

December 6, 2006

Legal & Finance Committee
300 6th Street
Rapid City, SD 57701

Dear Members of the Legal & Finance Committee:

After many years of fundraising and struggling to preserve the Skyline Wilderness Area, the Board of Directors of Skyline Drive Preservation, Inc. is pleased to be in a position to transfer this beautiful wilderness area to the City of Rapid City. By entrusting this unique "park" to the City, we are ensuring that a sampling of the beautiful Black Hills will remain easily accessible and available for our citizens and visitors to enjoy.

While we are excited to give this land to the City as an urban wilderness area within the City park system, we are equally pleased to have helped focus community support for preservation of unique areas within our City boundaries. The "Save Skyline Wilderness Area" became an effort that drew the diverse interests of many individuals and numerous organizations. We received letters thanking us for preserving Rapid City's special skyline, and for protecting this scenic open space within our growing City. The letters often included donations and helped supplement the contributions we received from major donors. Our community contributed nearly \$1.9 million dollars to preserve the Skyline Wilderness Area and early in 2006, we received 2012 funds of \$737,144 which allowed us to retire our remaining mortgage.

Our commitment to our donors, supporters, and to the City of Rapid City has always been to preserve the 150 acres known as the Skyline Wilderness Area as a unique wilderness area, with natural terrain and minimal or no improvements. In keeping with our promise, we have researched land preservation trusts, deed restrictions, and conservation easements to preserve the land into perpetuity. We have also spent much of 2006 working diligently on assessing the native vegetation, monitoring trails, placing boundary markers, determining areas for potential "building/improvement envelopes," and fundraising for our ongoing tax and insurance liabilities.

After careful deliberation, we have chosen to partner with Northern Prairies Land Trust, a South Dakota nonprofit corporation authorized to provide land preservation and protection in both South Dakota and Nebraska. The Northern Prairies organization has a broad knowledge of natural habitats and the track record necessary to ensure that the Skyline Wilderness Area will continue to fulfill our expectations and those of our generous supporters.

On the following pages, you will find the Conservation Easement between Skyline Drive Preservation Inc. and Northern Prairies Land Trust. This Conservation Easement guides and protects the future of the Skyline Wilderness Area and ensures that the Rapid City Common Council will not be besieged by future requests for development or expanded use of the wilderness area. It provides continuity, protection, and clear direction for this valuable Rapid City resource. We welcome any questions you may have and we would be happy to provide clarification on any point within this communication.

We have worked closely with Mayor Shaw, Jason Green, and Jerry Cole in drafting this document. While much of it is standard Conservation Easement language, care has been taken to specifically meet the goals and purposes of the Skyline Wilderness Area and to ensure a mutually satisfactory working arrangement between the City of Rapid City and Northern Prairies Land Trust.

We are seeking your acceptance of the transfer of the Skyline Wilderness Area with the Conservation Easement attached from Skyline Drive Preservation, Inc. Our goal is to deed the Skyline Wilderness Area to the City by year-end 2006.

We appreciate the continued support of the Rapid City Common Council and look forward to placing the Skyline Wilderness Area under the protection of the Rapid City Park System.

Sincerely,

**SKYLINE DRIVE PRESERVATION INC.
BOARD OF DIRECTORS**



Charles V. Tinant, President – 348-1930
cvtinant@rushmore.com

Erika Campbell, Vice President – 722-2273
erika_kroetch@yahoo.com

Bill Kessloff, Secretary/Treasurer – 341-5398
jkbmk@enetis.net

Carol Brown, Member – 718-6154
carolbrown@rushmore.com

Robb Campbell, Member – 722-2273
robb@robbscampbell.com

Roger Heacock, Member – 718-6110
crrun@rushmore.com

cc: The Honorable Mayor Shaw
Jason Green, City Attorney
Jerry Cole, Director of Parks and Recreation

This Instrument Prepared By:
Northern Prairies Land Trust
401 E. 8th St., #200B
Sioux Falls, SD 57103
(605) 339-3184

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this "Easement") is granted this ____ day of _____, 2006 by **Skyline Drive Preservation Inc.**, (the Grantor) to **Northern Prairies Land Trust**, a South Dakota nonprofit corporation (Grantee):

WHEREAS:

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately 150 acres, located in Pennington County, South Dakota and described in "Exhibit A" attached hereto, (the "Property").

B. Grantee is an authorized "holder" of conservation easements under SDCL 1-19B-56(2) and a "qualified conservation organization" as defined by the Internal Revenue Code ("IRC").

