



Protecting Montana's  
Open Landscapes

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**Main Office**

PO Box 355  
Helena, MT 59624  
406-443-7027  
info@mtlandreliance.org

**Big Sky Office**

PO Box 161554  
Big Sky, MT 59716  
406-594-1570  
mlrsw@mtlandreliance.org

**Glacier/Flathead Office**

PO Box 460  
Bigfork, MT 59911  
406-837-2178  
mlrnw@mtlandreliance.org

**Greater Yellowstone  
Office**

PO Box 10843  
Bozeman, MT 59719  
406-579-5481  
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[mtlandreliance.org](http://mtlandreliance.org)



October 29, 2020

Broadwater County Planning Board  
Attn: Nicole Brown  
515 Broadway  
Townsend, MT 59644

Dear Nicole,

The Montana Land Reliance (MLR) is working with Dreaming Fields, LLC (Dean Folkvord) on a potential conservation easement on a portion of the property in Broadwater County. Enclosed is a project write-up and a draft copy of the proposed Deed of Conservation Easement document. The terms as stated in the easement document are those that have been negotiated with the landowner(s) as of this date and should be considered in your review. The language of the easement may be modified somewhat before it is signed, but the changes, if any, should not be significant.

As you know, The Montana Land Reliance is a qualified, tax-exempt, private land trust. Montana law (76-6-206) requires that the county planning authority review proposed conservation easements prior to recording. The county is asked to review this easement in order to comment upon the relationship of the easement to comprehensive planning in the area. The landowner(s) would like to complete this easement transaction as soon as possible. If the Planning Department could review this at their earliest convenience, it would be greatly appreciated. Thank you!

Upon completion of your review, please notify me in writing at: Montana Land Reliance, P.O. Box 355, Helena, Montana 59624 or via email: lois@mtlandreliance.org with any comments and/or concerns in regard to this potential easement donation.

If you need any further information or have any questions, please don't hesitate to contact me in MLR's Helena office.

Regards,

Lois Delger-DeMars  
Managing Director

encls.

**FOLKVORD PROPERTY II  
(DREAMING FIELDS, LLC)**

Dreaming Fields, LLC (Dean and Hope Folkvord) would like to donate a conservation easement on 1,265 acres lying 9 miles northwest of Three Forks in Broadwater County. The property borders the Folkvord Property I easement property. The property consists of dryland farm ground, and provides habitat for a variety of wildlife, including turkey, pheasant, geese, white tail deer, mule deer, elk, pronghorn, fox, coyote, raptors, and songbirds.

**Human Development:**

**Existing:**

- None.

**Permitted:**

- Allow for two residences, associated outbuildings, and agricultural structures within two 5-acre building envelopes.
- Construction of roads and utilities for agricultural and residential purposes.
- Allow residences to be used as VRBO or as a bed and breakfast business.
- Transfer of the property as two parcels, with one building envelope per parcel.

**Relationship to MLR Goals:**

The easement would preserve open space and conserve two sections of productive agricultural land and developable open space adjacent to the Folkvord Property I easement property that was completed in 2013.

**Relationship to IRS Code:**

The property affords scenic views to folks traveling on 101 Road (a Broadwater County Road) and U.S. Highway 287, a route recommended by the Montana Office of Tourism between Glacier and Yellowstone National Parks.

The permitted development would be sited to minimize impact to the public view from Highway 287. The easement would restrict building height and construction materials such that the cumulative impact of existing development and reserved rights on the property would be compatible with perpetual protection of the conservation values on the easement as a whole.

**Relationship to MLR Resources:**

The landowners will pay all necessary transaction costs and understand the need to contribute to the Land Protection Fund. Staff will continue discussing a Land Protection Fund gift with the landowners as the project progresses.

