

DEED OF CONSERVATION EASEMENT**Soldier Creek Ranch**

22 THIS GRANT DEED OF CONSERVATION EASEMENT is made and entered into this day of NOVEMBER, 2002 by **Way Land of Wyoming, LLC**, a Wyoming limited liability company, of 782 Soldier Creek Road, Sheridan, Wyoming 82801 (hereinafter referred to as "Grantor"), and the **Wyoming Stock Growers Agricultural Land Trust**, a Wyoming non-profit corporation, whose address is P. O. Box 206, Cheyenne, Wyoming 82003 (hereinafter referred to as the "Land Trust"),

WITNESSETH THAT:

WHEREAS, Grantor is the owner of certain real property in Sheridan County, Wyoming, more particularly described in Exhibit A hereto (hereinafter referred to as the "Grantor's Land"); and

WHEREAS, Grantor's Land currently has agricultural and ranching attributes, which sustain and support the significant natural habitat, ecological, scenic, wildlife, habitat, and open space values of Grantor's Land (collectively, "conservation values") which are of great importance to Grantor, to the Land Trust, to Sheridan County, to the State of Wyoming, and to the people of this nation, and are worthy of preservation; and

WHEREAS, Grantor's Land provides significant agricultural open space and natural habitat in the form of sagebrush grassland and native grass meadows that provide prey for raptors including golden eagles, northern harriers, red-tailed hawks, kestrels, prairie falcons, rough legged hawks and great-horned owls; and

WHEREAS, Grantor's Land is located within approximately 15 miles of the Cloud Peak Wilderness Area of the Big Horn National Forest. The Cloud Peak Wilderness Area has been designated by the Congress of the United States in the Wilderness Act of 1964 (as amended) as federally-protected wilderness, an area essentially untouched by permanent human activities and devoted to the public purposes of scenic, scientific, educational, conservation, spiritual and historic use. The preservation of open space on Grantor's Land and adjacent lands serves the purpose of limiting development pressure in the vicinity of the Cloud Peak Wilderness Area and reduces the encroachment of increased population density, thereby minimizing further pressure for the use and degradation of the wilderness; and

WHEREAS, the east slope of the Big Horn Mountains, immediately adjacent to the Property, has been designated by Sheridan County as a Resource Conservation Area in the Sheridan County Comprehensive Plan. This area is an aesthetic resource which provides scenery unique to the western part of the county, where livestock production and other agricultural uses have enhanced and preserved this sensitive and relatively undisturbed environment. The Comprehensive Plan recognizes that preservation of livestock grazing and agricultural use of the land and water in this area has been an important factor in preserving and enhancing the region's wildlife, aesthetic and

ecological resources. An express goal of the Sheridan County Comprehensive Plan is to encourage utilization of open space as a means of preserving and protecting the natural environment, and as a means of giving shape to the community; and

WHEREAS, the Grantor intends to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity; and

WHEREAS, the Grantor and the Land Trust intend that the Property be maintained in agricultural production by the maintenance of agricultural values, and that the open space and scenic values of the Property be preserved by the continuation of the agricultural and ranching uses that have proven historically compatible with such values; and

WHEREAS, the Grantor and the Land Trust intend to enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility; and

WHEREAS, Grantor's Land provides significant natural vistas from public roads, including the Soldier Creek Road (Sheridan County Road 74) and from the Beckton-Wolf Road (Sheridan County Road 89); and

WHEREAS, Grantor's Land currently includes natural landscapes relatively free of human development and fragmentation by man-made features including but not limited to roads, buildings, and conversion of native habitat; and

WHEREAS, protection from habitat fragmentation and conversion of native habitat is of great importance for conservation of the natural elements, ecological, agricultural and open-space values occurring on Grantor's Land; and

WHEREAS, Grantor, as owner in fee of Grantor's Land, owns the affirmative rights to identify, to preserve and protect in perpetuity, and to enhance and restore the native species, natural features, and processes of Grantor's Land; and

WHEREAS, Grantor desires and intends, as owner of Grantor's Land, to convey to the Land Trust to the extent and subject to the limitations set forth below, the right to preserve and protect the conservation values of Grantor's Land in perpetuity; and

WHEREAS, the Land Trust warrants that the Land Trust is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), whose primary purpose is to preserve and conserve agricultural land and natural areas for aesthetic, scientific, charitable, and educational purposes; and

WHEREAS, the Land Trust has received letters from the Internal Revenue Service, on file at the offices of the Land Trust, to the effect that the IRS has determined in advance ruling that the Land Trust is likely to be deemed a "publicly-supported" organization under Section 170(b)(1)(A)(vi) of the Code and is not a private foundation within the meaning of Section 509(a) of the Code; and

WHEREAS, Grantor and the Land Trust recognize the natural, scenic, and special character of Grantor's Land, and have the common purpose of the conservation and protection in perpetuity of Grantor's Land through the use of restrictions on Grantor's Land and with the transfer from Grantor to the Land Trust of affirmative rights for the protection of Grantor's Land intend that the grant of such restrictions and rights qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code;

