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Summary of Advantages and Disadvantages
of Creating a Conservation Easement

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A conservation easement is an agreement between a property owner and a governmental agency or a land trust to restrict real estate development, industrial uses, and other commercial activities on the property. A conservation easement, however, can be uniquely tailored to the property and to the wishes of the property owner. Usually the primary purpose of a conservation easement is to protect the land from future development, by separating the right to subdivide and build on the land from the other rights of ownership. Although a conservation easement prohibits certain uses of the property, the property is not public, and the owner still controls continuing private property rights.

The restrictions placed on the property, pursuant to the conservation easement, are perpetual and binding on all future owners of the property. Consequently, if the property is ever sold, the new owner will take such property subject to the conservation easement.

The creation of a conservation easement not only protects the property's natural and scenic attributes and wildlife habitat, but the conservation easement also provides the property owner with many tax advantages. For example, the donation of the conservation easement may qualify as a tax deductible gift. Ordinarily, the value of such a gift is determined by an appraiser who values the land before the easement is

attached, and then again after the easement has attached. The difference between the two values is equal to the value of the conservation easement gift, to which the property owner may be entitled to an income tax charitable deduction. The amount of the conservation easement gift that may be deducted by the property owner in any given year is restricted, however, to 50% of the property owner's adjusted gross income (AGI). Any amount of the gift exceeding 50% of AGI is not lost, but rather may be carried forward and applied against future income for up to fifteen additional years.

Other potential tax advantages associated with the creation of a conservation easement include the following: (i) the value of the property subject to the conservation easement will decrease as a result of the conservation easement, which should reduce the value of the property owner's estate for federal estate tax purposes; and (ii) section 2031(c) of the Internal Revenue Code allows for the exclusion of up to 40% of the value of the property that is subject to a conservation easement from the property owner's estate at the time of the property owner's death.