DEED OF CONSERVATION EASEMENT IN GROSS

BETWEEN

BREDHOFT RANCH, LLC

AND

SAN ISABEL LAND PROTECTION TRUST
DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS (the "Easement") is made this 19 day of OCTOBER, 2004, by and between Bredehoft Ranch, LLC, grantor, ("Landowner") and the San Isabel Land Protection Trust, grantee, ("Land Trust") and with Colorado Open Lands, a Colorado non-profit corporation, as back-up holder and transferee ("COL" or "Land Trust").

RECITALS

A. Landowner is fee simple owner of the property described in Exhibit A, attached to and made a part of this Easement, consisting of approximately 161 acres of land, together with buildings, other improvements, and appurtenant water rights (the "Property").

B. The Property possesses natural, historic, scenic open space, biological and ecological values of prominent importance to Landowner, Land Trust, the people of Custer County, and the people of the State of Colorado ("Conservation Values"), including more specifically:

1. Scenic open and relatively natural spaces that would be impaired by significant modification of the Property, and a scenic panorama visible to the public from publicly accessible sites and public roads such as County Roads 130 and 119 and Highway 69 that would be adversely affected by significant modifications of the natural habitat;

2. Significant and sustainable natural habitat, including riparian areas, willow habitat and Grape Creek, which flows through the Property, in which fish, wildlife, plants, and the ecosystems that support them, thrive in a natural state;

3. Excellent agricultural lands and character highly rated for preservation by the public in the San Isabel Resource Plan (July 1997.) The Plan was prepared with the objective of providing the residents of Custer County with a description of the natural and cultural resources of the area. There is a reasonable possibility that Land Trust may acquire other valuable conservation easements on other nearby properties possessing conservation values consistent with the Conservation Values preserved by this Conservation Easement;

4. The parties recognize that development of the Property beyond what is permitted in this Easement would have an adverse impact on, and greatly impair, these Conservation Values.
C. The specific Conservation Values of the Property have been documented in a Baseline Documentation Report dated **OCTOBER 14, 2004** and signed by Landowner and Land Trust ("Baseline Documentation"), which, by this reference is made a part of this Easement. The Baseline Documentation consists of maps, a depiction of all existing man-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features and photographs. The parties acknowledge that this Baseline Documentation is an accurate representation of the Property at the time of this Easement and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. Copies of the Baseline Documentation will be kept on file at the offices of Landowner and Land Trust;

D. The Conservation Values of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

1. Colorado Revised Statutes §§ 35-1-101, *et seq.*, provide in part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."

2. Colorado Revised Statutes §§ 38-30.5-102, *et seq.*, provide for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."

3. Colorado Revised Statutes §§ 33-1-101, *et seq.*, provide that "it is the policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

4. The Custer County Master Plan, adopted April 10, 2002, which says that property in the Grape Creek District where the Property is located "is intended to have a low population density and to remain agricultural in character. The plan direction for the plan calls for the area to remain primarily agricultural and ranching."

5. The Custer County Zoning Resolution, Section 7.2, adopted March 15, 2002, which says the area where the Property is located, "is intended to have low population density and remain agricultural in nature."
E. Land Trust is a Colorado nonprofit corporation and is a "Qualified Conservation Organization," as defined by Sections 501(c)(3) and 170(h) of the United States Internal Revenue Code of 1986, as amended and the applicable regulations promulgated thereunder ("Code"), and accepts the responsibility of enforcing the terms of this Easement and upholding its Conservation Values forever. Land Trust was established to protect open space, agricultural land and natural habitats of fish, wildlife, plants or similar ecosystems;

F. Landowner is committed to preserving the Conservation Values of the Property and Landowner intends that the Conservation Values of the Property be preserved and maintained as described herein by permitting only those uses on the Property that do not impair or interfere with the Conservation Values of the Property;

G. Landowner further intends, as owner of the Property, to convey to Land Trust the right to preserve and protect the Conservation Values of the Property in perpetuity in order of priority as described herein; and

H. Land Trust agrees by accepting this Easement to honor the intentions of Landowner and to preserve and protect in perpetuity the Conservation Values of the Property in order of priority as described herein.

I. Land Trust agrees that the current uses of and existing improvements to the Property are consistent with the preservation and protection of the Conservation Values.

In consideration of the above and the following mutual covenants, terms, conditions and restrictions, and pursuant Colorado Revised Statutes §§ 38-30.5-101, et seq., Landowner voluntarily grants and conveys, in perpetuity, to Land Trust, and Land Trust voluntarily accepts, as a donation, a Conservation Easement in Gross, over the Property of the nature and character and to the extent set forth in this Easement.