WHEREAS, Grantor's Land is adjacent and appurtenant to that certain parcel of land owned in fee by the Land Trust consisting of one (1) acre in area, more or less, and more particularly described in Exhibit B hereto; and

WHEREAS, the Land Trust warrants that the Land Trust is organized to preserve and protect agricultural land and natural areas for aesthetic, scientific, charitable, and educational purposes, and is qualified under Section 170(h)(3) of the Code as a "qualified organization" to acquire and hold conservation easements;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration but as a donation nonetheless, and pursuant to Section 170(h) of the Code, Grantor does hereby convey to the Land Trust, its successors and assigns, a conservation easement in perpetuity consisting of the rights hereinafter enumerated, over and across Grantor's Land (hereinafter referred to as the "Conservation Easement").

1. Purpose. It is the purpose hereof (hereinafter, the "purpose") to preserve and protect the conservation values of Grantor's Land. In doing so the Property may continue to be agriculturally productive through the application of traditional and newly-developed ranching and farming activities, which is in the public interest. Portions of Grantor's Land may continue to be used for such residential, ranching, agricultural and recreational uses as are consistent with the preservation of the conservation values which are protected by this Conservation Easement.

2. Easement Documentation Report. The parties acknowledge that an Easement Documentation Report (the "Report") of Grantor's Land has been prepared on behalf of the Grantor by a competent professional familiar with Grantor's Land and its natural and agricultural values. The Report has been reviewed and approved by the Land Trust and Grantor as an accurate representation of the agricultural, biological and physical condition of Grantor's Land at the effective date of this grant. The Report, signed by Grantor and the Land Trust, has been placed on file with the Land Trust and a copy will be provided to Grantor. In the event a controversy arises with respect to the nature and extent of the physical or biological condition of Grantor's Land, the parties may

utilize the Report and any other relevant documents, surveys or other information to assist in the resolution of the controversy.

3. Land Trust's Rights. The rights conveyed to the Land Trust by this Conservation Easement are the following:

A. To identify, to preserve and protect in perpetuity, and by mutual agreement to enhance, the conservation values as described in the Whereas recitals hereof and the Report on Grantor's Land.

B. Upon at least fourteen (14) days prior notice to Grantor, to enter upon Grantor's Land (excluding the interiors of buildings) to enforce the rights herein granted, to determine whether Grantor's activities are in compliance with the terms of this Conservation Easement, in a manner that will not unreasonably interfere with the uses being made of Grantor's Land, consistent with this Conservation Easement, at the time of such entry. The Land Trust shall also have the right upon prior reasonable notice to Grantor of immediate entry to Grantor's Land if such entry is necessary to prevent imminent irreparable or irreversible damage to or the destruction of the conservation values of Grantor's Land, which entry will be reasonably exercised and will take into account Grantor's right to engage in residential, ranching, agricultural and recreational activities as set out in paragraphs 4, 4.1 and 4.2 hereof.

C. To obtain after the cure period set forth below, injunctive and other equitable relief against any activity on, or use of, Grantor's Land which is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of Grantor's Land as may be damaged by such activities to their condition immediately preceding the violation complained of. If Grantor fails to cure the violation within sixty (60) days after receipt of notice thereof from the Land Trust or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing such violation within the sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, the Land Trust may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, and to require the restoration of such areas or features of Grantor's Land as hereinabove set forth.

3.1 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Land Trust to bring any action against Grantor for any injury to or change in Grantor's Land resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers or the unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and major vegetative disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to Grantor's Land or damage to property or injury to persons resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and the Land Trust's rights to pursue any third party for damages to

Grantor's Land from vandalism, trespass, or any other violation of the terms of this Conservation Easement.

4. Grantor's Rights. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with this Conservation Easement, and these practices may not be prevented or limited by this Conservation Easement except for the requirement of prior approval from the Land Trust where provided herein and as highlighted through underlining:

A. Subject to the provisions of paragraphs 4.1 and 4.2 hereof, the right to conduct ranching and agricultural activities for personal and commercial purposes and, subject to the provisions of this paragraph 4 the right to use Grantor's Land for personal and commercial residential purposes.

B. To conduct recreational activities for personal and commercial purposes within those buildings and structures hereinafter described and upon Grantor's Land. Permitted recreational activities include those activities which do not impair conservation values and are not inconsistent with the purpose of this Conservation Easement such as, but not limited to hunting for birds or game (provided hunting is done in a manner that does not adversely affect the viability of any species' continued survival and is done in a manner consistent with the game laws of the state of Wyoming), fishing, equestrian activities (including the conduct of dude ranching, trail riding, horse shows, rodeos, roping, polo and livestock cutting events), hiking, and cross country skiing.

C. To maintain, repair, and, in the event of its destruction, to reconstruct or replace any irrigation structure now existing or permitted hereunder.

D. To build, maintain, and repair perimeter and other fencing related to the recreational, ranching, agricultural and residential uses permitted herein provided that fencing shall not exclude or unduly restrict wildlife movement to and from historical use areas located on or off of Grantor's Land.

