in keeping with practices that are best suited for the conservation of soil and water, the maintenance of soil and water quality, and so as to avoid erosion, overgrazing, soil contamination, and water pollution. The establishment of any feedlot (defined as a confined area or facility within which the land is not grazed or cropped annually, and which is used for the concentrated feeding and/or slaughter of animals), hog farm, poultry farm, dairy, or similar operation on the Property is prohibited. The

Landowner and the Land Trust desire to encourage the continuation of agricultural activities on the Property and to provide sufficient flexibility so that the Landowner can take advantage of appropriate practices and technologies in the future, all in a manner consistent with and not to the detriment of the Conservation Values.

7. Timber. Cutting of timber or harvesting of wood products is prohibited except: (i) subject to prior Land Trust approval, harvesting to prevent encroachment onto open fields, to control insects or disease, to thin stands appropriately for fire management, and to maintain the character and nature of the habitat, and (ii) not subject to prior Land Trust approval, harvesting to prevent personal injury and property damage, to cut posts for maintaining and constructing fences on the Property, and to provide firewood for use on the Property or as payment or trade for the labor described above. { *Working forest easements require additional language.* } Pursuant to NMAC 19.20.4, in most instances Landowners who wish to harvest in an area of twenty-five (25) acres or more, or in a combination of areas totaling twenty-five (25) acres or more in a calendar year, must first apply with the New Mexico Forestry Division for a harvest permit. Any harvesting for which the State of New Mexico requires a permit shall be conducted in substantial accordance with a forest management plan prepared at Landowner's expense by a professional forester and approved by the Land Trust.

All timber harvesting activities shall be performed in a manner consistent with and not to the detriment of the Conservation Values. Before granting approvals required by this section, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found.

8. Utilities. For purposes of this Deed, "Utilities" shall include electric, water, sewer, septic, wastewater treatment infrastructure, telephone, cable, gas, renewable energy infrastructure, antennae, satellite dishes, and similar equipment. Utilities that are currently located on the Property and described in the Baseline Documentation Report may be maintained, repaired, and replaced in their current size at their current location. All new Utilities shall be located underground and within the Building Envelope unless the Land Trust, in its sole discretion, determines that locating the Utilities above-ground or outside the Building Envelope is necessary to support permitted uses on the Property and does not impair the Conservation Values. Renewable energy systems are prohibited excepted for non-commercial systems reasonably scaled to serve only uses on the Property. Before placing any Utilities, the Landowner shall request approval from the Land Trust in writing and provide the Land Trust with the opportunity to review the proposed Utilities for compliance with the terms of this Deed. Before granting such approval, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological

resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found. The Landowner shall not grant any new or expanded rights-of-way or other access across the Property for utilities subsequent to the date of this Deed without prior approval of the Land Trust.

9. Roads and Trails. For the purposes of this Deed, “Roads” are defined as paths greater than six (6) feet in width and “Trails” are defined as paths six (6) feet in width or less.

(a) *Roads.* The Landowner may maintain, repair, and replace roads currently located on the Property, as described in the Baseline Documentation Report, in approximately their current location and with approximately their current width and surface. The construction of new roads is prohibited except: \_\_\_\_\_. {*Tailor to specific situation; specify surface requirements and prohibitions if desired.*} All roads shall be repaired, maintained, and managed in such a manner so as to minimize width and length, erosion, and the impact on the Conservation Values, and maximize, as far as practical, the ability of the road to be reclaimed and returned to a natural state when it is no longer needed. All roads shall be unpaved unless the Land Trust, in its sole discretion, determines that paving is appropriate to minimize erosion. Before undertaking the construction of any new roads, or the paving, relocation, or expansion of existing roads, and before applying for any permits necessary for such construction, the Landowner shall request approval from the Land Trust in writing and provide the Land Trust with the opportunity to review the plans for such construction for compliance with the terms of this Deed. Before granting such approval, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found.

(b) *Trails.* The Landowner may develop new trails on the Property and may maintain, repair, replace, and expand trails currently located on the Property, as described in the Baseline Documentation Report. All trails shall be constructed, repaired, maintained, and managed in such a manner so as to minimize width and length, erosion, and the impact on the Conservation Values, and maximize, as far as practical, the ability of the trail to be reclaimed and returned to a natural state when it is no longer needed. All trails shall be unpaved unless the Land Trust, in its sole discretion, determines that paving is appropriate to minimize erosion.