C. The Property is preserved in a substantially undisturbed natural state, and has a substantial diversity of ecosystems, trees and plants, wildlife, and soils and rocks and contains a habitat consistent with the transitional zone between the Black Hills and the mixed-grass prairie of the Great Plains. The area is located in Rapid City, South Dakota, and is known as "Skyline Wilderness Area." It is open to the public for activities such as hiking, running, biking, meetings, field studies, scientific research, and related activities. The Property has substantial economic value if developed for private recreational use, residential home sites, and commercial development, but only by jeopardizing certain "Conservation Values" of the Property as described below. The Property was obtained by the Grantor through the generous support of numerous individuals, organizations, and other entities including the City of Rapid City, based on the premise that Skyline Wilderness Area would remain in its natural state. The Wilderness Area is intended therefore not to provide full amenities and conveniences, but rather a primitive natural experience.

D. The Property contains excellent examples of ecologically significant flora and fauna, provides an important corridor for wildlife, provides significant habitat for native plants and wildlife, provides protection from habitat fragmentation and habitat loss, and is of great importance in the preservation of significant natural attributes such as a petrified forest, a mixed-grass prairie – Ponderosa pine forest ecotone and open-space values.

E. The conservation purposes of this Easement are to protect, preserve and enhance the following conservation values of the Property (“Conservation Values”):

(1) The Property represents "open space" for the scenic enjoyment of the general public which is also pursuant to clearly delineated federal, state and local governmental and conservation policies yielding a significant public benefit as identified in Exhibit B.

(2) The Property contains an ecologically diverse assemblage of wildlife and plant communities within a mixed-grass prairie – Ponderosa pine ecotone with: short and tall grasses, and herbaceous plants from both Black Hills and northern Great Plains ecotypes, sagebrush steppe; deciduous woodlands; and Ponderosa pine forest.

(3) The Property contains areas of historical importance including an amphitheater and a sandstone bridge constructed by the Civilian Conservation Corps in the 1930’s, and areas of petrified forest.

(4) The Property provides substantial outdoor recreational and educational opportunities for the general public, in that it is available for use by the general public for a variety of activities as outlined in Paragraph C. above.

F. The natural elements, ecological and open space values of Grantor's property are of great importance to the people of the City of Rapid City, the Black Hills area and the State of South Dakota and are worthy of preservation.

G. It is Grantor’s intent and purpose to restrict the uses of the Property in order to preserve, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, and, consequently, the Grantor desires to preserve **in perpetuity** the Conservation Values of the Property by granting this Easement and by surrendering the opportunity to engage in economic development of the Property that is inconsistent with such Conservation Values.

NOW, THEREFORE, intending to be legally bound, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement.**

1.1 *Scope and General Purpose.* Upon and subject to the terms and conditions described herein below, Grantor hereby grants, warrants and conveys to Grantee an Easement to preserve and protect the Conservation Values of the Property.

1.2 *Term.* This Easement shall be **perpetual**.

1.3 *Authority Generally.* Grantee shall have the right and power:

(a) To enter upon the Property at reasonable times to monitor compliance with and otherwise to enforce the terms of this Easement as more particularly set forth herein; and

(b) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in § 10; and

(c) To retain as its exclusive right, power and domain, except as expressly reserved to Grantor, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, it being the intent hereby that such development rights shall, except as expressly reserved, be terminated and extinguished and may not be used on or transferred to any portion of the Property.

1.4 *Access.* For all the purposes described in this Easement, Grantee shall have the right to access the Property from, and to travel by vehicle or foot upon and across, any public or private road or unimproved road or path, public or private, on, to or adjoining the Property. In the event the Property is landlocked, Grantee may have access to the Property on and across any adjoining land of Grantor by the route most convenient to Grantee.

1.5 *Transfer of Property, and Rights and Responsibilities.* Grantor and Grantee understand that the Grantor may transfer ownership of this Property to another entity after the granting of this Easement, and such transfer will be subject to the terms and conditions contained herein.

2. **Grants by Grantee.** This Easement shall not be interpreted to prohibit or restrict Grantor from participating in any state, federal or local government entity or agency programs designed to promote, preserve or enhance the natural characteristics and potential of the Property and to make any grant of any covenant, restriction, easement or title to the Property for that purpose (a “Public Entity Grant”), provided all of the following conditions are met: (i) any such grant is subject to this Easement; (ii) the grant does not impair, harm or otherwise jeopardize the Conservation Values; and (iii) Grantor shall provide prior notice to Grantee complying with § 9.

3. **Grantee’s Acceptance.** In reliance upon Grantor’s warranties and representations as described below, Grantee hereby accepts grant of this Easement and the responsibility of monitoring and enforcing its terms and upholding its Conservation Values forever.

4. **Present Conditions Report.** Exhibit C constitutes a summary of a present conditions report (the “PCR”) prepared by Grantee with the cooperation of Grantor, consisting of maps, photographs and other documents and acknowledged by both parties to be complete and accurate as of the date of this Easement. The PCR will be used by Grantee to assure that any future changes in use of the Property will be consistent with the terms of this Easement; but the PCR is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use. A full copy of the PCR is available at Grantee’s office.