E. To subdivide Grantor's Land into no more than four (4) legal parcels, one of which if such subdivision is effected must include in its entirety the building envelope described in subparagraph 4.F. hereof and two of which may include those building envelopes described in subparagraph 4.G. hereof. Each parcel may be under separate ownership and operated as an independent unit. Each parcel shall remain subject to all terms of the Conservation Easement. Grantor shall notify the Land Trust prior to any subdivision and prior to making a binding commitment for any subdivision, such notice to be for informational and easement monitoring purposes only and not for purposes of the Land Trust's approval.

1. The Land Trust makes no representation that any subdivision authorized under this subparagraph will be approved by governing authorities.

2. Any subdivision must conform to applicable federal, state or local laws and regulations, and Grantor shall be solely responsible for securing any required governmental approval.

F. In addition to the right to maintain, remove, rebuild and expand, and to use for those commercial and non-commercial purposes permitted hereunder, all buildings, structures and improvements comprising the current ranch headquarters as described in the Report, Grantor also reserves the right to build, maintain, remove, replace and expand, and to use for those commercial and non-commercial purposes permitted hereunder, new Residences, hereinafter defined, and Associated Improvements, hereinafter defined, within the building envelope described as T.56N, R.86W, Section 25: SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$; Section 36: W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, which building envelope contains the current ranch headquarters. "Residence" means a dwelling containing at a minimum permanently installed cooking or indoor or outdoor sanitary facilities. A Residence may include household or commercial guest and employee quarters and home occupation or professional offices. "Associated Improvements" means such other buildings, structures, and improvements as are customarily accessory uses to comparable non-commercial or commercial residence dwellings in the vicinity of Grantor's Land, including but not limited to separate guest and employee quarters; driveways, roads and above ground and below ground utilities located within the building envelope in which any Residence and Associated Improvements are located and to service said building envelope; swimming pools; tennis courts; solar panels; flagpoles; gazebos; indoor and outdoor riding rings; bird observation stands; buildings and facilities not for human habitation but for those personal and commercial agricultural, ranching, recreational and residential purposes permitted hereunder; improvements for heating, cooling and communications; satellite dishes; septic waste disposal facilities; wells; outbuildings; bunkhouses; garages; and outdoor furniture and ornaments.

G. Subject to the Land Trust's prior approval in accordance with paragraph 5 hereof, which approval shall not be unreasonably withheld but shall be based upon the criteria of this subparagraph, Grantor reserves the right to designate two separate building envelopes within two of the three parcels described in subparagraph 4.E. hereof not including the building envelope described in subparagraph 4.F. hereof. Neither of such two additional building envelopes shall exceed fifteen (15) acres in size. Grantor further reserves the right to construct within the designated and approved building envelopes in each of said two parcels Residences and Associated Improvements, along with access roads and utility lines to such parcels, to maintain and repair said Residences and Associated Improvements and to replace any destroyed Residence and/or Associated Improvement. The total

combined coverage on the ground of enclosed buildings located on each the two additional building envelopes described in this subparagraph shall not exceed one hundred and thirty thousand (130,000) square feet. The criteria to be used by the Land Trust in evaluating Grantor's request for approval of the location of any building envelope shall be limited to the foreseeable adverse impact that such location may have on the following: (i) views of Grantor's Land from public roads, (ii) the preservation of riparian areas, (iii) the preservation of critical viewsheds as experienced from publicly accessible areas, and (iv) hilltop skylines as viewed from publicly accessible areas. Notwithstanding the previous sentence, no building envelope shall be located west of the current ranch headquarters within Section 36.

H. To construct, repair and maintain above ground or below ground utility systems within new, existing or identified easements or rights of way and to maintain or repair such utility systems and existing roads as are necessary for the uses of Grantor's Land permitted herein. Grantor further reserves the rights to construct new roads, utility systems, water wells and ponds as are necessary for uses permitted under this Conservation Easement, provided that such construction does not impair the wildlife habitat or riparian corridor of Soldier Creek, and to acquire additional water rights for uses on Grantor's Land that are permitted under this Conservation Easement.

I. To plant and maintain native plant species and native plant communities and non-native plants in cultivated fields as described in the Report or, with the prior approval of the Land Trust in accordance with paragraph 5 hereof, other species and plant communities, for the purpose of protecting, preserving, and enhancing the conservation values of Grantor's Land, and for residential, ranching, recreational and agricultural purposes; and the right to conduct prescribed burns to protect or enhance the conservation values of the Property.

J. To introduce new (either native or non-native) fish and game bird species, such as various species of trout, pheasant, quail and partridge but specifically excluding and prohibiting the introduction of any other non-native fish or game bird species except with the prior approval of the Land Trust in accordance with paragraph 5 hereof.

K. To use agrichemicals, including, but not limited to chemical and natural fertilizers and pesticides, in accordance with paragraph 4.3 hereof.

L. To use motorized vehicles on and off roads and driveways in support of other uses and activities permitted under this Conservation Easement but not as a stand alone recreational activity.