10. Night Sky. All permitted exterior lighting shall comply with New Mexico Night Sky Protection Act, NMSA 1978, Sections 74-12-1 through -11, the purpose of which is to regulate outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy, and preserving the environment for astronomy. In

addition, all permitted exterior lighting shall be shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted. To the extent any excessive glare is identified by the Land Trust, the Landowner shall undertake reasonable measures to reduce such glare, such as landscape screening or changes in fixtures or lighting intensity.

11. Impervious Surfaces. Paving, covering, or treating the soil with an impervious surface including concrete, asphalt, or any other material, is prohibited except for roads specifically permitted by this Deed or as foundations for construction specifically permitted by this Deed. Any use of the Property that causes its surfaces to become relatively impervious, or results in compaction, erosion, or denuding of the land, is prohibited.
12. Topography. The Landowner shall not make substantial topographical changes, whether permanent or temporary in nature, or grade, dig, fill, or excavate over twelve inches in depth, or take any other action that would materially disturb the surface or subsurface of the ground, without the prior written approval of the Land Trust. Before granting such approval, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found. *{Adapt as necessary for agricultural use.}*
13. Enhancement & Restoration. The Landowner may engage in wildlife habitat enhancement and restoration activities of grasslands, arroyos, and riparian areas in order to improve the Property's hydrological and ecological health, with prior approval of the Land Trust. All enhancement and restoration activities shall be performed in a manner consistent with and not to the detriment of the Conservation Values. Before granting approval, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found.
14. Mining.
  - (a) *Extraction Area.* Soil, sand, gravel, and rock may be extracted from an extraction area (sometimes referred to as a "borrow pit") on the Property (as shown on \_\_\_\_\_) as long as: (i) such extraction is solely for use on the Property; (ii) the extraction area and all disturbed land associated with the extraction area does not exceed one quarter acre (1/4) in size; (iii) such extraction is done in a manner that produces only a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values; and (iv) after completion of extraction the extraction area is restored and revegetated to a natural condition. The Landowner may request Land Trust approval

to relocate the extraction area if any prior extraction area has been reclaimed to the satisfaction of the Land Trust and any new area is approved by the Land Trust as consistent with and not to the detriment of the Conservation Values. Before granting such approval, the Land Trust may require a professional archaeological survey of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found.

(b) *Other Mining.* Any other mining or extraction, or consent by the Landowner to any mining or extraction, of soil, sand, gravel, rock, hydrocarbons, or any mineral substance, using a surface mining method, or any other extractive technique that is inconsistent with or to the detriment of the Conservation Values, is strictly prohibited. In the unlikely event that the Landowner ever receives any notice pursuant to the Surface Owners Protection Act, Sections 70-12-1 through 70-12-10 (NMSA 1978), or any successor or similar statute, the Landowner shall immediately notify the Land Trust. The Landowner shall not enter into any surface use and compensation agreement (or similar agreement) without the prior written approval of the Land Trust, which approval may be granted or withheld in the Land Trust's sole discretion.

15. Refuse & Compost. The dumping, disposal, accumulation, or storage of any kind of waste or refuse on the Property is prohibited. Should waste or refuse be found on the Property, it is the Landowner's responsibility to promptly remove and properly dispose of it. Organic matter, such as compost, may be used, stored, or disposed of in a manner consistent with the Conservation Values.
16. Signs. Signs are permitted for purposes of identifying the Property as private property, posting the Property against trespassing or hunting, advertising recreational and commercial activities on the Property permitted by this Deed, temporary "for sale" or "for lease" signs, identifying the Property as protected by the Land Trust, or any posting or notice required by law. All other signs are prohibited. Signs shall not exceed one by two feet in size, be made with reflective surfaces, or be artificially illuminated.
17. Recreational Use. Landowner retains the right to engage in and permit others to engage in low impact educational, research, charitable and recreational uses of the Property that do not significantly impair or interfere with the Property's Conservation Values, including but not limited to nature study, hiking, hunting, fishing, horseback riding, bird watching, camping and other similar recreational activities. Notwithstanding the foregoing, more than a de minimis use of the Property for commercial recreation is prohibited pursuant to Internal Revenue Code § 2031(c) and regulations promulgated thereunder.
18. Industrial and Commercial Use. Industrial use of the Property is prohibited. Commercial use of the Property is prohibited, except limited commercial use as described in Section 17