I. **Purpose.** It is the primary purpose of this Easement to assure that the Property will be perpetually preserved in its predominantly natural, scenic and open space condition. Specifically, this Easement will serve to protect the riparian areas, wetlands, open spaces, willow and other habitat and forest lands identified in the Baseline Documentation. It is the secondary purpose of this Easement to permit, without requiring, certain agricultural uses of the Property. Any use of the Property that may impair or interfere with any significant Conservation Values is expressly prohibited. The purposes of this Easement are prioritized as follows to provide guidance in the case that one or more of the proposed or permitted uses of the protection of Conservation Values themselves conflicts with protection of all of the Conservation Values: to accomplish the goal
of protecting the Conservation Values on the Property, Landowner and Land Trust agree to place in a position of first priority and protection the purpose and those Conservation Values relating to and enabling wildlife and habitat conservation, and by placing in a position of second priority and protection the purpose and those Conservation Values relating to open space qualities derived from the Property’s scenic or agricultural characteristics; therefore, any analysis of appropriate uses of the Property shall contemplate this priority of purposes, and when confronted with the protection of different purposes and Conservation Values that may be at odds with one another, the first priority purpose of wildlife habitat protection shall trump the second priority purpose of open space, scenic, or agricultural qualities of the Property. Landowner shall confine use of the Property to activities consistent with the purposes of this Easement and preservation and protection of the purposes and Conservation Values in the order of priority described herein. Nothing in this Easement is intended to compel a specific use of the Property, such as agricultural use or certain types of agricultural activities, and all permitted uses described herein are deemed consistent with the purposes of this Easement and the protection and preservation of the purposes and Conservation Values in the order of priority described herein.

II. Rights Conveyed. To accomplish the purpose of this Easement, the following rights are conveyed to, and vest in, Land Trust:

A. Real Property Interest. A real property interest immediately vesting in Land Trust.

B. Entering and Monitoring. The right to enter upon the Property at reasonable times to monitor and enforce Landowner’s compliance with the terms of this Easement, provided that Land Trust uses the utmost care not to destroy the Conservation Values by disturbing wildlife habitat or interfering with crop production, accesses the Property solely along the Property’s road shown on the map attached hereto as part of Exhibit C, except when travel off of the road is required to prevent, document, terminate, or mitigate a violation of the Easement or damage to the Conservation Values, and upon fifteen (15) day’s prior notice. Land Trust may enter the Property without notice when it reasonably determines that immediate entry is required to prevent, terminate or mitigate a violation of this Easement. Unless required by Land Trust in connection with reasonably suspected violations of the terms of this Easement, such entry shall occur not more frequently than once per calendar year. Land Trust and Land Trust’s representatives shall not unreasonably interfere with Landowner’s use and quiet enjoyment of the Property.

C. Preservation. The right to preserve and protect the Property's
Conservation Values in order of priority as described herein and to prevent or enjoin any activity on or use of the Property that is in violation of the specific terms of this Easement or is otherwise inconsistent with preservation of the Conservation Values.

D. Development Rights. All development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.

E. Restoration. The right to require restoration of any of the Property’s Conservation Values that are substantially damaged or impaired as a result of any activity on or use of the Property that is in violation of the specific terms of this Easement or is otherwise inconsistent with preserving the Conservation Values described in this Easement.

F. Placement of Signs. The right to place and maintain on the perimeter of the Property signs indicating that a conservation easement covering the Property is held by Land Trust. Should Land Trust elect to place such signs on the Property, these signs shall be placed on the Property by Land Trust within 120 days of this Easement’s recording. The number and size of such signs, and the specific location, design and content of the signs, shall be determined by mutual agreement of Landowner and Land Trust. Signs placed pursuant to this right shall be inspected and maintained in good condition by Land Trust.

III. Prohibited Activities and Uses. Any activity on or use of the Property which impairs any significant Conservation Values of the Property, or which is otherwise inconsistent with the purpose of this Easement, is expressly prohibited. Without limiting the generality of the foregoing, Landowner and Land Trust agree to the following limitations, prohibitions and requirements affecting the Property:

A. Division. Any division, subdivision, de facto subdivision or partitioning of title to the Property, whether by physical or legal process, is prohibited, except for minor boundary line adjustments, for which Land Trust’s approval is first required.

B. Water Rights. The Property includes any and all water and water rights beneficially used on the land described in Exhibit A that are owned by Landowner and all ditches, headgates, springs, reservoirs and water allotments, contracts, units, wells, easements and rights of way associated therewith (the “Water Rights”). The Water Rights include surface water rights and groundwater rights, whether tributary, nontributary or notnontributary, decreed or
undecreed, including, but not limited to, those water rights or interests specifically described on Exhibit B, attached to and made a part of this Easement. The parties agree that it is appropriate to include the Water Rights in this Easement pursuant to § 38-30.5-102, C.R.S.

1. Permitted Water Right Uses. The Water Rights are included in this Easement to retain or maintain the Water Rights predominantly for agricultural, wildlife habitat, horticultural, wetlands or other uses, consistent with the Conservation Values. Except as otherwise set forth in this paragraph III.B, the Water Rights are hereby dedicated and restricted to support, enhance and further the Conservation Values, which include, but are not limited to, the continuation of the historic use of the Water Rights on the Property. Landowner shall have the right to use and enjoy the Water Rights on the Property consistent with historic practices and this Easement. Landowner shall have the right to maintain, repair, and if destroyed, reconstruct any existing facilities related to the Water Rights (such as ditches, wells and reservoirs) unless the Conservation Values of the Property would be adversely impacted thereby, as determined by Land Trust in its sole judgment.