5. **Grantor’s Warranties and Representations.**

5.1 *Statement of Intentions for Future Use and Maintenance.* The Grantor and Grantee understand that the primary goal of this Easement is to preserve the area in its natural state. The area covered by this Easement also provides public access and public use, and, as such, offers

recreational and educational opportunities to the public. The Grantor shall assume responsibility for maintenance of any facilities supporting public access and public use, and it is agreed that the Grantee does not assume any obligation to maintain the property for public access and public use.

The Grantor and Grantee acknowledge that portions of Skyline Wilderness Area have been purchased utilizing funds from a number of sources, including federal funds allocated under the TEA-21 Highway Bill. A condition of the conveyance of legal title for the Skyline Wilderness Area to Skyline Drive Preservation Inc. includes ownership, operation, maintenance, and preservation of the property for "public use." "Public use" has been defined to include, among other things, the following: "nature and environmental interpretive facilities for public education and information, public recreational uses, and other public use that is not inconsistent with the preservation purposes for which the property was acquired by the City of Rapid City." (See Amendment No. 2 to Agreement 612350 for Project P 8052(07) PCEMS 634R, Skyline Drive Property Acquisition.)

The Grantor and Grantee understand and interpret this provision as follows: 1. The specific areas within Skyline Wilderness Area in which any "facilities for public education and information" will be built shall be within building envelopes, which boundaries are set forth in Exhibit D, Permitted Encumbrances; 2. The Grantor shall have responsibility for any "facilities"; 3. The Grantor shall have responsibility for maintenance or development of any other public recreational areas, including but not limited to, hiking, running, and biking trails, public gathering areas, the natural amphitheater, and petrified forest. Further, the Grantor and Grantee adopt the following definition of "recreational uses": "traditional, nonintensive outdoor recreation that does not generally rely on buildings or spectator facilities and has minimal impacts on renewable natural resources, such as hiking, running, biking, nature conservation, cross-country skiing, snowshoeing, outdoor education and nature study, scientific research and observation, and enjoyment of open space." The term "recreational uses" will also include occasional public events which are authorized by the Grantor, such as "volksmarches," running and foot races, mountain bike races, and tours by educational and social organizations. The Grantor shall accept all responsibility for these activities and release the Grantee from any liability and agrees to indemnify the Grantee as stated in ¶ 8.6.

Grantor and Grantee also acknowledge that there may be applicable laws or regulations, such as the Americans with Disabilities Act ("ADA"), which impact how the Property is managed and maintained. The provisions of this Conservation Easement may need to make allowances for such laws and regulations. Any such allowances or modifications will be planned and agreed to by Grantor and Grantee so that appropriate amendments can be made to the Present Conditions Report.

5.2 *Purpose.* Grantor acknowledges that despite the Conservation Values of the Property, certain factors, if they were present, would preclude Grantee from accepting this Easement; and Grantee cannot accept this Easement without affirmative assurances that these factors are not present with respect to the Property. Since Grantor is the party most familiar with the Property, Grantor acknowledges the right of Grantee to rely without inquiry on these assurances in the form of Grantor's warranties and representations as described below.

5.3 *Enumeration.* To induce Grantee to accept this Easement, Grantor warrants and represents as follows:

(a) Grantor is the sole owner of the Property, free of all liens, claims, interests and encumbrances, except those permitted in attached Exhibit D. Grantor understands that the Exhibit D parties must consent and subordinate to this Easement. No person has any homestead interest in the Property other than Grantor.

(b) To the best of Grantor's knowledge:

(i) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements and has no current adverse effect on any of the Conservation Values.

(ii) No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.

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

(iv) Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.

(v) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.

(c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

(d) In determining to grant this Easement, Grantor has relied solely on the advice of their own legal, tax and valuation advisors and not on any representations of Grantee.

6. **Retained Rights.** Except as otherwise expressly provided in this Easement, Grantor shall retain all incidents, rights, powers and discretion inherent in ownership and possession of the Property including without limitation to the following:

6.1 *Transfers.* Grantor may transfer the Property, subject and subordinate to this Easement.

6.2 *Compliance with Public Entity Grants.* Grantor may execute all instruments and documents, provide all assurances and take all actions necessary to comply with all public entity grants, to the extent required thereby and not impairing, harming or otherwise jeopardizing the Conservation Values.

6.3 *Public Use and Access.* Grantor reserves the right to allow public access and use of the property for the purpose of passive recreational activities, including, without limitation, conducting educational tours, scientific study, plant/animal observation, hiking, biking, and other uses in a manner consistent with maintaining the Conservation Values of the Property. Grantor also recognizes that Skyline Wilderness Area is actively used by members of the Native American community for religious ceremonies, evidenced by prayer bundles and tobacco ties, and this practice will be allowed to continue.

