

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made as of this _____ day of _____, 2008, by _____, whose address is _____ ("Grantors"), and LAND LEGACY, a non-profit Oklahoma public benefit corporation, whose address is 502 S. Main, Suite 401, Tulsa, Oklahoma 74103 ("Grantee").

WHEREAS, the mission of Land Legacy is to conserve and enhance urban and rural landscapes; and

WHEREAS, the State of Oklahoma has recognized the importance of both public and private efforts to conserve and protect the state's natural resources by the enactment of the Oklahoma Uniform Conservation Easement Act (60 O.S. §§ 49.1-49.8 (OSCN 1999)); and

WHEREAS, Grantors are the owner of all the real property in Delaware County, State of Oklahoma, described in the attached **Exhibit A** ("Property") and approximately located on the map attached as **Exhibit B**; and

WHEREAS, the Property has significant water resources, agricultural, ecological, natural, scenic, open space, and wildlife habitat values as recognized in the Oklahoma Uniform Conservation Easement Act (60 O.S. §§ 49.1-49.8 (OSCN 1999)); and Grantors intend to convey this Easement under the statutory provisions of that Act and other applicable provisions of Oklahoma statutory and common law; and

WHEREAS, the Property constitutes a valuable element of the natural habitat of the Eucha/Spavinaw watershed and ecosystem and the ecosystem's ecological, natural, scenic, and open space values, including flora, fauna, and prime and important soils; the Property provides significant wildlife habitat, and the maintenance of such natural habitat helps support wildlife populations in the Ozark and Eucha/Spavinaw ecosystems. In addition to the agricultural productivity of the Property, all of these natural habitat, ecological, wildlife, water resource, natural, scenic, and open space values ("Conservation Values") are worthy of conservation and of great importance to the Grantors, the Grantee, the City of Tulsa (an incorporated municipality), the State of Oklahoma, and the United States of America; and

WHEREAS, the purpose of this conservation easement is to protect and enhance forever the Conservation Values of the Property; and

WHEREAS, the Grantee is a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and a qualified conservation easement holder under the Oklahoma Uniform Conservation Easement Act (60 O.S. § 49.2 (2)(b) (OSCN 1999)); and the Grantee is a qualified organization under Section 170(h)(3) of the Internal Revenue Code to receive and hold conservation easements; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, Grantors, their heirs, representatives, and assigns, hereby convey and warrant to the Grantee, its successors and assigns, this perpetual Easement over the Property. The scope of this Easement is set forth in this deed.

I. COVENANTS, CONDITIONS, LIMITATIONS, AND RESTRICTIONS

A. The Grantors on behalf of themselves, their heirs, personal representatives, successors, and assigns, hereby covenant, relinquish, and convey to Grantee and its successors and assigns the following rights, with the intention that the Property shall be preserved for agriculture, wildlife habitat, open space, and personal residential and recreational use in perpetuity, and that the covenants, conditions, limitations and restrictions hereinafter set forth, are intended to limit the use of the Property and are to be deemed and construed as real covenants running with the land:

1. The right to establish or maintain any residential, commercial, recreational, or industrial facility on the Property or any other structure not specifically reserved herein;

2. The right to establish or maintain a confined animal feeding operation or commercial feedlot on the Property. For purposes of this Easement, a commercial feed lot is defined as a permanently constructed, confined area or facility, within which the land is not grazed or cropped annually, used for purposes of engaging in the business of receiving and feeding poultry or livestock for hire;

3. The right to subdivide the above-described land for any purpose or take any action that would create an actual or *de facto* sub-grantee of the Property;

4. The right to erect, display, place or maintain signs, billboards, or outdoor advertising displays on the land herein described; provided, however, the Grantors reserves the right to erect signs not exceeding four feet (4') by four feet (4') for each of the following purposes:

(a) To state the name of the Property and the name and address of the occupant;

(b) To advertise any home or ancillary occupation consistent with the purposes of this easement subject to the approval of the Grantee;

(c) To describe the fact that the Property is protected by a conservation easement, and to list the agencies and organizations involved; and

(d) To advertise the Property's sale or rental;

5. The right to dump ashes, sawdust, bark, trash, rubbish or any other material;

6. The right to transfer development rights from the above described tracts(s) to another area, or to another person, or to a political subdivision; and

7. The right to remove timber or timber products from the property for purposes other than to maintain the health of the forest as recommended by a timber management plan developed by the Oklahoma Department of Agriculture, Food, and Forestry.

B. The Grantors retain the right to use the Property for any agricultural or personal residential and recreational uses, and to carry on all normal farming and ranching practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the said land any agricultural operation which is in accordance with good husbandry practices, including any operation directly relating to the processing, storage, or sale of farm or livestock products produced on the Property; and all other rights and privileges not hereby relinquished, including their right of privacy; provided:

1. The Grantors shall manage the above-described land in accordance with sound agricultural soil, water, and timber conservation practices, in consultation with the Delaware County Conservation District, and in compliance with the terms and conditions of the Settlement Agreement, Case No. 01 CV 0900EA (C), United States District Court for the Northern District of Oklahoma and all subsequent Court Orders applicable to the Eucha/Spavinaw watershed.

2. The trees and other native vegetation located along the corridor of the Spavinaw Creek Channel, on both sides of the banks, shall be maintained to reduce bank erosion and protect water quality. Trees and native vegetation located within 30 percent of the geomorphic floodplain or 150 feet of the centerline of the Spavinaw Creek Channel, whichever is larger, shall be maintained and protected, and, specifically, shall not be removed for commercial purposes. Livestock shall be limited from the creek by various measures, including adequate fencing and the provision of off-site watering facilities.