**Potential Challenges:**

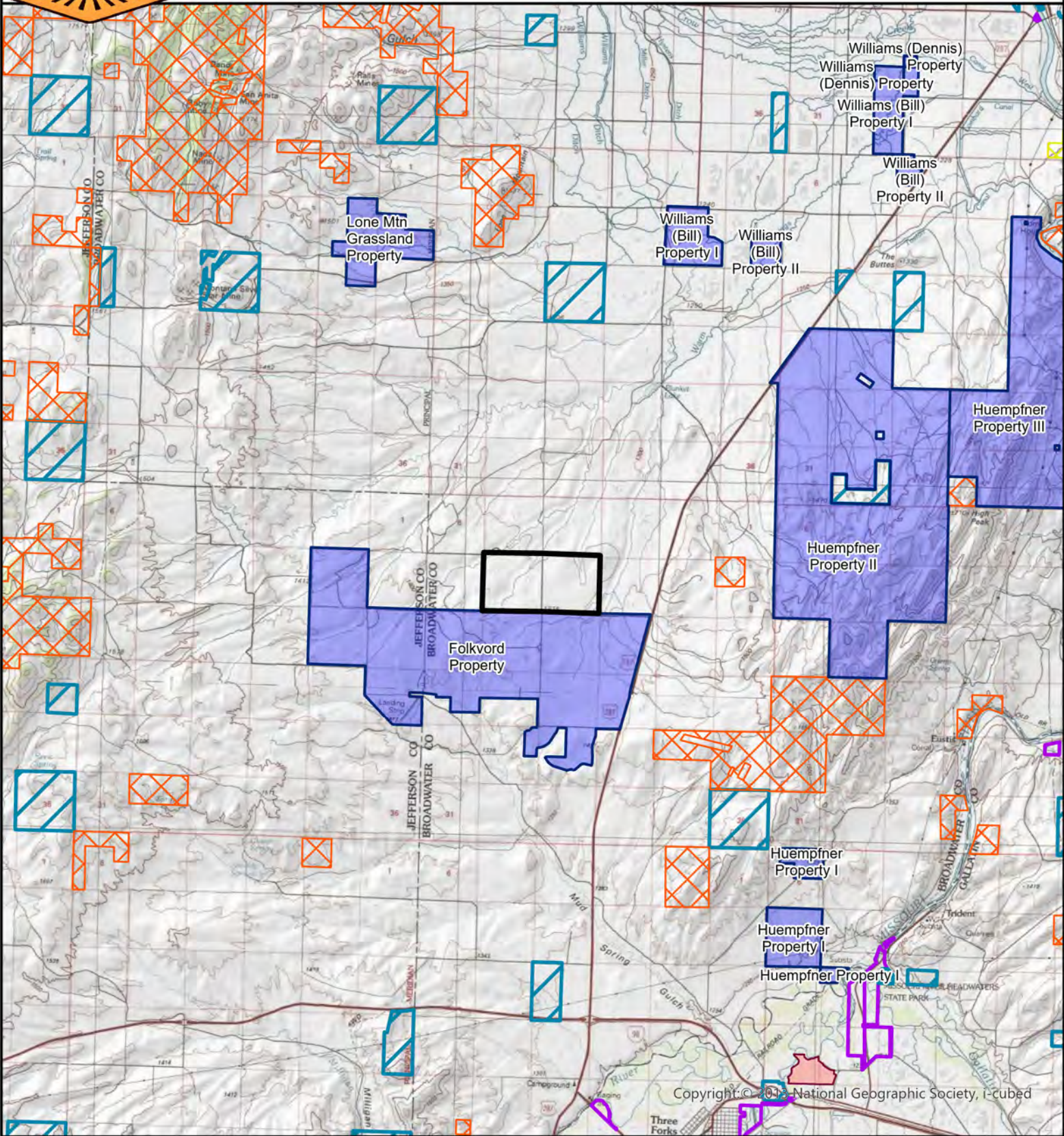
None anticipated.

Staff contact for the project is Jordan Vana.

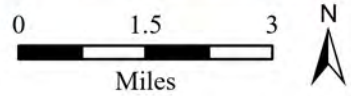




# FOLKVORD PROPERTY II



-  Subject Property  
Acreage: 1,265
-  MLR Conservation Easement
-  State Trust
-  MT FWP
-  BLM
-  Other Conservation Easements