2. Restrictions On Water Rights. The Water Rights may not be changed to or used for municipal, industrial, or commercial uses, or be legally separated from the Property. The Water Rights are beneficially used on the Property as set forth in § 38-30.5-102, C.R.S. and Landowner shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Landowner shall not change the historic use or point of diversion of the Water Rights without the prior written consent of, and determination by, Land Trust that such change is not inconsistent with the preservation and protection of the Conservation Values pursuant to the order of priority described herein.

3. Protection of Water Rights. The intent of the parties is that Landowner will continue the historic use of the Water Rights on the Property. Landowner shall not abandon or allow the abandonment of any of the Water Rights. If Landowner fails to maintain such historic uses of the Water Rights, or the Water Rights are otherwise subject to a threat of abandonment, Land Trust shall have the right, but not the obligation, to enter upon the Property and undertake any and all actions reasonably necessary to continue the use of the historic Water Rights to preserve and protect the Conservation Values in order of priority as described herein. It is the parties’ intent that the Water Rights always be used on the Property for conservation purposes consistent with this Easement.
4. Effect of Loss. Except as set forth in this paragraph III.B, no loss of any or all of the Water Rights through injury or abandonment, or conversion of the Water Rights as set forth above, shall be considered a severance or other transfer of the title to the Water Rights from the Property for federal or state tax or other purposes.

C. Hunting and Fishing. No hunting or fishing is permitted on the Property unless an authorized Colorado State Wildlife Officer determines that culling of fish or animals is necessary to protect public health.

D. Commercial or Industrial Activity. No commercial or industrial uses, other than agricultural uses as set forth in paragraph IV.F and home office uses, shall be allowed on the Property, except as otherwise expressly provided in this Easement.

E. Feedlot. The establishment or maintenance of a commercial feed lot on the Property is prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed, confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. For purposes of this Easement, a "commercial feedlot" shall not include the establishment, use or maintenance of corrals, holding pens or pastures. Nothing in this paragraph shall prevent Landowner from seasonally confining Landowner's livestock into an area for feeding or from leasing pasture for the grazing of livestock owned by others.

F. Road Construction. The construction of any new roads or drives outside of the Building Envelope is prohibited. Construction of new roads or drives within the Building Envelope consistent with paragraph IV.C is permitted with Land Trust's approval, which approval Land Trust may withhold if it determines in its sole discretion that the proposed road or drive will be inconsistent with the preservation and protection of the Conservation Values of the Property in the order of priority described herein. Except as permitted within the Building Envelope as described in paragraph IV.C, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other paving or impervious material.

G. Timber Harvesting. There shall be no commercial harvesting of timber or willows on the Property. Landowner, however, may cut trees and willows to control insects and disease, to control invasive non-native species, to clear for fire control and to prevent personal injury and property damage and other forest management purposes consistent with this Easement.
H.  *Land Surface Alteration.* Any surface or sub-surface mining of the land is prohibited, provided that construction materials, such as rock, dirt, sand, and gravel, may be taken for use on the Property so long as such removal is restricted to have limited localized impact on the Property and such removal is not irremediably destructive of significant Conservation Values. In addition, exploring for, developing, or extracting oil, gas, hydrocarbons, or petroleum products are all prohibited. Sod farming is prohibited.

I.  *Dumping and Hazardous Materials.* Storage, dumping or other disposal of wastes, refuse and debris on the Property is prohibited. The storage of any hazardous or toxic substance or material which is regulated under any federal, state, or local law is prohibited, except for the above ground storage and use of fuels, fertilizers, treated lumber and legal chemicals as necessary for the agricultural operation. All such agricultural materials shall be stored in accordance with all applicable laws and regulations, and in a manner which prevents spillage, leakage, and dumping, and which prevents soil, and surface water or groundwater contamination, and in a manner which is consistent with the preservation of the Conservation Values of the Property. Notwithstanding anything in this Easement to the contrary, this prohibition does not make Land Trust an owner of the Property, nor does it permit Land Trust to control any use of the Property by Landowner which may result in the storage, dumping, or disposal of hazardous or toxic materials; provided, however, that Land Trust may bring action to protect the Conservation Values of the Property, as described in this Easement. (This prohibition does not impose liability on Land Trust nor shall Land Trust be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or similar federal or state statutes.)

J.  *Changes to Water Courses.* Landowner shall not alter or degrade natural water courses, lakeshores, wetlands, or other water bodies on the Property other than to repair the same after destruction or degradation to the water course, lakeshore, wetland, or water body resulting from a natural casualty or an Act of God and after obtaining Land Trust's approval pursuant to paragraph VIII.

K.  *Motorized Vehicles.* The use of motorized vehicles in a manner that substantially diminishes or impairs the Conservation Values of the Property, the wildlife habitat thereon, causes soil erosion or disturbs wildlife wintering areas during winter months is prohibited. There shall be no off road vehicle courses for snowmobiles, all-terrain vehicles, four wheelers, motorcycles or other motorized vehicles. Motorized vehicles generally shall be confined to established roads on the Property, unless specifically used in hay production or ranch management and which do not diminish or impair the Conservation Values of the Property, the wildlife
habitat thereon, cause soil erosion or disturbs wildlife wintering areas during winter months.