3. For intermittent and perennial streams located within the Eucha/Spavinaw watershed the riparian area shall be measured from the defined edge of the stream, or centerline if the bank is not defined, and shall extend up to 150 feet from the point of measurement. Where steep slopes (in excess of 20 percent) are located within the designated widths, the riparian area shall be the entire distance of this sloped area.

4. All soil amendments and fertilizer applications, either organic or inorganic, shall not exceed the phosphorus agronomic rate for crop needs.

C. The parties, for themselves, their successors and assigns, further covenant and agree as follows:

1. The Grantee, or its assign or authorized representative, shall have the right to enter at reasonable times on the above described land from time-to-time for the sole

purposes of inspection and enforcement of the easement, covenants, conditions, limitations, and restrictions contained herein; *provided*, however, that the Grantee shall notify the Grantors of such entry in advance, and shall have no right to inspect the interior of any structures on the above described land. Grantors or Grantors designee shall be present during any such entry and inspection.

2. That if the easement or any covenant, condition, limitation or restrictions herein contained is violated or breached, the Grantee or its successors or assigns, may, after due notice to the Grantors, their successors or assigns, institute an action in equity to enjoin, by *ex parte*, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such violation or breach; to recover damages; and to take such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions contained herein.

3. If the Grantors have any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said land, Grantors may submit a written request to the Easement holder for consideration of such use.

4. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantors shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority on the Property.

5. This easement shall be in perpetuity.

6. The Grantors further covenant that they have not done anything whatsoever to encumber the property hereby conveyed. Grantors agree that they will warrant specially the property interest hereby conveyed; and that they will execute such further assurance of the same as may be required.

7. Grantors agree to bear all costs of operation, upkeep and maintenance of the Property, and agree to indemnify the Grantee and its assigns against all claims and obligations arising from such operation, upkeep, and maintenance activities. Grantors also agree to defend and indemnify the Grantee against obligations arising from past, present or future dumping of hazardous materials on the Property, and any obligations associated with their cleanup or containment.

8. Grantors agree that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached thereto. Grantors will notify the Grantee in writing of any conveyance of interest by sending written notice to the Grantee. Grantors agree to provide notice of this Easement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantors elect to sell the Property, Grantors agree to provide notice of this

Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.-

II. BASELINE DATA

A. The parties acknowledge that an inventory of baseline data relating to the Property has been completed by competent professionals familiar with the Property, and furnished to the Grantee by Grantors. The parties acknowledge that this collection of baseline data contains an accurate representation of the Property's condition and natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(I).

B. Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information to assist in resolving the controversy.

III. MISCELLANEOUS PROVISIONS

A. Assignment. The Grantee may transfer or assign its interest in the Property created by this Easement, but only to a "qualified organization" within the meaning of Section 170(h) (3) of the Internal Revenue Code, which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Any such qualified organization shall agree to enforce the conservation purposes protected by this Easement.

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

C. Enforcement. Grantors intend that enforcement of the terms and provisions of this Easement shall be at the discretion of the Grantee, and that the Grantee's failure to exercise its rights under this Easement, in the event of any breach by Grantors, shall not be considered a waiver of the Grantee's rights under this Easement in the event of any subsequent breach or as available in the Settlement Agreement, Case No. 01 CV 0900EA (C), United States District Court for the Northern District of Oklahoma and all subsequent Court Orders applicable to the Eucha/Spavinaw watershed.

D. "Grantors" and "Grantee". The term "Grantors," as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantors, and their heirs, personal representatives, executors, successors and assigns. The term "Grantee," as used in this Easement, and any pronouns used in place thereof shall mean the Grantee and its successors and assigns.

E. Proceeds for Extinguishment or Condemnation. If this easement is extinguished, terminated or condemned, in whole or in part, then Grantee is entitled to its proportional share each of the percentage of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed.

F. Successors. This Easement is binding upon, and will inure to the benefit of the Grantors' and the Grantee's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as the Grantors.

G. Titles. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

H. Amendment. Nothing in this Easement shall be construed to preclude Grantors from making a subsequent conveyance of rights in the Property to further protect its Conservation Values, provided, however, that any such subsequent conveyance shall not impair any conservation purpose sought to be advanced by this Easement.

I. Construction. This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with the Oklahoma Uniform Conservation Easement Act, (60 O.S. § 49.2 (2)(b) (OSCN 1999)).

J. Governing Law. This Easement will be interpreted and construed in accordance with applicable Oklahoma laws.

K. Entire Agreement. This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

L. Compliance. All uses and practices permitted by this Easement, including the Primary Uses, shall comply with all applicable state and federal laws.

M. Effective Date. The effective date of this Easement will be the date signed by all parties.

N. Notice. Grantors hereby acknowledge that the Grantee, at least three days prior to the execution of this Easement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning the possible legal and tax implications associated with granting this Easement.

GRANTEE: LAND LEGACY

By: _____

Name: _____

Title: _____

State of _____)
) ss.
County of _____)

On this _____ day of _____ 2008, _____, known to me to be the person whose name is subscribed to the instrument set forth above, personally appeared before me, _____, a Notary Public for the State of _____, and acknowledged that (s)he executed the same on behalf of Land Legacy.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal on the date written above.

(SEAL)

Notary Public for the State of _____
My commission expires _____

Exhibit A

(Property Description)

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

Exhibit B

(Property Map)