above and herein. Limited commercial use shall not require surface alteration or other permanent development of the land, unless such surface alteration or development is nominal and is expressly approved within the sole discretion of the Land Trust. Limited commercial use must be conducted in accordance with applicable zoning codes and must not significantly impair or interfere with the Property's Conservation Values. Such limited commercial use includes, but is not limited to, (i) "home occupations" and "home businesses" carried out exclusively within the Building Envelope, (ii) lodging activities, such as bed and breakfast type lodging, destination events, (iii) agricultural activities including the marketing and selling of agricultural products produced on the Property and forest products produced in accordance with Section 7 above, (iv) other low impact uses, including, but not limited to, educational programming, nature study, foraging, rock climbing, photography, sporting clays and hunting, wildlife observation, ecological tours, location filming, and events promoting conservation and/or charitable initiatives, and other similar activities. All such uses must comply with all local, state, and federal laws and regulations and have minimal impact on the Property.

19. Miscellaneous Uses. The Property shall not be used in any manner that is inconsistent with or to the detriment of the Conservation Values. Without limiting the generality of the foregoing or the other terms of this Deed, the construction or placement of any cell phone tower or similar equipment is prohibited; the construction of runways, landing strips, or landing pads is prohibited; the operation of motorized vehicles off of permitted roads is prohibited (other than for occasional maintenance or emergency purposes).
20. Public Access. This Deed is not intended to provide for public access to the Property. The Landowner retains the right to allow public access to the Property in the future as long as such public access complies with the terms of this Deed and is consistent with and not to the detriment of the Conservation Values.

*[Or, if easement requires landowner to provide public access, use:]*

Public Access. This Deed provides for public access to the Property *{describe in general or specific terms}*. The Landowner retains the right to allow additional public access to the Property in the future provided that such public access complies with the terms of this Deed and is consistent with and not to the detriment of the Conservation Values. The Landowner also retains the right to place reasonable restrictions on type, duration, timing, and intensity of use to ensure that such public access to the Property complies with the terms of this Deed and is consistent with and not to the detriment of the Conservation Values. The Land Trust shall have no obligation to take any action to prevent trespassing on the Property. Use of the Property for recreational purposes pursuant to this Deed is subject to the protections provided to the Landowner and the Land Trust by NMSA 1978, § 17-4-7,



which states that a landowner who grants permission to use lands for recreational purposes without charge or other consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency, does not assume any additional burden of care with regard to those who so use such lands for recreational purposes.

21. Third Parties. The Landowner shall take reasonable steps to prevent violations (or end ongoing or repeated violations) of this Deed by third parties. The Landowner shall restore the Property to its condition prior to a violation when the Property is damaged by guests, invitees, agents, tenants, lessees, or other third parties who accessed the Property with the consent, permission, or acquiescence of the Landowner. The Land Trust shall have no obligation to take any action to prevent trespassing on the Property.
22. Acts Beyond Landowner's Control. The parties recognize that that over the perpetual term of this Deed, the Property, including the landscape, vegetation, resources, and habitat, will undergo change over time, including through the effects of a changing climate beyond the control of Landowner. Nothing contained in this Easement Deed shall be construed to entitle the Trust to bring any action against Landowner for any injury to or change in the Property resulting from causes beyond Landowner's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
23. Payments. The Landowner is solely responsible for payment of all valid taxes, assessments, charges, fees, fines, and liens, and associated penalties and interest, imposed on the Property. If the Land Trust is ever required to make any such payments on its interest in the Property, the Landowner will reimburse the Land Trust for the same, and, until such reimbursement occurs, such payment shall constitute a lien on the Property with the same priority and effect as a mechanic's lien.
24. Perpetual Duration. The Easement is a real property interest, immediately vested in the Land Trust, which shall run with the land in perpetuity. Every provision of this Deed that applies to the Landowner or Land Trust shall also apply to their respective heirs, executors, administrators, assigns, and all other successors in interest to this Deed or the Property or any interest therein. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property except that liability for acts or omissions before transfer shall survive transfer. In order to preserve its rights under this Deed the Land Trust may, but is not required to, re-record this Deed from time to time. The Easement and this Deed shall not be subject to the doctrine of merger, and, in the unlikely event the Land Trust ever acquires fee title to the Property, the fee estate and the easement

estate shall remain separate. The Land Trust shall, promptly but in due course, either transfer fee ownership of the Property (which shall still be encumbered by the Easement and this Deed) or transfer the Easement as outlined in Section 29 of this Deed.