L. **Construction.** The placement or construction of any man-made modification such as buildings, structures, fences, and roads is prohibited, except as expressly permitted by this Easement, and excluding modification, replacement, or repair to irrigation ditches in the pursuit of efficiency, improvement, or mending damage to the ditches.

M. **Signs and Billboards.** The construction, placing or erection of any commercial signs or billboards on the Property is prohibited, except that signs advertising that the Property is for sale or for rent, stating the name and address of the Property, identifying that the Property is subject to a conservation easement, and prohibiting unauthorized entry or uses, such as hunting or fishing, are permitted. No signs shall impair significant Conservation Values of the Property.

N. **Lighting.** The installation of permanent outdoor lighting is prohibited on the Property, unless such lighting is within the Building Envelope and is fully shielded so that light rays emitted are projected below, and not above, the horizontal plane of the fixture.

O. **Recreational Uses.** All public or commercial recreational uses of the Property, such as use for a golf course, are prohibited. Non-commercial, low-impact recreational uses such as bird watching, hiking, or cross country skiing that are not inconsistent with the preservation and protection of the Conservation Values, which uses are permitted exclusively for Landowner and its family.

P. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible and consistent with all applicable laws.

Q. **Other Restricted Uses.** Helicopter pads and airstrips on the Property are prohibited.

**IV. Permitted Uses.** Landowner reserves all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited and are not inconsistent with the Conservation Values. Landowner and Land Trust acknowledge that the present uses of the Property are permitted uses. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are permitted under this Easement, and these uses and practices are not to be precluded, prevented, or limited by this Easement. Landowner retains the following rights:
A. **Conveyances.** The right to sell, mortgage, bequeath or donate the Property. Any document of conveyance shall expressly refer to this Easement, and the transferee shall take subject to the terms of this Easement.

B. **Maintenance and Replacement of Existing Structures.** The right to maintain, renovate and replace the existing structures as noted in the Baseline Documentation in substantially the same location and footprint. Any expansion or replacement may not substantially alter the character or function of the structure. In addition, Landowner may maintain, remove or replace any structures which may hereafter be built on the Property, as permitted in this paragraph IV. Before expanding or replacing any existing structure, Landowner shall deliver written notice regarding the proposed construction to Land Trust for Land Trust’s approval pursuant to paragraph VIII.

C. **Adding Designated Agricultural Structures or Uses.** The right to continue using all existing agricultural buildings and agricultural structures for agricultural and wildlife rehabilitation purposes and to repair, reasonably enlarge, and replace at their current location without further approval of Land Trust. Major new buildings and improvements, such as barns, sheds, riding arenas and garages that are to be used solely for agricultural or wildlife rehabilitation purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be built within the building envelope, as shown on Exhibit C, attached to and made a part of this Easement, (“Building Envelope”) without further approval of Land Trust. Minor new structures and improvements, such as loafing sheds, corrals, water lines, water tanks and other minor agricultural structures and improvements may be constructed anywhere on the Property without further approval of Land Trust. No commercial or industrial buildings or improvements other than those covered by this subparagraph shall be constructed. Prior to the commencement of construction of any of the agricultural buildings or structures permitted herein, Landowner shall notify Land Trust pursuant to paragraph VIII, so that it can determine that the building or structure will be consistent with the terms of this paragraph.

D. **Single-Family Residential Dwellings.** The right to construct one single-family residential dwelling, not to exceed 5,000 square feet within the Building Envelope. No other residential dwelling shall be constructed on the Property. Prior to the commencement of construction of the proposed residential dwelling, Landowner shall notify Land Trust pursuant to paragraph VIII, so that it can determine in its sole discretion whether the dwelling will be consistent with the terms of this paragraph.

E. **Repairs, Replacement and New Fences.** The right to repair or replace
existing fences and to build new fences for purposes of reasonable management of livestock and wildlife and for separation of uses. New fences shall be wildlife-friendly pursuant to guidelines established by the Colorado Division of Wildlife.

F. **Agricultural and Wildlife Uses.** The right, but not the requirement or obligation, to conduct ranching operations on the Property, including pasturing, grazing, and care or rehabilitation of cattle, horses, burros, donkeys, sheep and goats, and the right to promote foraging by wild turkeys and birds indigenous to the area and rehabilitation of these and other wild and domestic birds and animals, such as jackrabbits. Any livestock, such as elk, bison, llamas or other exotics, may be grazed only after Land Trust’s approval in its sole discretion, pursuant to paragraph VIII. The Property shall not be overgrazed and shall be managed in accordance with good grazing and agricultural land conservation practices to prevent and control soil erosion and the degradation of the Property’s first priority purpose and Conservation Values. The Property’s agricultural and wildlife practices and uses shall be consistent with all applicable laws relating thereto and shall not interfere with any right of the government to act on behalf of the public interest in instances of protecting the public health.

G. **Water Course Improvement.** The right to improve, restore, or stabilize natural water courses, lakeshores, wetlands, or other water bodies and banks adjacent thereto on the Property for the purpose of improving wildlife habitat.