6.4 *Trails.* Grantor reserves the right to construct, relocate, close, and maintain walking, hiking, and biking trails on the property. These trails will be maintained to provide a primitive experience comparable to a federally designated wilderness, except that bicycles will be allowed. Only natural, on-site materials will be used, except where extraordinary circumstances require other materials to preserve the Conservation Values. Trail density will be limited to a level that does not compromise the Conservation Values. An inventory of existing, approved trails will be included in the Conservation Baseline to assist Grantor and Grantee in making decisions which are consistent with these requirements.

(a) Exception: the trail/roadway which enters Skyline Wilderness Area as an extension of St. Cloud Street has been developed with the consent of the Grantor. This project has utilized off-site materials and is not yet complete. This road will be allowed to be completed and maintained as planned by the Grantor utilizing off-site materials. Motorized vehicles are permitted on this St. Cloud St. extension for administrative purposes and special events as approved by the Grantor, and for Grantee's inspections, but such vehicles are not permitted beyond this road or the designated building envelopes. Vehicles and equipment shall not be left on the property beyond the duration of any single event. However, motorized vehicles are allowed as provided by ¶ 7.3 (o).

(b) Grantor shall provide Grantee a map and an explanation of the nature and design of any proposed changes to the trails at least 30 days prior to initiating any work so that Grantee can confirm the proposed changes are consistent with this Easement. However, if the proposed changes are of an emergency nature necessary to protect the public or the Conservation Values from immediate or on-going harm, Grantor may take appropriate preventative or corrective actions, and provide Grantee notice of such action within 10 days, including an explanation of the actions taken, the reasons for the actions, and a map of the areas affected by the actions. Grantee shall provide any comments or concerns regarding the actions taken within 20 days of notice by Grantor. Changes to the trails will be noted in the Conservation Baseline to assist in future monitoring by Grantee.

(c) Horses are not allowed on the trails except in conjunction with a special event as authorized by Grantor.

6.5 *Alterations from Present Condition.* Consistent with the aforementioned public access and use of the Property, Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Property. Any proposed alterations in uses or facilities shall pose no threat to the Conservation Values of the Property. Grantor shall provide Grantee a map and an explanation of the nature and design of any proposed alterations at least 30 days prior to initiating any work so that Grantee can confirm the proposed changes are consistent with this Easement, and make appropriate amendments to the Present Conditions Report. Alterations are allowed only within the designated "building envelopes" and are subject to the following conditions:

- (a) List of allowable uses, facilities, and conditions within the building envelopes:
 - (1) Unlighted signs to interpret and regulate the use of the property.
 - (2) Public restrooms;
 - (3) Shelters;
 - (4) Interpretive displays;
 - (5) Paved or natural surface parking areas. Gravel parking areas not allowed;
 - (6) Most types of building materials are allowed in the envelopes as long as the materials are consistent with the provisions of this Conservation Easement;
 - (7) Park benches;
 - (8) Garbage and recycling receptacles;
 - (9) The Steuerwald Memorial, as approved by Grantor;
- (b) The following signs are allowed outside the designated building envelopes:
 - (1) Signs at boundary lines;
 - (2) Small symbols on trees to identify trails designated by Grantor.

6.6 *Fire Management within Skyline Wilderness Area.* Grantor agrees to accept all responsibility for fire management within the Property, including any prescribed burn activities. It is anticipated that the Grantor and the Rapid City Fire Department will formalize an agreement and partnership for fire management. Grantee accepts no liability for these activities.

6.7 *Research and Educational Outreach Opportunities.* The Property provides for formal and informal education opportunities for members of the Rapid City community. Access to the Property and these resources will remain available to the diverse educational institutions in the region in a manner consistent with the terms of this Easement.

6.8 *Disturbance of Natural Features.* Trees may be cut or removed, and the natural features of the Property may be disturbed only as follows: (i) as may be incidental to boundary marking, fencing, and signage allowed or required hereunder; (ii) selective cutting and prescribed burning or clearing of vegetation and the application of pesticides in accordance with the label restrictions, and fire containment and protection, disease control, restoration of hydrology,

wetlands enhancement and/or control of non-native plants, all subject however, to prior notification to Grantee (iii) fishing pursuant to applicable federal, state and local rules and regulations; (iv) Animal control, to include hunting and trapping, to the extent necessary to keep the animal population within numbers consistent with federal, state and local best wildlife management practices.

6.9 *Vehicular Traffic.* Grantor may erect fencing, walls, or barriers as deemed necessary to limit unauthorized vehicular traffic.

6.10 *Preservation Actions.* Grantor may take appropriate and necessary protective measures to preserve the historic features including, but not limited to, the amphitheater and petrified forest.