25. Liability and Indemnification. The Landowner is solely responsible for liability arising from or connected with the Property, including injury (bodily or otherwise) or damage to any person or organization directly or indirectly caused by any action or omission of the Landowner. The Landowner shall indemnify, defend, and hold harmless the Land Trust, its directors, officers, employees, and agents, from and against any and all loss, cost, liability, or expense, including reasonable attorneys' fees, for injury (bodily or otherwise) or damage to any person or organization arising from or connected with the Property and the uses and activities permitted herein.

26. Warranties.

(a) *Title*. The Landowner represents and warrants that the Landowner has good and sufficient title to the Property and that the Property is not subject to any mortgages, deeds of trust, liens, leases, or other interests in the Property that have not been disclosed to the Land Trust in writing. The Landowner shall defend the Property and the Easement against all claims from persons claiming by, through, or under the Landowner. The Landowner intends that this Deed encumber the entire Property, whether any interest in the Property is now owned or later acquired by the Landowner, including any mineral rights, water rights, or other severable interests associated with the Property.

{OR, if there is a mortgage on the property:}

(a) *Title*. The Landowner represents and warrants that the Landowner has good and sufficient title to the Property, that the lien on the Property held by \_\_\_\_\_ dated \_\_\_\_\_, has been subordinated to this Deed, and that there are no other liens on, leases to, or other interests in the Property that have not been disclosed to the Land Trust in writing. The Landowner shall defend the Property and the Easement against all claims from persons claiming by, through, or under the Landowner. The Landowner intends that this Deed encumber the entire Property, whether any interest in the Property is now owned or later acquired by the Landowner, including any mineral rights, water rights, or other severable interests associated with the Property.

(b) *Environmental*. The Landowner represents and warrants that the Landowner has no knowledge of a release or threatened release of hazardous substances on the Property. The Landowner shall indemnify, defend, and hold harmless the Land Trust, its directors, officers, employees, and agents, from and against any and all loss, cost, liability, or

expense, including reasonable attorneys' fees, for injury (bodily or otherwise) or damage arising from or connected with any release of hazardous substances or violation of federal, state, or local laws. Nothing in this Deed shall be construed as giving rise to any right or ability in Land Trust, nor shall Land Trust have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, as amended.

(c) *Background Recitals.* The Landowner represents and warrants that the information contained in the background recitals of this Deed is true and correct to the best of the Landowner's knowledge.

(d) *Authority.* The individuals executing this Deed represent and warrant that they have the legal right, power, and authority to act on behalf of their respective party, and no further action, resolution, or approval is necessary to enter into a binding agreement.

27. Inspection.

(a) *Annual.* With reasonable prior notice to the Landowner, representatives of the Land Trust may enter the Property at reasonable times for the purpose of inspecting the Property to determine if there is compliance with the terms of this Deed. Inspections will generally occur once a year but may occur whenever the Land Trust deems appropriate. The Landowner is welcome and encouraged to accompany Land Trust representatives during such inspections.

(b) *Emergency.* If the Land Trust believes or has reason to believe that there is an ongoing, imminent, or threatened violation of the terms of this Deed, representatives of the Land Trust may enter the Property for the purpose of inspecting the Property to determine if there is compliance with the terms of this Deed. The Land Trust will use good faith efforts to contact the Landowner, but the Land Trust may enter the Property without the Landowner's presence.

28. Enforcement.

(a) *Rights & Remedies.* The Land Trust has all the rights, remedies, and powers to enforce the terms of this Deed against the Landowner that are provided by law, including the right of specific performance, and in the event of a violation of this Deed by the Landowner, the right to require the Landowner to restore the Property to its prior condition

(b) *Notice.* Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, the Land Trust shall give the Landowner written notice

of the violation and thirty days to correct it before filing any legal action. When a violation has occurred and will reasonably take more than thirty days to correct, the Land Trust will provide the Landowner with an additional amount of time to correct the violation provided that the Landowner commences to cure the violation within such thirty-day period and diligently pursues such cure to completion. The Land Trust may, however, file legal action whenever the Land Trust in its sole discretion determines that the violation is not being completely corrected in a diligent manner.