H. **Private Recreational Use.** The exclusive right of Landowner, its family, and invited guests to engage in non-commercial, low-impact recreational uses such as bird watching, hiking, or cross country skiing that are not inconsistent with the preservation and protection of the Conservation Values.

I. **Irrigation Ditches.** The right to modify, replace, or repair irrigation ditches in the pursuit of efficiency, improvement, or mending damage to the ditches.

J. **Outdoor Lighting.** The right to install new outdoor lighting within the building envelope, provided that any such new lighting and any outdoor lighting that is replaced shall be fully shielded so that light rays emitted are projected below, and not above, the horizontal plane of the fixture.

K. **Utilities.** The right to install utilities necessary to serve the Property, provided that all utilities shall be installed underground, and any disturbed soils shall be re-vegetated and repaired as soon as is practicable.
V. **Access.** No right of access to any portion of the Property by the general public other than visual is conveyed by this Easement or permitted on the Property.

VI. **Landowner’s Duties.**

A. **Costs and Liabilities.** Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, with the exception of any Land Trust signage as allowed under paragraph II.F, which, when such signage is placed on the Property, would be so accomplished by Land Trust within 120 days of the Easement’s recording as provided in paragraph II.F. Landowner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowner. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “Taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Land Trust with satisfactory evidence of payment upon request. Land Trust is authorized but in no event obligated to make or advance any payment of Taxes not paid by Landowner in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement, or estimate. Landowner shall reimburse Land Trust for any such payment made or advanced, and the obligation created by such payment shall bear interest at 2 points over the Colorado legal rate of interest until Landowner reimburses Land Trust.

B. **Insurance.** Landowner shall maintain adequate comprehensive general liability insurance for the Property and shall deliver evidence of such insurance upon request of Land Trust.

C. **Agricultural Value.** If Landowner and Land Trust believe that agriculture is no longer a viable, second priority Conservation Value for the Property, either party may request that Landowner and Land Trust mutually develop an acceptable plan to ensure appropriate land cover consistent with the preservation and protection of the first priority Conservation Values. The expense of developing and implementing said plan shall be paid for by Landowner.

VII. **Land Trust Remedies.**

A. **General Remedies.** If Land Trust finds what it believes is a violation of the terms of this Easement, it may at its discretion take appropriate legal
action, including seeking damages for the loss of scenic, aesthetic, or environmental values. Land Trust shall not, however, claim a violation of any term of this Easement, unless Land Trust makes such a claim within five years of the date of discovery of the claimed violation. Except when Land Trust determines in its sole discretion that an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, Land Trust shall give Landowner written notice of the violation and thirty days to correct it before filing any legal action. If Land Trust determines that a violation may exist or has occurred, Land Trust may seek an injunction to stop it, temporarily or permanently. Land Trust may also seek an injunction requiring Landowner to restore, or pay for the restoration of, the Property to its condition prior to the violation. Landowner agrees that Land Trust may pursue any equitable remedy without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Land Trust’s remedies described in this paragraph VII are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Except as otherwise set forth in this subparagraph, failure of Land Trust to discover a violation or to take immediate action shall not bar it from doing so at a later time, subject to the five-year limitation from the date of discovery described in this paragraph.

B. Informal Resolution of Differences. Upon Land Trust giving written notice of violation, the parties shall meet as soon as possible to resolve their differences. Landowner immediately shall discontinue any activity that could increase or expand the alleged violation after receipt of Land Trust’s written notice. If a resolution of this difference cannot be achieved at the meeting, both parties shall meet with a mutually acceptable mediator to attempt to resolve the dispute, but only if Land Trust in its sole discretion has determined that Landowner has ceased, and agrees to postpone during such mediation, any further activity that constitutes the alleged violation. The parties shall pursue the obligations of this subparagraph, even if litigation has commenced between them.

C. Waiver of Certain Defenses. Landowner hereby waives any defense of laches, waiver, estoppel or prescription or any defense available to Landowner pursuant to C.R.S. §38-41-119.

D. Acts Beyond Landowner’s Control. Land Trust may not bring an action against or seek any reparations or compensation from Landowner for modifications or damage to the Property or the Property’s Conservation Values resulting from causes or acts beyond Landowner’s control, including, without limitation, fire, flood, storm, and earth movement, acts by or of third parties over which Landowner has no control, acts of or by Land Trust, 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. However, Land Trust may bring an action for damages or injunctive relief against any other person or entity, excluding Landowner for modifications that impair or interfere with the Property's Conservation Values. In the event of an action against another person or entity, Landowner, at its sole discretion, may join in the action or shall assign its rights of action to Land Trust.

E. **Performance to Continue.** Each Party is required to continue to perform its obligations under this Easement pending final resolution of any dispute arising out of or relating to this Easement.

F. **Costs and Attorneys Fees.** Any costs incurred by Land Trust in enforcing the terms of this Easement against Landowner, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Landowner's violation of the terms of this Easement shall be borne by Landowner. If Landowner prevails in any action to enforce the terms of this Easement, Landowner's costs and fees, including, without limitation, costs and expenses of suit and attorneys' fees, shall be borne by Land Trust, but only if the court determines that the Land Trust's action was brought in bad faith or that its position was frivolous or groundless.