7. **Prohibited and Restricted Uses.**

7.1 *Encouraged Practices.* Grantee acknowledges that the Conservation Values are available to be preserved, and Grantor and its successors and assigns are encouraged to conduct all permitted operations and practices in accordance with good management practices addressing soil and water conservation, erosion control, and habitat protection.

7.2 *Promise to Comply.* Grantor covenants and promises that Grantor will not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with this § 7.

7.3 *Specific Terms.* The Property is hereby made subject to the following prohibitions and restrictions:

(a) No billboards or commercial signs shall be erected on the Property.

(b) The Property shall not be subdivided by physical, legal or other process, for purposes of transferring ownership of less than the entirety of the Property.

(c) The Property shall not be subject to any mining, extraction or removal of soil, sand, gravel, oil, natural gas, fuel or other mineral substance or exploration for any such purpose, except for movement of material solely for use on the Property in conjunction with and in furtherance of activities permitted by this Easement.

(d) No commercial harvesting, cutting, burning, or removal of trees, plants, flora, or other vegetation is allowed except pursuant to ¶ 6.8. The term “commercial” is defined as any entity endeavoring to use the Property for the purpose of financial or monetary gain. However, if it is necessary for the Grantor to remove timber for pest control purposes, it is permissible to offer that timber for sale, provided that such harvest is conducted in a manner consistent with the preservation of the Conservation Values.

(e) No portion of the Property (outside of the building envelopes as allowed in ¶ 6.5), shall be paved, including, without limitation, covering the soil surface with concrete, asphalt, gravel, rock, or other material. However, if it is necessary for Grantor to take

appropriate preventative or corrective actions to protect the public or the Conservation Values from immediate on-going harm, Grantor has the right to address that affected area of the Property to stop the immediate on-going harm by using either on-site materials or other materials. Grantor shall provide notice to Grantee of any actions taken under this section as specified in ¶ 6.4(b).

(f) Grantor shall not transfer, encumber, lease, sell or otherwise separate any water rights from the Property.

(g) The dumping or accumulation of any kind of trash, garbage, debris, waste, refuse, junk, hazardous chemicals, other unsightly or foreign material, or derelict equipment on the Property is prohibited.

(h) The keeping of livestock is prohibited.

(i) Industrial, production agricultural and commercial activities on the Property are prohibited. The Property may not be used for or as a part of any ongoing commercial or other business venture to provide fishing, camping, hiking, hunting, boating, lodging, drinking or eating. It is recognized that some of the occasional public events, as allowed in ¶5.1 may charge participation fees, and such de minimus commercial activity is allowable provided that such activities do not materially and adversely impact the Conservation Values.

(j) Any use of or activity on the Property that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited.

(k) No Structures or other Improvements may be built on the Property except as provided in §6. For purposes of this Easement, "Structure" includes any building or object constructed, installed or placed upon the ground, whether temporarily or permanent, including without limitation public restroom facilities, residential units, garages, sheds, pool houses, greenhouses, barns, animal corrals, farm markets/stands, silos, grain drying facilities, equestrian facilities, docks, studios, ski cabins, hunting cabins, moveable buildings, decks, terraces, and garden features such as arbors and gazebos. For purposes of this Easement, "Improvements" shall mean anything that is constructed or installed upon the ground or a Structure that is not a Structure as defined above, and includes without limitation driveways, roads, parking areas, gardens, ponds, wells, septic tanks, drainageways, utility lines, fences, and walls.

(l) There shall be no: diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities; altering or tampering with water control structures or devices; disruption or alteration of the restored, enhanced, or created drainage patterns; drainage or removal of wetlands; or polluting or discharging into waters, springs, seeps, or wetlands. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement area by any means, is not allowed. However, appropriate measures or devices for erosion control, soil stabilization, and the slowing of water runoff are permitted as may be necessary to protect the Property or adjacent property. Surface drainage into the Property shall comply with all applicable ordinances, regulations and statutes, including those applicable to water quality.

(m) No new roads may be developed on the Property.

(n) No above ground installation of new utility systems or extensions of existing systems, including, without limitation, communications or cell towers, telephone relay towers and any other stand alone tower structures shall be permitted without prior approval of the Grantee. No water, sewer, power, fuel or communication lines nor related facilities, or any underground installation, will be permitted if the resulting effect would be to alter, drain, or disturb any natural habitat on the Property without prior approval of the Grantee. Grantor and Grantee acknowledge that there are certain permitted encumbrances which are listed in Exhibit D.

(o) Motorized vehicles are prohibited within Skyline Wilderness Area except for emergency vehicles, or those necessary for maintenance work to protect the Conservation Values. It is intended that maintenance vehicles are not to be used on a regular basis, but limited to special projects or occasional maintenance needs.