M. To lease or grant other less-than-fee-interests in all or any portion of Grantor's Land for any use or activity that is permitted by this Conservation Easement, including but not limited to any commercial use.

N. To use Grantor's Land for educational and training activities and summer camps provided that such use does not substantially diminish or impair the conservation values of Grantor's Land.

O. To selectively cut or clear vegetation and mow and hay fields or pastures outside riparian areas for habitat enhancement and protection, fire protection, unpaved equestrian and pedestrian trail construction and maintenance, tick control, the creation or preservation of vistas, or otherwise to preserve the current condition of Grantor's Land. Within riparian areas as shown in the Report, Grantor reserves the right to selectively cut or clear vegetation for unpaved equestrian and pedestrian trail construction and maintenance, fence crossings, water gaps and other limited cutting related to those recreational, agricultural and ranching activities and uses permitted hereunder provided that no more than ten percent (10%) of the current total surface area of riparian areas may be cut or cleared of vegetation without the prior approval of the Land Trust in accordance with paragraph 5 hereof.

P. To maintain lawns and gardens within building envelopes, including the rights to plant, maintain, cut and remove grass, trees, shrubs, flowers, vegetables and other vegetation within building envelopes.

Q. To convey portions of Grantor's Land for boundary line adjustment purposes. The parties hereto agree that such boundary line adjustments shall not constitute subdivision as described at subparagraph 4.E. hereof. Any of Grantor's Land conveyed out as a result of a boundary line adjustment shall remain subject to all terms of this Conservation Easement.

R. To control predatory and problem animals, including but not limited to beavers and prairie dogs, in accordance with all applicable state or federal laws, by the use of selective control techniques which shall not extirpate native species from Grantor's Land.

S. To engage in any unanticipated use of or activity on Grantor's Land not expressly prohibited or conditioned in this Conservation Easement which would not diminish or impair conservation values and would not be inconsistent with the purpose of this Conservation Easement.

4.1 Ranching and Agriculture. Grantor reserves the right to conduct activities in connection with ranching and agriculture; to create and maintain irrigation systems; and to construct, repair and maintain new barns, garages, and related buildings within building envelopes as described in subparagraph 4.F. and subparagraph 4.G. For purposes hereof "ranching", "agriculture" and

"agricultural" shall include agriculture and animal husbandry; the pasturing, grazing, feeding, watering, and caring of horses, cattle, mules, donkeys, sheep and goats, and with the prior approval of the Land Trust in accordance with paragraph 5, other livestock species; and the production and sale of plant and animal products for domestic or commercial purposes.

4.2 Enumeration of Certain Specific Ranching and Agricultural Rights. It is Grantor's and the Land Trust's intent to permit the continuation of ranching and agricultural activities on Grantor's Land, and to provide sufficient flexibility so that such activities can take advantage of new related technologies in the future. In all events, however, ranching and agricultural activities shall be conducted in a manner that is consistent with the protection and preservation of the conservation values of Grantor's Land, including but not limited to the wildlife habitat and scenic values of Grantor's Land. Accordingly, subject to the overriding goal of protection of the conservation values of Grantor's Land, permitted ranching and agricultural activities may include, but are not hereby limited to, the following:

- (a) pasturing, grazing, feeding, watering, and caring for livestock as described at paragraph 4.1;
- (b) planting and maintaining native vegetation to protect, preserve, and enhance the aesthetic and wildlife habitat values of Grantor's Land and for ranching and agricultural purposes;
- (c) using all of Grantor's rights, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to Grantor's Land, and the acquisition of additional water rights for authorized ranching and agricultural use on Grantor's Land;
- (d) constructing, maintaining, developing, or altering irrigation facilities, including reservoir systems, on Grantor's Land;
- (e) constructing, rebuilding, maintaining, repairing, and using culverts on Grantor's Land;
- (f) building, maintaining, and repairing cattle guards on Grantor's Land;
- (g) erecting, maintaining, and repairing signs on Grantor's Land as reasonably appropriate to discourage trespassing, provided that each such sign shall not exceed four square feet in size on each side;
- (h) the selective planting or harvesting of trees for range enhancement or habitat enhancement;

(i) building, maintaining, and repairing fences (including gates and stockyards) for agricultural or ranching purposes and for the protection of wildlife, wildlife habitat, and vegetation;

(j) the composting, burning and storage of waste generated by permitted activities on and uses of Grantor's Land (any enclosed waste storage facilities to be located within building envelopes); and

(k) planting, growing, and harvesting hay, grains, alfalfa and agricultural crops in cultivated fields as set out in the Report.

4.3 Further Limitation on the Application of Chemicals and Natural Controls. In connection with any permitted activity on Grantor's Land, the use of chemical fertilizers, herbicides, pesticides, fungicides, and natural controls will be permitted only if such use is in compliance with all applicable federal, state, and local statutes and regulations and only to the extent such use does not have a demonstrable detrimental effect on the conservation values of Grantor's Land.