(c) *Injunction.* If a court determines that a violation has occurred or is threatened, the Land Trust may obtain an injunction to stop the violation, temporarily or permanently, and to require the Landowner to restore the Property to its condition before the violation. (However, nothing in this Deed shall require the Landowner to take any action to restore the condition of the Property after any Act of God or other event over which the Landowner had no control.)

(d) *Fees.* In any case where a court finds that a violation has occurred, the Landowner shall reimburse the Land Trust for all its expenses incurred in stopping and correcting the violation, including reasonable attorneys' fees and court costs. If the court finds no violation, the Landowner and Land Trust shall each bear their own expenses and attorneys' fees. The Landowner and the Land Trust acknowledge that this allocation of expenses is appropriate in light of the potential disparate financial incentives of the Landowner and the Land Trust and the Land Trust's charitable mission.

(e) *Limited Liability.* If and to the extent that any act taken by the Land Trust, its directors, officers, employees, or agents, gives rise to a claim by the Landowner against the Land Trust or its directors, officers, employees, and agents, the sole remedy on the part of the Landowner shall be compensation for actual damages reasonably incurred by the Landowner; the Landowner shall not have a right to any indirect, consequential, or punitive damages from the Land Trust or its directors, officers, employees, and agents.

29. Transfer of Easement. The Easement, and the rights and responsibilities contained in this Deed, may be transferred by the Land Trust to another organization as follows:

(a) *Involuntary.* If the Land Trust ever ceases to exist or no longer qualifies under Section 170(h)(3) of the Internal Revenue Code or applicable state law, a court with jurisdiction shall transfer the Easement to another organization having similar purposes, that is qualified under Section 170(h)(3) of the Internal Revenue Code and applicable state law, and that agrees to monitor the Easement and enforce the terms of this Deed.

(b) *Voluntary.* If the Land Trust ever wishes voluntarily to transfer the Easement, the Land Trust will notify the Landowner in writing and give the Landowner thirty days from receipt of notification in which to deliver any preferences the Landowner may have regarding a successor organization. The Easement shall be transferred only to another organization having similar purposes, that is qualified under Section 170(h)(3) of the Internal Revenue Code and applicable state law, and that agrees to monitor the Easement and enforce the terms of this Deed.

(c) *Miscellaneous.* Any transfer will be accomplished by a written instrument executed by the parties and recorded in the Office of the County Clerk of the county in which the Property is located. Transfer of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.

30. Transfer of Property. Any time the Property or a portion thereof is transferred by the Landowner to any third party, the Landowner shall pay a transfer fee of  $\frac{1}{4}$  of 1% of the purchase price, and/or of the then fair market value of any other consideration, for the transfer received by the Landowner to the Land Trust to be used for the purpose of the defense of conservation easements or for other purposes consistent with Land Trust's organizational purposes (the "Transfer Fee"). The Land Trust shall have the right to communicate with prospective owners of the Property regarding the Easement. The Landowner shall notify the Land Trust in writing at least thirty (30) days prior to the transfer of the Property and provide complete contact information for the purchaser. The document of conveyance shall expressly refer to this Deed. The Landowner shall also notify the Land Trust in writing within five (5) business days after closing and provide the Transfer Fee to the Land Trust.

31. Amendment. The Landowner and the Land Trust recognize that rare and extraordinary circumstances could arise that might justify the modification of certain provisions of this Deed. The Landowner and the Land Trust have the right to agree to amendments to this Deed as long as, in the reasonable discretion of the Land Trust, such amendment enhances the Conservation Values such as by adding real property subject to this Deed by an amended deed of conservation easement. In no event, however, shall any amendment be made that: (i) adversely affects the qualification of the Easement under any applicable laws, including Section 170(h) of the Internal Revenue Code; (ii) adversely affects the status of Land Trust under any applicable laws, including Section 501(c)(3) of the Internal Revenue Code; (iii) affects the perpetual duration of either the Easement or this Deed in general; (iv) conflicts with or is contrary to or inconsistent with the Conservation Purpose and intent of this Deed; (v) reduces the protection of the Conservation Values; (vi) affects the qualification of this Deed as a "qualified conservation contribution" or "interest in land"; (vii) creates an impermissible private benefit or private inurement in violation of federal