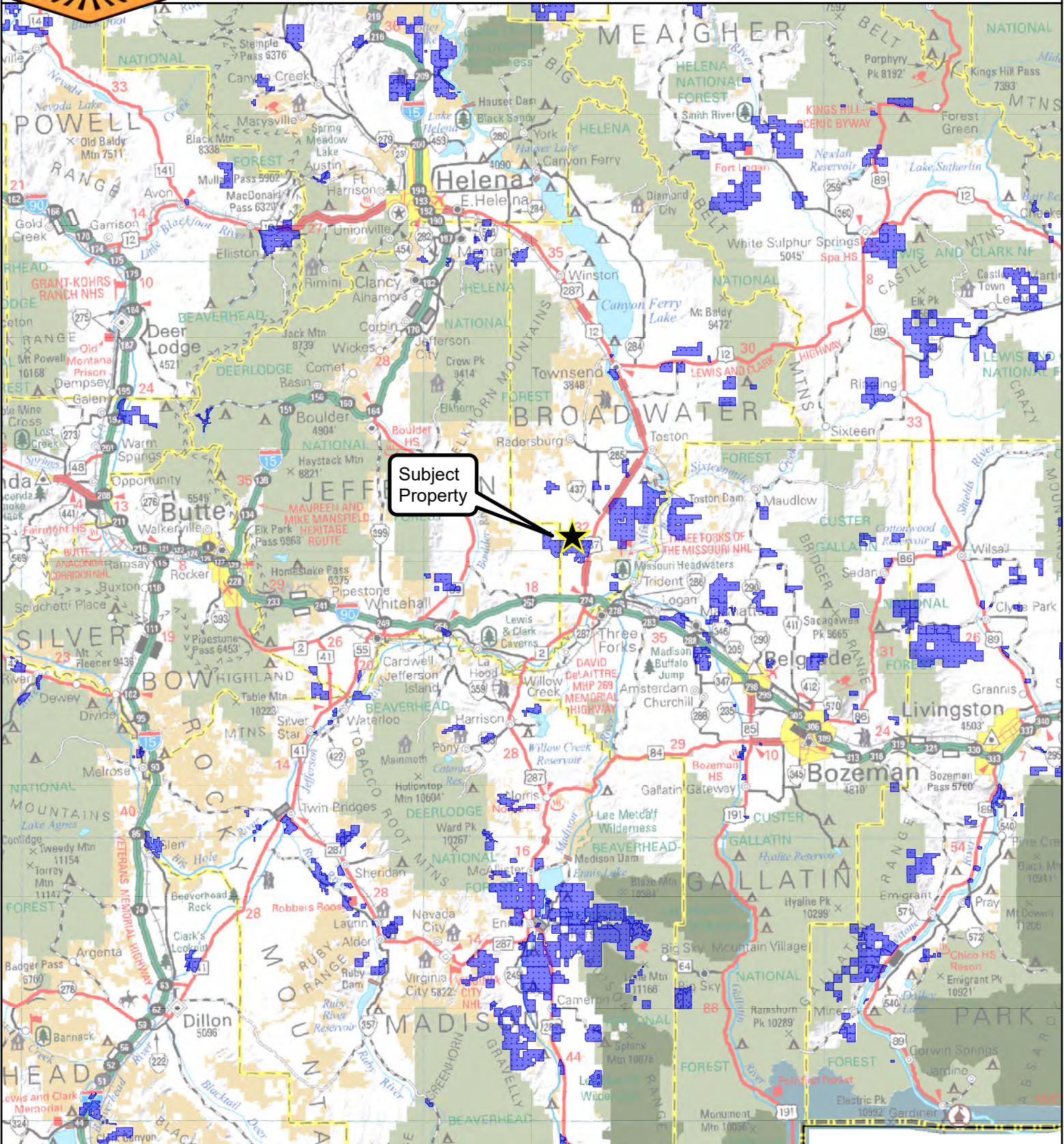


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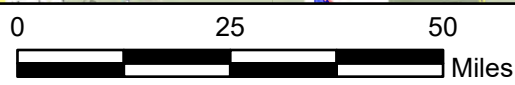
# FOLKVORD PROPERTY II



Subject Property

★ Subject Property

■ MLR Conservation Easements



1:1,428,904

Montana State Highway Map 2019

Map Created By: kim

Map Creation Date: September 28, 2020





*AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:*

*THE MONTANA LAND RELIANCE  
P.O. BOX 355  
HELENA, MT 59624*

## DRAFT

October 27, 2020

FOLKVORD II CE

### DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (“Easement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by DREAMING FIELDS, LLC, a Montana limited liability company, of 10847 Hwy 287, Three Forks, Montana 59752 (hereinafter together with its successors and assigns collectively referred to as “Grantor”) and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 and with a mailing address of P.O. Box 355, Helena, Montana 59624 (hereinafter referred to as “Grantee”);