5. Approval by the Land Trust. Grantor shall not undertake any activity pursuant to the underlined portions of subparagraphs 4.G., 4.I., 4.J., and 4.O. and paragraph 4.1 without first having obtained the approval of the Land Trust as provided herein. Prior to the commencement or undertaking of any such activity, Grantor shall send the Land Trust written notice of the intention to commence or undertake such activity. Said notice shall inform the Land Trust of all aspects of such proposed activity including, but not limited to, the nature, siting, size, capacity, and number of improvements, facilities, or uses. Said notice shall be sent to the Land Trust in accordance with paragraph 23.

The Land Trust shall have forty-five (45) days from the posting of Grantor's request for approval, as indicated by the registered or certified return receipt, to review the proposed activity and to notify Grantor of its objections thereto. Such objections, if any, shall be based upon the Land Trust's opinion that the proposed activity is inconsistent with this Conservation Easement. The Land Trust's notice shall inform Grantor of the manner in which the proposed activity can be modified to be consistent with this Conservation Easement. The proposed activity may thereafter be conducted only in a manner that is mutually acceptable to Grantor and the Land Trust. The Land Trust's response to Grantor's notice shall be sent to Grantor in accordance with paragraph 23.

Should the Land Trust fail to post its response to Grantor's notice within thirty (30) days of the posting of Grantor's notice, the activity proposed by Grantor shall automatically be deemed consistent with the terms of this Conservation Easement, and the Land Trust shall have no further right to object to the activity identified by such notice.

Grantor shall be under no liability or obligation for any failure in the giving of notice as required above with regard to any activity undertaken by Grantor necessitated by virtue of fire, flood, act of God, or other element, or cause beyond the control of Grantor similar to those specified in paragraph 3.1 hereof.

6. **Prohibited Activities.** The following uses and practices by Grantor are inconsistent with the purpose of this Conservation Easement, and shall be prohibited:

A. Conversion of Grantor's Land from its current state of a native vegetation dominated landscape. There shall be no farming, plowing, or cultivation of the soil and no interseeding or conversion to exotic vegetation or cropland, except in cultivated fields as described in the Report and as permitted by paragraph 4.2.

B. The construction or placement of any buildings, transmission or receiving tower, energy facility, camping accommodations, mobile homes, boat ramps, bridges, billboards, or other advertising materials or any structures, except as permitted in paragraphs 4, 4.1, and 4.2, and except for such derricks and pumps required for those hydrocarbon exploration and extraction activities permitted under subparagraph 6.F.

C. The introduction of non-native plant or animal species, except within the building envelopes described in subparagraph 4.F. and subparagraph 4.G., except for the grazing of livestock or planting of approved species as described in subparagraph 4.I. and paragraphs 4.1 and 4.2, and except for the introduction of fish and game bird species in accordance with subparagraph 4.J.

D. The construction of any roads or vehicle trails, except as permitted by Paragraph 4.

E. The use of any motorized vehicles off roadways now existing or new roadways permitted herein, except in support of those uses and activities permitted under paragraphs 4, 4.1 and 4.2, and those hydrocarbon exploration and extraction activities permitted under subparagraph 6.F.

F. The exploration for or extraction by any surface mining method of minerals, oil, gas, or other hydrocarbons, including coal bed methane, soils, sands, gravel, rock, or other materials on or below the surface of Grantor's Land, with the following exceptions:

(1) following notice to the Land Trust (for informational and easement monitoring purposes only and not for purposes of the Land Trust's approval), from the existing, historical extraction site located on Grantor's Land as identified as Exhibit C and more fully described in the Report (which site has surface area dimensions of approximately 180 feet by 240 feet on the effective date of this Conservation Easement and is not visible from any public way or publicly accessible property), Grantor reserves the limited right to extract construction materials such as gravel, scoria, rock, dirt, soil, and sand for use only in connection with permitted activities on

Grantor's Land provided (i) when the surface area disturbed by extraction activities exceeds the site's current surface area of 43,200 square feet by more than 40,000 square feet, then any portion of the disturbed site whose surface area exceeds 43,200 square feet shall be restored by Grantor using clean, natural fill material (rock, soil, sand, and dirt) in consultation with the Land Trust to the disturbed area's approximate original contours and natural landscaping similar in appearance and plant species to that which characterizes the vicinity of the site; (ii) all extraction is limited in quantity so that such extraction is not inconsistent with the purpose of this Conservation Easement; (iii) all portions of the extraction site shall remain concealed by landscaping and topography from any public way or publicly accessible property; and (iv) any portion of the extraction site which is either abandoned or not used by Grantor for a period exceeding three years is restored by the Grantor using clean, natural fill material (gravel, rock, soil, sand, and dirt) in consultation with the Land Trust to the site's approximate original contours and natural landscaping similar in appearance and plant species to that which characterizes the vicinity of the site; and

(2) in accordance with the following provisions, the exploration and extraction of oil, gas and other hydrocarbons:

(a) The exploration and extraction of oil and gas and hydrocarbons shall be conducted by drilling in a manner that has limited, localized impact on Grantor's Land such that the production facilities are concealed and the visual landscape is protected to the maximum extent practical, exploration and extraction equipment shall not be located within riparian areas, no refineries, compression or secondary production facilities shall be located on Grantor's Land, all gas shall be transported by underground pipelines that do not traverse riparian areas, and any surface alteration is restored to its condition (including but not limited to restoring soils to the approximate original contours and replanting native vegetation) existing immediately prior to exploration or extraction immediately upon completion of exploration or extraction, consistent with the requirements of Treas. Regs. Section 1.170A-14(g)(4).