tax law; or (viii) does not conform to applicable policies of the Land Trust then in effect, if any, regarding amendment of conservation easements. This Deed shall not be altered, changed, or amended other than by a written instrument executed by the parties and recorded in the Office of the County Clerk of the county in which the Property is located. The Landowner shall pay all reasonable fees, costs, and expenses of the Land Trust, including staff time and attorneys' fees, in reviewing and/or preparing any amendment requested by the Landowner. Nothing in this paragraph (Amendment) shall require the Landowner or the Land Trust to agree to, or negotiate regarding, any proposed amendment.

32. Termination.

(a) *Cause.* If all or a part of the Property is taken for public use (or sold to a public authority under threat of condemnation), or if a subsequent unexpected change in the conditions on or surrounding the Property renders impossible or impractical the continued use of the Property for Conservation Values, then the Landowner and the Land Trust have the right to jointly request that a court with jurisdiction terminate the Easement (in whole or in part) and order the sale of the Property. The Easement may only be terminated by judicial action.

(b) *Criteria.* The fact that a use of the Property may become greatly more economically valuable than uses permitted under this Deed shall not be considered a changed condition. The inability to use the Property for permitted uses, or the unprofitability of doing so, shall not warrant termination of the Easement. The fact that some conservation value(s) may be compromised by casualty, condemnation, or changed conditions shall not warrant termination of the Easement if other conservation value(s) remain or can be restored. Nothing in this paragraph (Termination) shall require the Landowner or the Land Trust to agree to, or negotiate regarding, any proposed termination.

(c) *Compensation.* The Landowner agrees that the donation of the perpetual Easement described in this Deed gives rise to a property right, immediately vested in the Land Trust, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of the gift, bears to the fair market value of the unencumbered Property at that time. The proportionate value of Land Trust's property rights remains constant such that if the Easement is terminated (in whole or in part), the Land Trust shall be entitled to its share of the proceeds of any subsequent sale, exchange or involuntary conversion of the property formerly subject to the Easement, according to the Land Trust's proportionate value of the perpetual conservation restriction as required under Treas. Reg. §1.170-A-14(g)(6)(ii). The Land Trust will use the proceeds of the proportionate interest in a manner consistent with the conservation purposes as set forth in IRC §170(h)(4)(A). [Based on the appraisal obtained by the Landowner current as of the date of this Deed, the parties acknowledge

that the Land Trust's share of said proceeds is equal to \_\_\_\_% and the Landowner's share of the proceeds is equal to \_\_\_\_% .]

33. Approvals. Before doing anything that requires the Land Trust's approval under this Deed, the Landowner shall seek such approval from the Land Trust in writing. The Land Trust shall strive to grant or withhold its approval in writing within thirty (30) days of receipt of the Landowner's written request for such approval together with such supporting maps, documentation, and other information as is necessary for or requested by the Land Trust to properly review the request. Before granting any approval, the Land Trust may require a professional archaeological survey of affected areas of the Property to identify the presence of significant archaeological resources, if any, and prevent or satisfactorily mitigate the impact on such resources if found. The Land Trust shall deny requests for activities that are inconsistent with or to the detriment of the Conservation Values, as determined by the Land Trust in its sole discretion. No proposed activity may proceed without the Land Trust's written approval. Failure of the Land Trust to respond in writing within 30 days shall be deemed a constructive denial of the request. In case of such constructive denial, the Landowner may submit the same or similar request again.
34. Required Notices. Landowner agrees to notify the Land Trust prior to undertaking any activity or exercising any reserved right that may have an adverse impact on the Conservation Purpose and the Conservation Values associated with this grant pursuant to Treasury Regulation 26 C.F.R. § 1.170A-14(g)(5)(ii)].
35. Breach. Failure to secure the Land Trust's approval when required or to give the notices required by this Deed before undertaking an activity shall constitute a material breach of this Deed by the Landowner, entitling the Land Trust to such rights or remedies as are available under this Deed.
36. Notices.
- (a) *Generally*. Any notices permitted or required by this Deed, including notice of any change of the address(es) shown below, shall be in writing and shall be personally delivered, sent by certified mail (return receipt requested), or emailed (return receipt requested).
- (b) *Current Addresses*. As of the date of this Deed, the addresses for the Landowner and the Land Trust are as follows:

To the Landowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Land Trust: Santa Fe Conservation Trust  
PO Box 23985  
Santa Fe, NM 87502-3985

(c) *Permanent Addresses.* In addition to the foregoing, the address of the Property shall always be a valid address for notices to the Landowner, and the address of the Land Trust's registered agent (on file with the State of New Mexico) shall always be a valid address for notices to the Land Trust.