### R E C I T A L S:

1. Grantor is the owner of certain real property in Broadwater County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the “Property”), and the Property totals approximately one thousand two hundred sixty-five (1,265) acres; and,
2. The Property consists of significant open-space land, as defined in the Open-Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,
3. Preservation of the Property by this Easement will yield significant public benefits to the people of the State of Montana, Broadwater County, and the United States by protecting, preserving, and providing the following significant resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code of 1986, as amended (hereinafter the “Code”) and Sections 76-6-101, et seq., MCA:
  - a. Open-space lands which protect productive agricultural lands, important wildlife habitat, watersheds, and scenic views, and provide opportunities to continue traditional farming and ranching practices in perpetuity as encouraged and supported by clearly delineated federal, state, and local governmental conservation policies, as set forth in more detail below; and,
  - b. Open-space lands which preserve scenic views of historic Montana landscapes and working agricultural lands in the Upper Missouri River Valley for the scenic enjoyment of the general public traveling on U.S. Highway 287, a major north-south route through central Montana and a route recommended by the Montana Office of Tourism between Glacier and Yellowstone National Parks, on 101 Road, and Jeep Trail Road, public roadways that border and traverse the Property; and,

c. Retention of significant open-space lands for a variety of other purposes, including for the benefit of plants, biotic communities, fish and wildlife, including, but not limited to, turkey, pheasant, geese, white-tailed deer, mule deer, elk, pronghorn, fox, coyote, and various raptor and songbird species, all of which use the Property;

(hereinafter collectively referred to as the "Conservation Values"); and,

4. Preservation of the Property by this Easement furthers, supports, and is pursuant to the following clearly delineated governmental conservation policies:

a. The Broadwater County, Montana, Commissioners have expressly recognized in the Broadwater County Growth Policy, adopted in July, 2003, and in the 2020 Growth Policy Update, adopted May 11, 2020, the importance of preserving open space and agricultural lands in Broadwater County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

b. The Broadwater County Growth Policy specifically encourages the use of conservation easements to preserve open space and agricultural lands in the area; and,

c. The State of Montana has recognized the importance of private efforts toward voluntary conservation of significant open-space lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,

5. Preservation of the Property by this Easement will yield significant public benefit, as described below and as contemplated in Treasury Regulation §1.170A-14(d)(4)(iv)(A):

a. The Property is adjacent to and in the general vicinity of other private lands protected by conservation easements held by Grantee, which preserve scenic and open-space resources in the Upper Missouri River Valley, and therefore the proposed open-space use is consistent with existing private conservation programs in the area and will provide significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(4); and

b. This Easement will protect scenic and open-space resources which are under threat due to the high intensity of existing and foreseeable land development in the vicinity of the Property, and therefore preservation of the Property will yield significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(2); and

c. Development of the Property would degrade the scenic, natural and historic character of the area, and would negatively impact the rural, scenic, and agricultural landscapes that attract tourism and commerce to the area, and therefore preservation of the Property will yield significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(5) and (7); and,

6. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the Conservation Values of the Property, which are of great importance to Grantor and to the public, and are worthy of preservation in perpetuity; and,

7. By conveying this Easement and its associated rights to Grantee, freely, voluntarily, and irrevocably, Grantor intends to preserve and protect in perpetuity the Conservation Values of the Property; and,

8. Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open-space purposes, and is an organization described in Section 170(h)(3) of the Code qualified to receive and hold conservation easements; and, by accepting this Easement, Grantee agrees that it is committed to protect the conservation purpose(s) of this gift and has the resources to enforce the restrictions in this Easement in perpetuity, as required by Treasury Regulations §1.170A-14(c)(1); and,

9. Grantor and Grantee intend and agree that:

a. This Easement will constitute a restriction granted in perpetuity on the use which may be made of the Property in accordance with section 170(h)(2)(C) of the Code;

b. The conservation purposes of this Easement will be "protected in perpetuity" in accordance with section 170(h)(5)(A) of the Code by permitting only those activities and uses on the Property that do not significantly impair or interfere with such conservation purposes;

c. The contribution of this Easement will be "exclusively for conservation purposes" in accordance with section 170(h)(1)(C) of the Code by permitting only those activities and uses on the Property that do not injure or destroy other significant conservation interests.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Easement, and as an absolute, unconditional, unrestricted, irrevocable, and voluntary gift, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Property in accordance with the terms and conditions set forth below. No goods or services were provided in consideration of the grant of this Easement, which Grantee received as of the date noted on page 1 of this Easement.