(b) A plan for the siting of new roads and wellheads, the placement of electric lines, the displacement of water and any other surface activities associated with the exploration or extraction of oil, gas or hydrocarbons will be developed in consultation with the Land Trust. To the extent reasonably practical, all activities associated with the development of oil, gas or hydrocarbons will be designed using technologies which provide for the protection of the conservation values of Grantor's Land and minimal impact on the land.

(c) Travel for the purpose of oil, gas or other hydrocarbon development shall be restricted to existing roads or to new roads developed in consultation with the Land Trust for said purpose, and are to be abandoned and the land restored to its previous natural state at the end of the development period.

(d) The Land Trust shall be released, indemnified and held harmless from any liabilities, damages or expenses resulting from claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessors or other third parties relating to the exploration for or extraction of oil, gas or other hydrocarbons.

(e) Grantor agrees not to enter into any lease or other agreement for the exploration or development of the interest in any oil or gas or other hydrocarbon substance, unless such lease or other agreement includes the provisions of subparagraph 6.F.(2)(a) through and including subparagraph 6.F.(2)(d). Notwithstanding anything to the contrary in the foregoing sentence, the Grantor shall remain liable for compliance with all of the terms and conditions of this Conservation Easement.

(f) Grantor shall notify the Land Trust prior to the commencement of any oil, gas or hydrocarbon exploration and extraction activity, and Grantor shall notify the Land Trust upon completion of such exploration and extraction activity, such notice to be

for informational and easement monitoring purposes only and not for purposes of the Land Trust's approval.

G. The division, subdivision, or de facto subdivision of Grantor's Land except as permitted in subparagraph 4.E.

H. The establishment or maintenance of any commercial feed lot, which shall be defined for purposes of this Conservation Easement as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

I. The dumping or other disposal of toxic materials or of non-compostable refuse. Notwithstanding anything in this Conservation Easement to the contrary, this prohibition does not make the Land Trust an owner of Grantor's Land, nor does it permit the Land Trust to control any use of Grantor's Land by the Grantor which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that the Land Trust may bring an action to protect the conservation values of the Grantor's Land, as described in this Conservation Easement. (This prohibition does not impose liability on the Land Trust, nor shall the Land Trust be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.)

J. The manipulation, diversion, or other alteration of natural water courses (except for the creation of ponds, irrigation facilities and/or reservoir systems in accordance with subparagraph 4.H. and subparagraph 4.2(d) hereof), wetlands, or other bodies of water or any practice which degrades or destabilizes their natural banks or shorelines.

K. The degradation, pollution, or drainage of any surface or sub-surface water.

L. Any change in the topography of Grantor's Land through the placement therein of soil, land fill, dredging spoils, or other material, except as permitted in the conduct of uses and activities permitted by paragraphs 4, 4.1, 4.2 and subparagraph 6.F. hereof.

M. Commercial or industrial use except as permitted under paragraphs 4, 4.1 and 4.2 and subparagraph 6.F. hereof.

7. **Remedies.** Should Grantor undertake any activity requiring approval of the Land Trust without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement, the Land Trust shall have the rights granted herein, including but not limited to, the right to compel the restoration of that portion of Grantor's Land affected by such activity to the condition that existed prior to the violation complained of. In such case, the prevailing party shall be entitled to its costs of suit, including attorneys' fees, and, if the Land Trust prevails, the cost of restoration activities undertaken by the Land Trust, if any. In the event that redress is secured without a completed judicial proceeding, the parties shall each be liable for their respective costs of suit. Nothing herein contained shall be construed to preclude Grantor from exhausting its legal remedies in determining whether the proposed activity to which the Land Trust has objected is inconsistent with this Conservation Easement.

8. **Taxes.** Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on Grantor's Land, including any tax or assessment on the easement herein granted. If Grantor's successors and assigns become delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Land Trust at its option, shall have the right to purchase and acquire the Grantor's, or its successor's or assign's, interest in Grantor's Land at any tax lien foreclosure in accordance with applicable law by paying funds to discharge said lien or delinquent taxes or assessments, or to take other actions as may be necessary to protect the Land Trust's interest in Grantor's Land and to assure the continued enforceability of this Conservation Easement.

9. **Costs.** Grantor agrees to bear all costs of the operation, upkeep, and maintenance of Grantor's Land, without charge to or reimbursement from the Land Trust.

10. **Liabilities.** Grantor shall hold harmless, indemnify, and defend the Land Trust and the Land Trust's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on Grantor's Land. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on Grantor's Land by the Land Trust or the Land Trust's representatives or agents.

11. **Access.** Nothing herein contained shall be construed as affording the public access to any portion of the land subject to this Conservation Easement.