7.4 *Acts of God.* Nothing contained in this Easement shall be construed to impose upon Grantor any liability or obligation for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movement, or from any prudent action by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. However, Grantor accepts all responsibility associated with any prescribed burn activities on the Property.

8. **Retained and Assumed Responsibilities, Obligations and Liabilities.**

8.1 *Grantee's Status.* Grantor acknowledges that Grantee shall not be considered, and the parties do not intend this Easement to be construed to create or impose upon Grantee any responsibilities, obligations or liability as, an owner, operator, landlord, tenant or manager of the Property. Grantee's obligations for monitoring and inspection shall be solely for the purpose of preserving Conservation Values and not for the prevention or mitigation of any damage, injury or other harm to persons or property. This Easement shall not be deemed to create any right of action against Grantee in favor of any third party.

8.2 *Taxes.* Grantor shall pay before delinquency all taxes, assessment, fees and charges of whatever description levied on or assessed against the Property and/or this Easement; provided, however, that all assessed real estate taxes shall be paid on or before the due date set forth in the county tax statement.

8.3 *Management.* Grantor shall continue to be solely responsible for the upkeep, maintenance and management of the Property and preservation and protection of the Conservation Values.

8.4 *Insurance.* Grantor shall be solely responsible for maintaining all appropriate casualty, property, liability and workers compensation insurance appropriate for their use and occupation of the Property.

8.5 *Compliance with Laws.* Grantor shall remain solely responsible for obtaining all applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement and to conduct the foregoing in accordance with and in observation of all applicable federal, state and local laws, rules, regulations and requirements.

8.6 *Ownership Costs and Liabilities.* Grantor and Grantee recognize that Grantee is not involved in the daily management of the Property. As a result, the Grantor agrees to retain all responsibilities and bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the Property. The Grantor agrees to defend, indemnify, and hold the Grantee and its members, directors, officers, employees, agents, and contractors harmless from any and all costs or liability for any personal injury or property damage occurring on or related to that Property. This indemnity shall not apply if it shall be finally determined that any of the foregoing was caused primarily by the gross negligence or willful misconduct of Grantee.

8.7 *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9. **Notices and Approvals.**

9.1 *Methods.* Any notice or communication under this Easement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Easement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

9.2 *Timing and Substance.* Whenever notice to or approval of Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question, or as otherwise stated in any specific provision of this Easement. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

9.3 *Approval.* Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. If the approval is sought at the request of Grantor, and said approval will likely result in substantial time or cost by

Grantee, the Grantor and Grantee will negotiate reimbursement to Grantee for reasonable costs and fees.

10. **Grantee's Remedies.**

10.1 *Notice; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation. Corrective action sufficient to cure the violation shall be required of the Grantor, and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, the Property so injured shall be restored to its prior condition in accordance with a plan approved by Grantee. This provision shall not apply if, in the sole discretion of the Grantee, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if reasonable, good faith efforts to notify the Grantor are unsuccessful.

10.2 *Remedies.* Remedies available to the Grantee in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement. The Grantee and the Grantor also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement. The Grantee is entitled to seek expedited relief ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

10.3 *Costs of Enforcement.* The Grantor shall be responsible for all reasonable costs incurred by Grantee in enforcing the terms of this Easement including, without limitation, costs of suit, attorneys' fees, and expenses related to restoration of the Property. If, however, the Grantor ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorney's fees.

10.4 *Discretionary Enforcement.* Enforcement of the terms of this Easement is solely at the discretion of the Grantee. The Grantee does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Grantee in discovering a violation or initiating enforcement proceedings.

10.5 *Injury to Property by Third Parties; Emergency Response.* Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond the Grantor's control, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property. However, Grantor shall take necessary and reasonable measures to prevent or control ongoing injury to the Property caused by third parties, or resulting from Grantor's response to emergency conditions.

11. **Extinguishment and Condemnation.**

11.1 *Extinguishment.* If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with § 11.2.

11.2 *Valuation.* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of § 11.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

11.3 *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in § 11.2.

11.4 *Application of Proceeds.* Grantee shall use any proceeds received under the circumstances described in this § 11 in a manner consistent with its conservation purposes, which are exemplified by this grant of Conservation Easement.

12. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the IRC (or any successor provision then applicable), or any organization authorized to acquire and hold Easements under state statute as SDCL 1-19-56 or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee shall give written notice to Grantor of an assignment at least thirty (30) days prior to the effective date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. **General Provisions.**

13.1 *Benefit and Binding Effect.* The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor and Grantee shall also apply to, be binding upon and inure to the benefit of their respective agents, heirs, executors, administrators, other legal representatives, transferees, successors and assigns.

13.2 *No Third Party Beneficiaries.* This Easement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.