VIII. **Notice of Intention to Undertake Certain Permitted Actions and Land Trust's Approval.** If any proposed land use or activity by Landowner consistent with the terms of this Easement requires Land Trust's approval, Landowner shall provide written notice to Land Trust, specifying with particularity Landowner's proposed land use or activity. The notice shall describe the nature, scope, design, location, timetable and any other material aspects of the proposed land use or activity in sufficient detail to permit Land Trust to make an informed judgment as to its consistency with the protection of the Conservation Values of this Easement. Such written notice shall be provided to Land Trust no less than ninety (90) days prior to Landowner's effecting such proposed land use or activity. Upon receipt of such notice, if Land Trust determines in its sole discretion that Landowner's proposed land use or activity does or may substantially impair the Conservation Values, Land Trust shall have sixty (60) days thereafter within which to provide to Landowner a written objection and explanation of Land Trust's objection ("Written Objection"), unless the time is reasonably extended in Land Trust's discretion because of emergency, snow, or other weather condition. Land Trust's failure to provide a Written Objection to Landowner within such sixty (60) day period, or as may be extended by Land Trust, shall be deemed to be Land Trust's consent to Landowner's proposed land use or activity. Approval shall be withheld upon Land Trust's determination, in its sole discretion, that the action as proposed would be inconsistent with the original Landowner's intent and the purpose of this Easement as evidenced by paragraph I of this Easement and the Conservation Values protected hereby. Any proposed land use or activity proposed by Landowner or subsequent
landowners that is substantially different from the land uses and activities permitted by the Easement or existing on the date of the grant of this Easement shall be proposed to Land Trust for approval in its sole discretion and with careful consideration and weight given to the intent of the original Landowner and the prioritization of the purpose and protection of the Conservation Values described herein.

IX. Land Trust’s Costs, Legal Requirements, and Liabilities. Land Trust shall have no liability or other obligation for costs, liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, demands, orders, judgments, taxes or insurance of any kind related to the ownership, operation, upkeep and maintenance of the Property. Land Trust and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any property on the Property or otherwise unless caused by the negligence or willful misconduct (as defined by C.R.S. § 13-21-102(1)(b)) or omission of Land Trust, its trustees, officers, employees, agents, and members. Land Trust shall indemnify, defend against, and hold Landowner and its assigns, successors, and heirs harmless from any and all loss, cost, or expense, including reasonable attorney’s fees, arising from or in any way related to injury or death of any person, including Land Trust, its trustees, officers, employees, agents, and members, occurring on or about or related to the Property arising out of Land Trust’s actions on Property.

X. Good Faith. Land Trust shall at all times subsequent to the granting of this Easement act in good faith in its dealings with Landowner and others to uphold and enforce the terms of this Easement, protect the Property’s Conservation Values as defined by this Easement, and protect the intent and purpose of Landowner in making this grant.

XI. Extinguishment. If future circumstances make all purposes of this Easement impossible to accomplish, a court with jurisdiction may utilize the doctrine of *cy pres* to substitute another applicable conservation purpose for this Easement, excluding public recreation or commercial recreational uses. If no conservation purpose can be substituted for the original purposes of this Easement, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings by a local court of competent jurisdiction. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted hereunder, has been considered by Landowner in granting this Easement. It is the intent of both Landowner and Land Trust that any such changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be
considered grounds for its termination or extinguishment pursuant to this Section. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and net of any costs or expenses associated with the sale, Landowner and Land Trust shall divide the proceeds from the sale in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of paragraph XIA, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Land Trust shall be used by Land Trust in a manner consistent with Land Trust’s conservation purposes.

A. **Percentage Interests.** For purposes of this paragraph, the parties stipulate that as of the effective date of this Easement, this Easement and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property which percentage of the Easement is equal to 58.94% and which percentage of the restricted fee interest in the Property is equal to 41.06%. The percentage interests are determined by the ratio of the value of this Easement on the effective date of this Easement to the value of the Property, without deduction for the value of this Easement, on the effective date of this Easement. The values on the effective date of this Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Easement, pursuant to the Code. Landowner shall provide Land Trust with the ratio of those values upon the effective date of this Easement and shall amend such values and this Easement, if necessary, to reflect any final determination of the ratio by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of this Easement to the value of the Property unencumbered by this Easement shall remain constant, and the percentage interests of Landowner and Land Trust in the fair market value of the Property thereby determinable shall remain constant.

B. **Condemnation.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or is otherwise acquired by such authority through a purchase in lieu of a taking, Landowner and Land Trust shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Landowner and Land Trust shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provision of paragraphs XI and XIA (with respect to the allocation of proceeds.) unless state law provides that landowner is entitled to the full
proceeds from the conversion without regard to the terms of the easement. Land Trust shall invest any compensation from the balance of the recovered proceeds from the conversion of any part of this easement in the first priority Conservation Values of this Easement by purchase of conservation easements, fee purchase of property, or other forms of protection of property possessing the first priority Conservation Values protected by this Easement. The respective rights of Landowner and Land Trust set forth in this paragraph shall be in addition to, and not in limitation of, any rights they may have at common law.