12. **Amendments.** If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and the Land Trust may, by mutual written agreement, jointly amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of the Land Trust under any applicable laws, including Sections 170(h)(3) and 501(c)(3) of the Code. Any such amendment shall be consistent with the purpose of this Conservation Easement, shall not affect is perpetual duration, shall not permit additional residential development on Grantor's Land

other than residential development permitted by this Conservation Easement on its effective date, and shall not permit any impairment of the significant conservation values of Grantor's Land. Nothing in this paragraph shall require Grantor or the Land Trust to agree to any amendment or to consult or negotiate regarding any amendment.

13. Assignment. The Land Trust may not assign this Conservation Easement without Grantor's consent, except in the event of the Land Trust's termination, provided that (1) the Land Trust shall require, as a condition of such transfer, that the purpose of this Conservation Easement continue to be carried out; and (2) any assignment shall be made only to an organization qualified at the time of transfer as an eligible donee under Code Section 170(h)(3) or its successor, or any regulations issued thereunder, provided that, if consistent with the foregoing requirements, in the event of the Land Trust's termination, this Conservation Easement shall be assigned to The Nature Conservancy.

14. Change of Conditions. The Land Trust hereby covenants and agrees that in the event that a later unexpected change in the conditions of or surrounding Grantor's Land makes impossible or impractical any continued use of Grantor's Land for the conservation purposes described herein, and the restrictions are extinguished by judicial proceeding, then, upon the subsequent sale, exchange, or condemnation of Grantor's Land, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and the Land Trust shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Conservation Easement, which amount is reserved to Grantor) in accordance with their respective proportionate shares as determined below. The Land Trust will apply its share of any proceeds received from such sale, exchange, or taking in a manner consistent with the purpose of this Conservation Easement including the preservation of land for open space (including agricultural and forest land) and the preservation and protection of scenic views, land areas for outdoor recreation, or the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Code Section 170(h)(4)(A)(ii) as amended, and in regulations promulgated thereunder.

For purposes of compliance with Treasury Regulations Section 1.170A-14(g)(6)(ii), the Grantor hereby agrees that at the effective date of this Conservation Easement, the donation of this Conservation Easement by the Grantor gives rise to real property rights, immediately vested in the Land Trust, with a fair market value equal to the proportionate value that the fair market value of this Conservation Easement at the time of the contribution bears to the fair market value of Grantor's Land as a whole at that time. That proportionate value of the Land Trust's property rights shall remain constant.

Whenever all or part of the Grantor's Land is taken in exercise of eminent domain by public, corporate, or other authority so as to extinguish the restrictions imposed by this Conservation Easement, the Grantor and the Land Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate values of the Land Trust's and Grantor's interests as specified above; all expenses incurred by the Grantor and the Land Trust in this action shall be first paid out of the recovered proceeds.

15. No Extinguishment Through Merger. Grantor and the Land Trust herein agree that (i) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (ii) should all or a portion of the fee interest subject to this Conservation Easement and the Conservation Easement come to be owned by the same owner, said owner as promptly as practicable shall assign the Conservation Easement of record to another holder in conformity with the requirements of this Conservation Easement. The instrument of assignment shall refer to the provisions of this paragraph, and shall contain confirmatory language suitable to reimpose this Conservation Easement to the extent, if any, necessary to continue it in force.

16. Appurtenant Easement. The Conservation Easement granted herein is appurtenant to certain other real property granted to the Land Trust contemporaneously with or before this conveyance, and more particularly described in Exhibit B, attached hereto and made a part hereof by this reference. In the event the State of Wyoming adopts a law enabling conservation easements to be held by the grantee thereof in gross, the real property described in Exhibit B shall revert to the Grantor of the Property described in Exhibit A, and, upon request of the Grantor, the Land Trust will execute and deliver a quitclaim deed confirming this reversion.

17. Forbearance. Any forbearance on behalf of the Land Trust to exercise its rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of the Land Trust's rights hereunder in the event of any subsequent breach.

18. Binding Effect. This Conservation Easement shall run with and burden title to Grantor's Land in perpetuity, and shall bind Grantor, and its successors, and assigns of each of them. The Grantor agrees that the terms, conditions, restrictions and reference to the purpose of this grant will be inserted in any subsequent deed or other legal instrument by which the Grantor divests itself of either the fee simple title to or possessory interest in Grantor's Land.

19. Definitions. The terms "Grantor" and "Land Trust," wherever used herein, and any pronouns used in place of those terms, shall be deemed to include, respectively, Grantor and its administrators, successors, and assigns, and the Land Trust, its successors and assigns.

20. Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of Grantor's Land, by judicial proceeding in a court of competent jurisdiction.

21. Invalidity of Provision. If any provision of this Deed of Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Deed of Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

22. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation 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 12 above.