37. Compliance Certificates. Within thirty days following receipt of written request from the Landowner, the Land Trust shall execute a compliance certificate and deliver it to the Landowner to certify to the best of the Land Trust's knowledge the Property's compliance (or noncompliance) with this Deed.
38. Waiver. No term of this Deed shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No forbearance, delay, or failure to exercise any right, power, or remedy shall impair such right, power, or remedy, shall be construed as a waiver of such right, power, or remedy, or shall prevent the exercising of such right, power, or remedy in the future. The Landowner waives the defenses of estoppel, laches, prescription, and adverse possession.
39. Incorporation. The background recitals set forth at the beginning of this Deed, and any exhibits referenced in and attached to this Deed, are incorporated herein by this reference.
40. Interpretation. This Deed shall be governed by the laws of the State of New Mexico (without giving effect to the State of New Mexico's choice of law provisions). This Deed shall not be interpreted for or against any party on the basis of authorship, but rather shall be interpreted so as to give maximum protection to the Conservation Values. The captions and paragraph headings of this Deed are not necessarily descriptive (or intended or represented to be descriptive) of all the terms thereunder, and such captions and paragraph headings shall not be deemed to limit, define, or enlarge the terms of this Deed. The use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter.
41. Compliance with Laws. Nothing contained in this Deed shall be interpreted to authorize or permit the Landowner to violate any applicable law, rule, or regulation, including zoning and building codes. In the event of any conflict between any applicable law, rule, or regulation and the terms of this Deed, or if the Landowner ever receives a notice of violation any governmental authority, the Landowner shall promptly notify the Land Trust of such conflict or notice and shall cooperate with the Land Trust and the governmental



authority to accommodate both the purposes of this Deed and the requirements such law, rule, or regulation.

42. Severability. If any provision of this Deed or its application to any person or circumstance is found to be illegal, invalid, or unenforceable, the remainder of the provisions of this Deed shall not be affected.

43. Integration. This Deed sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed or the Easement. This Deed may be executed in multiple counterparts and separate signature pages, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

44. Acceptance. By resolution adopted on \_\_\_\_\_, the Land Trust's Board of Directors has authorized entering into this Deed and accepting the Easement.

*[Signatures and acknowledgments on following pages.]*

SIGNATURE PAGE  
TO  
DEED OF CONSERVATION EASEMENT

The Landowner and the Land Trust enter into this Deed of Conservation Easement as of the date first written above.

"Landowner"

\_\_\_\_\_  
{Name}

\_\_\_\_\_  
{Name}

The Land Trust hereby accepts the Conservation Easement and acknowledges that no goods or services were delivered to the undersigned Owner or Owners in consideration of this Grant.

"Land Trust"

Santa Fe Conservation Trust  
a New Mexico nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENTS  
FOR  
DEED OF CONSERVATION EASEMENT

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, by {insert name of signatory}.

My commission expires: \_\_\_\_\_

[SEAL]

Date Notary Signature

State of \_\_\_\_\_ )  
 ) ss  
 County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, by Sarah Noss  
as Executive Director of the Santa Fe Conservation Trust.

My commission expires: \_\_\_\_\_

[SEAL]

Date Notary Signature

Exhibit 1  
to  
Deed of Conservation Easement

**LEGAL DESCRIPTION**

*[To be added.]*

Exhibit 2  
to  
Deed of Conservation Easement

**SURVEY**

*[To be added.]*

Exhibit 3  
to  
Deed of Conservation Easement

**BUILDING ENVELOPE**

*[To be added.]*

Exhibit 4  
to  
Deed of Conservation Easement

**WATER RIGHTS**

*[To be added.]*