13.3 *Entire Agreement.*

(a) This Easement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. Subject to subparagraph (b), this Easement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Easement. The parties waive their rights to amend or modify this Easement in any other manner.

(b) This Easement may be amended only upon satisfaction of all of the following: (i) written consent of Grantee, which may be granted or withheld in its sole discretion and upon such additional conditions as Grantee may determine to impose in any specific instance; (ii) payment of Grantee's incurred costs and reasonable fees as negotiated by Grantor and Grantee, for the consideration of such amendment; (iii) protection of the Conservation Values are improved or not impaired; (iv) the amendment complies with SDCL 1-19B-56(2)(b) et seq.; and (v) the amendment complies with §170(h) of the Internal Revenue Code. Any such amendment that does not comply with all such requirements shall be void and of no force or effect.

13.4 *Severability.* If any one or more of the provisions of this Easement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Easement shall not be in any way impaired.

13.5 *Nonwaiver.* Failure of a party to insist upon adherence to any term of this Easement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Easement.

13.6 *Governing Law.* This Easement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. This Easement shall not be interpreted to negate, supersede or otherwise modify any law, statute, rule, regulation or ordinance (together a Law) imposing additional or more stringent restrictions, including those related to zoning or land use, unless such Law is permitted to be varied by private agreement and the express terms of this agreement have that effect. No approval of this Easement by any governmental authority shall have the effect of negating, superseding or otherwise modifying such Law, or waiving its enforcement, unless expressly so stated as a part of such approval.

13.7 *Headings.* The section headings to this Easement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Easement.

13.8 *Recordation; Publicity.* Grantee shall record this instrument in timely fashion in the official records of Pennington County, South Dakota and may re-record it at any time as may be required to preserve its rights in this Easement. Grantee may reasonably publicize the grant of this Easement and use photographs and descriptions of the Property on its web site and other informative materials.

13.9 *Liberal Interpretation.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant of the conservation easement to affect the purpose of this Easement and preservation of the Conservation Values. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13.10 *No Forfeiture.* Nothing contained herein will result in a forfeiture by Grantee or reversion of Grantor's title in any respect.

13.11 *Termination.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

13.12 *Exhibits.* The exhibits attached hereto are incorporated herein by this reference:

Exhibit A - Real Property Description
Exhibit B – Federal, State and Local Governmental and Conservation Policies
Exhibit C - Present Condition Report
Exhibit D - Permitted Encumbrances

EXHIBIT A
Real Property Description

LEGAL DESCRIPTION 1: LOTS ONE (1), TWO (2), THREE (3) AND FOUR (4) IN BLOCK EIGHT (8) OF LAMPERT'S ADDITION TO THE CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 2: LOT SEVEN (7) OF OVERLOOK SUBDIVISION, CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 33 OF PLATS ON PAGE 126 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 3: LOT CR OF FOREST HILLS IN THE CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 17 OF PLATS ON PAGE 175 EXCEPTING THEREFROM UTILITY LOT A OF LOT CR OF THE FOREST HILLS SUBDIVISION, AS SHOWN BY THE PLAT RECORDED IN BOOK 22 OF PLATS ON PAGE 54, AND EXCEPTING THEREFROM UTILITY LOT B OF LOT CR OF FOREST HILLS SUBDIVISION, AS SHOWN BY THE PLAT RECORDED IN BOOK 27 OF PLATS ON PAGE 144 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 4: TRACT A OF TRACT S IN FOREST HILLS SUBDIVISION, AS SHOWN BY THE PLAT RECORDED IN BOOK 30 OF PLATS ON PAGE 10 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 5: TRACT B OF TRACT S IN FOREST HILLS SUBDIVISION, AS SHOWN BY THE PLAT RECORDED IN BOOK 30 OF PLATS ON PAGE 10 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 6: TRACT C OF TRACT S IN FOREST HILLS SUBDIVISION, AS SHOWN BY THE PLAT RECORDED IN BOOK 30 OF PLATS ON PAGE 10 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 7: LOT 14R IN KEPP HEIGHTS SUBDIVISION NO. 3, CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 25 OF PLATS ON PAGE 74 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 8: LOT 16R IN KEPP HEIGHTS SUBDIVISION NO. 3, CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 25 OF PLATS ON PAGE 86 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 9: LOT SEVENTEEN (17) IN KEPP HEIGHTS SUBDIVISION NO. 3, CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 25 OF PLATS ON PAGE 86 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 10: LOT B OF DERBY SUBDIVISION IN THE CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 27 OF PLATS ON PAGE 138 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

LEGAL DESCRIPTION 11: LOT FIFTEEN (15) IN KEPP HEIGHTS SUBDIVISION NO. 3, CITY OF RAPID CITY, AS SHOWN BY THE PLAT RECORDED IN BOOK 24 OF PLATS ON PAGE 103 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA

EXHIBIT B
Federal, State and Local Governmental and Conservation Policies

The Easement is consistent with clearly delineated Federal, State and local conservation policies calling for the preservation of open space, wildlife habitat and preservation of values which contribute to the scenic enjoyment of the public.