23. Notices. Any notice that either party desires or is required to give to the other shall be in writing and sent by registered or certified mail, return receipt requested, addressed as follows:

Grantor:	Way Land of Wyoming, LLC c/o Wayland H. Cato Jr. 782 Soldier Creek Road Sheridan, WY 82801	
And copies to:	Robert G. Berger, Esq. Lonabaugh and Riggs Drawer 5059 Sheridan, WY 82801	Way Land of Wyoming, LLC c/o Aaron Smith, Esq. 8100 Denmark Road Charlotte, NC 28234
The Land Trust:	Wyoming Stock Growers Agricultural Land Trust P. O. Box 206 Cheyenne, WY 82003	

or such other address as any of the above parties from time to time shall designate by written notice to the other.

24. Compliance Certificates. Upon request by Grantor, the Land Trust shall within thirty (30) days execute and deliver to Grantor any document that may be requested by Grantor, including an estoppel certificate or compliance certificate, to certify to the best of the Land Trust's knowledge Grantor's compliance with any obligation of Grantor contained in this Conservation Easement or otherwise to evidence the status of this Conservation Easement.

25. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with Grantor's Land, provided that (i) no owner shall be responsible except for violations occurring on such owner's land while owner thereof; (ii) in the event of a breach of the terms hereof by the owner or owners of any subdivided portion of Grantor's Land, no owner or owners of any other portion of Grantor's Land shall be liable for such breach; and (iii) any of the rights herein reserved to Grantor may be exercised by any owner or owners from time to time of any lot within Grantor's Land.

26. **Effective Date.** Grantor and the Land Trust intend that the restrictions arising hereunder take effect on the day and year this **DEED OF CONSERVATION EASEMENT** is recorded in the Registry of Deeds of Sheridan County, Wyoming, after all required signatures have been affixed hereto. The Land Trust may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF, Grantor has hereunto set its hand this 22 day of November, 2002.

GRANTOR

Way Land of Wyoming, LLC,
a Wyoming limited liability company

Wayland H. Cato Jr.
By: Wayland H. Cato Jr., Manager
Date: November 22, 2002

STATE OF WYOMING)
COUNTY OF SHERIDAN) ss.

The foregoing Deed of Conservation Easement was acknowledged before me this 22 day of November, 2002, by Wayland H. Cato, Jr., as Manager of Way Land of Wyoming, LLC, a Wyoming limited liability company.

WITNESS my hand and official seal.



Elizabeth Wilson
Notary Public
My Commission expires: June 1, 2006

The foregoing Deed of Conservation Easement is hereby duly accepted by the Wyoming Stock Growers Agricultural Land Trust.

GRANTEE

Wyoming Stock Growers Agricultural Land Trust

By: Mark Eisels

Title: President

Date: 11-4-02

Wyoming Stock Growers Agricultural Land Trust

By: James H. Magagna

Title: Secretary

Date: 11-17-02

STATE OF WYOMING)
COUNTY OF Lawrence) ss.

The foregoing Deed of Conservation Easement was acknowledged before me this 4th ¹¹/₁₁ day of November, 2002, by Mark Eisels as President and by James H. Magagna as Secretary/Treasurer of the Wyoming Stock Growers Agricultural Land Trust.

WITNESS my hand and official seal.

Uma L. Lightfoot
Notary Public

My Commission expires: 1-12-2004

EXHIBIT A
GRANTOR'S LAND

Township 56 North, Range 85 West of the 6th P.M., Sheridan County, Wyoming

Section 17: SE1/4, S1/2NE1/4, NW1/4NE1/4,
 Section 19: E1/2SE1/4, SE1/4NE1/4
 Section 20: All
 Section 21: SW1/4
 Section 28: N1/2NW1/4
 Section 29: W1/2, N1/2NE1/4, S1/2SE1/4
 Section 30: All
 Section 31: N1/2N1/2, S1/2SW1/4
 Section 32: N1/2N1/2

Township 56 North, Range 86 West of the 6th P.M., Sheridan County, Wyoming

Section 25: E1/2, SW1/4, SE1/4NW1/4
 Section 26: S1/2SE1/4
 Section 35: E1/2 except that portion lying West of the County Road, E1/2NW1/4
 except that portion lying West of the County Road
 Section 36: All except that portion lying West of the County Road

Township 55 North, Range 86 West of the 6th P.M., Sheridan County, Wyoming

Section 1: W1/2 except that portion lying West of the County Road, NE1/4, N1/2SE1/4;
 also that part of the South half of the SE1/4 of said Section 1 lying North of the
 center line of the County Road

Township 55 North, Range 85 West of the 6th P.M., Sheridan County, Wyoming.

Section 6: NW1/4, N1/2SW1/4; also that part of the S1/2SW1/4 and SW1/4SE1/4 of said
 Section 6 lying North of the center line of the County Road

EXHIBIT B

LAND TRUST'S PROPERTY

That part of the SW1/4SE1/4 of Section 6, Township 55 North, Range 85 West, 6th P.M.,
Sheridan County, Wyoming, described as follows:

The North 208.71 feet of the West 208.71 feet of Section 6: SW1/4SE1/4, containing 1.00 acre,
more or less.

EXHIBIT C

GRAVEL AREA

An area within the limits described in this document, located in the NW1/4NW1/4 of Section
31, Township 56 North, Range 85 West, 6th P.M., Sheridan County, Wyoming,