XII. Transfer of Easement or the Property.

A. Transfer by Land Trust. With prior notice to Landowner, this Easement is transferable by Land Trust to COL at any time with COL’s consent and provided that COL is a Qualified Conservation Organization at the time of transfer and authorized to acquire hold conservation easements under Colorado law. This Easement is transferable by COL or, if COL is unavailable or unwilling to take this Easement, by Land Trust after first attempting to transfer the same to COL and with prior notice to Landowner, to an organization that (a) is a Qualified Conservation Organization at the time of transfer; (b) is authorized to acquire and hold conservation easements under Colorado law; (c) agrees to continue to carry out the Conservation Values that this Easement is intended to advance and (d) has a mission similar to Land Trust’s mission at the time of the grant of this Easement.

B. Transfer by Judicial Process. If (a) Land Trust ever ceases to exist, (b) Land Trust is no longer a Qualified Conservation Organization, or (c) Land Trust is no longer monitoring and enforcing the terms of this Easement to preserve and protect the Conservation Values of the Property, this Easement shall automatically transfer to COL. Should there be a question about the possibility of this automatic transfer, then Landowner may apply to a court with jurisdiction for such court to transfer this Easement, on the grounds that one or more of (a) through (c) has occurred, and such transfer shall in the first place be to COL, or in the second place be to another Qualified Conservation Organization having similar purposes that is qualified and agrees to assume the responsibility imposed on Land Trust by this Easement.

C. Transfer by Landowner. Landowner shall give written notice to Land Trust of any conveyance of any interest in the Property at least thirty (30) days prior to the date of such transfer. The failure of Landowner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Any conveyance of the Property shall be subject to the terms of this Easement and shall specifically refer to this Easement in the document of conveyance.
XIII. Landowner's Environmental Warranty and Indemnity. Landowner warrants that Landowner has no actual knowledge of the existence of any Hazardous Substances on the Property or of a release or threatened release of Hazardous Substances on the Property. "Hazardous Substances" means any hazardous or toxic substance that is regulated under any federal, state or local law. For the purpose of this paragraph and without limiting the foregoing, nothing in this Easement 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; to investigate or remediate any Hazardous Substances associated with the Property; to investigate, remove, remediate, or otherwise clean up any Hazardous Substance associated with the Property or otherwise to become an operator or owner with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. In view of Land Trust's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, Landowner hereby promises to hold harmless, defend and indemnify Land Trust against all liabilities, penalties, costs, losses, damages, expenses, causes of action, litigation, claims, demands, judgments, penalties, and damages, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (b) the obligations specified in Paragraph II; (c) the presence or any release of Hazardous Substances on, under or about the Property and (d) any claim against Landowner's title or any defect in Landowner's title that threatens Land Trust's interest in the Property.

XIV. Notices. Except as otherwise provided herein, all notices or demands under this Easement shall be in writing and shall be deemed given and received when delivered personally, or

A. In the case of nationally recognized overnight courier service, notice shall be deemed to have been given and received on the next business day following its deposit with such courier service. No signature affirming receipt by the receiving party is required, the internal records of the courier service are to be accepted as sufficient evidence of receipt.

B. In the case of the U.S. Postal Service, notice shall be deemed to have been given and received on the third business day after the deposit of a postage prepaid, certified return receipt requested, envelope, containing the notice, addressed to the receiving party, with the U.S. Postal Service.
C. In the case of facsimile transmission, notice shall be deemed to have been given and received on the day of such transmission. Such facsimile transmission, to be considered effective, shall be corroborated by a copy of the facsimile printout showing the telephone number from which transmitted, the telephone number to which transmitted, the date and the time of such transmission. The copy of such printout and the notice shall be mailed the day of transmission by regular U.S. Postal Service, to the receiving party.

All notices shall be given to the respective parties at the following addresses, until further written notice:

To Landowner:

Ronald H. and Rebecca J. Bredehoft
Bredehoft Ranch, LLC
P.O. Box 06592
Westcliffe, CO 81252

To Land Trust:

San Isabel Land Protection Trust
P.O. Box 124
Westcliffe, CO 81252

XV. General Provisions.

A. Reasonable Standard. The parties shall follow no less than a reasonableness standard in implementing the terms of this Easement and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other actions suitable to that end. The parties shall make their judgments in a manner that is consistent with the intent of Landowner as evidenced by the grant of this Easement and the priority of purpose as set forth in this Easement.

B. No Third Party Beneficiaries. This Easement is entered into by and between Landowner and Land Trust, and is solely for the benefit of Landowner and Land Trust and their respective successors and assigns, and it is not intended to, nor does it, create rights or responsibilities in any third parties as beneficiaries or otherwise for the purpose of enforcement of this Easement. The foregoing notwithstanding and without assigning, designating, or creating rights or responsibilities to the public hereto, this paragraph is not intended to imply that the public is not benefited by this
grant of Easement, the intent of Landowner, and the protection of the Conservation Values articulated herein and evidenced by this Easement.