South Dakota statutes clearly identify open space, wildlife habitat and scenic values protection as policy for the State. Easements retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological..." are expressly authorized by state law. SDCL §1-19B-56(1).

The Agreement between the South Dakota Department of Transportation and the City of Rapid City, which provided funding for obtaining certain portions of Skyline Wilderness Area, states that the land acquired under this project will be dedicated to "public use."

EXHIBIT C

**Present Conditions Report
Conservation Baseline Summary for Skyline Wilderness Area**

This Present Conditions Report summarizes the Conservation Baseline and supporting documents which have been provided to Northern Prairies Land Trust by various members of Skyline Drive Preservation, Inc. In particular, the bulk of information provided has come from Charles Jason Tinant, and the Conservation Baseline represents a cooperative effort by both Skyline Drive Preservation, Inc. and Northern Prairies Land Trust.

The property (“Property”) which is the subject of this Deed of Conservation Easement (“Easement”) is known as “Skyline Wilderness Area.” It currently encompasses approximately 150 acres, with more parcels being considered for inclusion in this Easement.

The Property is preserved in a substantially undisturbed natural state, and has a substantial diversity of ecosystems, trees and plants, wildlife, and soils and rocks and contains a habitat consistent with the transitional zone between the Black Hills and the mixed-grass prairie of the Great Plains. The area is located in Rapid City, South Dakota, and is open to the public for activities such as hiking, running, biking, meetings, field studies, scientific research, and related activities.

The Property contains excellent examples of ecologically significant flora and fauna, provides an important corridor for wildlife, provides significant habitat for native plants and wildlife, provides protection from habitat fragmentation and habitat loss, and is of great importance in the preservation of significant natural attributes such as a petrified forest, a mixed-grass prairie – Ponderosa pine forest ecotone and open-space values.

The Property also contains an ecologically diverse assemblage of wildlife and plant communities within a mixed-grass prairie – Ponderosa pine ecotone with: short and tall grasses, and herbaceous plants from both Black Hills and northern Great Plains ecotypes, sagebrush steppe; deciduous woodlands; and Ponderosa pine forest.

The Property contains areas of historical importance including a natural amphitheater and a sandstone bridge, both constructed by the Civilian Conservation Corps in the 1930’s, and areas of petrified forest.

The supporting documentation includes the following: the Conservation Baseline document; a map and CD outlining three building envelopes; CD’s of photographs taken by Charles Jason Tinant, Patrick Anderson, and Rosemary Draeger; a CD containing GPS readings for locations where photographs were taken by Charles Jason Tinant; the “Skyline Wilderness Park Open Area Soils Map” (sic); and a soils map chart.

The complete Conservation Baseline is on file at the office of Northern Prairies Land Trust, located at 401 E. 8th St, Suite 200B, Sioux Falls, SD 57103.

Skyline Drive Preservation, Inc.

Northern Prairies Land Trust

Date

Date

EXHIBIT D
Permitted Encumbrances

1. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$642.53 (I.D.#24968) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 1)
2. 2005 REAL ESTATE TAXES HAVE BEEN PAID IN FULL.

NOTE: REAL ESTATE TAXES ARE CURRENTLY ASSESSED IN A LEGAL DESCRIPTION UNDERLYING THE SUBJECT PROPERTY AND OTHER LAND. AN INDIVIDUAL FIGURE ON A PER LOT BASIS IS NOT AVAILABLE AS OF THE DATE OF THE COMMITMENT. THE NEW PROPERTY IDENTIFICATION NO. FOR THE SUBJECT PROPERTY WILL BE I.D. #59721. (LEGAL 2)
3. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$1,278.63 (I.D. #49554) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 3)
4. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$1,851.55 (I.D. #53473) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 4)
5. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$1,784.09 (I.D. #53474) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 5)
6. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$6,651.25 (I.D. #53475) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 6)
7. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$2,721.11 (I.D. #47063) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 7)
8. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$2,230.65 (I.D. #47208) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 8)
9. SECOND HALF OF 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$773.17 (I.D. #47209) PLUS INTEREST WHICH ARE NOW DUE AND PAYABLE. (LEGAL 9)
10. 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$2,484.44 (I.D. #48549) WHICH HAVE BEEN PAID IN FULL. (LEGAL 10)
11. 2005 REAL ESTATE TAXES IN THE AMOUNT OF \$5,095.26 (I.D. #46002) WHICH HAVE BEEN PAID IN FULL. (LEGAL 11)