C. **Subsequent Liens on the Property.** No provisions of this Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing will be subordinated to this Easement.

D. **No Merger.** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement.

E. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

F. **Successors.** This Easement is binding upon, and inures to the benefit of the parties, their successors, agents and assigns and shall continue as a servitude running in perpetuity with the Property. All subsequent owners of the property are bound to all provisions of this Easement to the same extent as Landowner.

G. **Termination of Rights and Obligations.** A party's future rights and obligations under this Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer shall survive the transfer.

H. **Amendment of Easement.** This Easement may be amended only with the joint written consent of Landowner and Land Trust, provided that no amendment to this Easement shall be allowed that affects the perpetual duration of this Easement or will affect the qualification of this Easement or the status of the Land Trust under any applicable law, including C.R.S. § 38-30.5-101 et seq., or the Code or any regulations promulgated pursuant to those laws. Any such amendment shall be consistent with protection of the Conservation Values, must be in writing and signed by Landowner and Land Trust, and shall be recorded as set forth in paragraph XV.J.

I. **Jurisdiction.** Venue for any court action concerning the terms of this Easement will be in Custer County, Colorado. Landowner and Land Trust consent to personal jurisdiction in the state courts in Custer County for any such proceeding in law or equity.
J. **Recording.** Land Trust shall record this Easement promptly after its execution in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

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

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

M. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to protect the Conservation Values set forth in this Easement and to promote the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The Recitals at the beginning of this Easement are not mere surplusage but are an integral part of this Easement and are incorporated into the body of this Easement.

N. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Landowner's title in any respect.

O. **Captions.** The captions in this Easement have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

P. **Counterparts.** This Easement may be signed in counterparts which when combined shall constitute but a single document.

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

**BREDEHOFT RANCH, LLC**

by **Ronald H. Bredehoft**, member
by Rebecca J. Bredehoft, member

STATE OF Illinois )

) ss.

COUNTY OF Lake )

The foregoing instrument was acknowledged before me this 19 day of October, 2004, by Ronald H. Bredehoft, as member of Bredehoft Ranch, LLC.

Witness my hand and official seal.

My commission expires: 11-21-2005

Karen A. Abbott
Notary Public

OFFICIAL SEAL
KAREN A. ABBOTT
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Nov. 21, 2005

STATE OF Illinois )

) ss.

COUNTY OF Lake )

The foregoing instrument was acknowledged before me this 19 day of October, 2004, by Rebecca J. Bredehoft, as member of Bredehoft Ranch, LLC.

Witness my hand and official seal.

My commission expires: 11-21-2005

Karen A. Abbott
Notary Public

OFFICIAL SEAL
KAREN A. ABBOTT
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Nov. 21, 2005
SAN ISABEL LAND PROTECTION TRUST

by

STATE OF COLORADO )

) ss.

COUNTY OF CUSTER )

The foregoing instrument was acknowledged before me this 21 day of
October, 2004, by Victor E. Barnes, Jr., as
Vice President of San Isabel Land Protection Trust

Witness my hand and official seal.

My commission expires: August 24, 2007

Notary Public

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement

B. Water Rights

C. Building Envelope and Map of Property
EXHIBIT A
Legal Description

THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 23 SOUTH,
RANGE 72 WEST OF THE 6TH P.M., CUSTER COUNTY, COLORADO. Except
that parcel conveyed to Leonard R. Reis and Jean Reis Revocable Intervivos
Living Trust by Deed recorded July 30, 2002 in Book 435 at Page 21 more
further described as follows:

A parcel of land lying in portion of the SE 1/4 Section 9, Township 23 South,
Range 72 West of the 6th P.M., Custer County, Colorado described as follows:

Beginning at the East 1/4 corner of said Section 9; Thence S 89 degrees 50
minutes 28 seconds W a distance of 2682.76 feet to intersect the East right of
way fence of Custer County Road No. 119 (AKA Colfax Lane); Thence N 00
degrees 04 minutes 43 seconds W distance of 76.65 feet along said right of way
fence to intersect the north line of said SE 1/4 Section 9; Thence S 88 degrees
31 minutes 20 seconds E a distance of 2683.75 feet along said north line to the
Point of Beginning.
EXHIBIT B
Water Rights

The following real property situate in Custer County, Colorado:

The Pinto Ditch No. 32B and the 1.77 cubic feet of the 2.51 cubic feet decreed to said ditch by virtue of Priority No. 112 and the same proportionate amount of water from Priority No. 206; an undivided 1/3 of the 2.5 cu. ft. of water in the Helmuth Ditch Priority No. 150, together with 1/3 interest in said ditch.

Together with all water and water rights apportioned to, appurtenant to and used on the Southeast Quarter of Section 9, Township 23 South, Range 72 \(^{th}\) West of the 6\(^{th}\) P.M. in Custer County, Colorado, to include water well permit number 143720 apportioned to the subject property as issued by the Colorado Division of Water Resources of the Colorado State Engineers office.
EXHIBIT C

Exhibit C: Bredehoft Property Building Envelope, Structures and Roads/Lanes

Map by: San Isabel Land Protection Trust