#### **SECTION I** **Purposes and General Effect of Easement**

A. Purposes. The purposes of this Easement are to preserve, protect, and enhance the Conservation Values, in perpetuity, and to prevent any use of, or activity on, the Property that will impair the Conservation Values. In achieving these purposes, it is the mutual intention of Grantor and Grantee to permit the continuation of such uses of the Property that may be conducted consistent with the purposes and terms of this Easement. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purposes of the Easement may be accomplished.

Grantor and Grantee recognize that changes in natural conditions, landscapes, technologies, accepted farm, ranch, and forest management practices, and the situation of Grantor may result in an evolution of land uses and practices related to the Property which are allowed, provided that such uses and practices are consistent with the purposes and terms of this Easement. Grantor and Grantee have considered the possibility that uses which are prohibited by the terms of this Easement may become more economically valuable than permitted uses, and it is the mutual intent of Grantor and Grantee that any such economic changes shall not be deemed to be changed conditions or a change in circumstances impairing the validity of this Easement, and shall not justify the amendment, judicial termination, or extinguishment of this Easement.

B. Perpetual restrictions. This Easement shall run with and burden title to the Property in perpetuity and shall bind Grantor and all future owners, tenants, lessees, licensees, occupants, invitees, and users of the Property.

C. Dedication. The Property is hereby declared to be “open-space land” as defined in MCA Section 76-6-104(3), and may not be converted or diverted from open-space land use, except as set forth in MCA Section 76-6-107.

## SECTION II Rights Conveyed

The rights conveyed by this Easement to Grantee are the following:

A. Identification and protection. To identify, preserve, and protect in perpetuity the Conservation Values of the Property, including, but not limited to, its significant open-space and scenic values, subject, however, to Grantor’s reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

B. Access. To enter upon the Property to inspect the same and to monitor Grantor’s compliance with the terms of this Easement, all in a manner that will not unreasonably interfere with the use of the Property by Grantor. Grantee shall also have the right to enter the Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Property if, in Grantee’s sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted to Grantee in the preceding sentences of this Section II, paragraph B, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Property.

C. Injunction and restoration. To enjoin any activity on, or use of, the Property which is inconsistent with the purposes or terms of this Easement, including those activities which may have an adverse impact on the Conservation Values or would permit destruction of significant conservation interests, and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activities or uses.

## SECTION III Reserved Rights and Prohibited Uses

A. Reserved rights. Grantor reserves to itself and to its successors and assigns all rights accruing from ownership of fee title to 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 herein, that do not destroy or impair the Conservation Values, and that are not inconsistent with the terms or purposes of this Easement. Without limiting the generality of the foregoing sentence, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted, subject to any prior written approval requirements.

B. Prohibited uses. Any activity on, or use of, the Property that is inconsistent with the terms or purposes of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

## SECTION IV Prior Notice by Grantor and Approval of Grantee

Any enterprise, use, or activity proposed to be done or undertaken by Grantor requiring Grantee’s prior approval, consultation, notification, or mutual agreement (including any provision of Exhibit B or Exhibit C expressly requiring the prior approval of Grantee), or which may harm the



Conservation Values or other significant conservation interests, may be commenced only after satisfaction of the notice and approval conditions of this Section IV. A purpose of requiring notice and prior approval is to afford Grantee the opportunity to ensure the proposed use is consistent with the purposes and terms of this Easement and does not adversely impact the Conservation Values.

A. Grantor's written request for approval. Prior to the commencement of any enterprise, use, or activity for which Grantee's prior approval is required, or which may have an adverse impact on the Conservation Values, Grantor must send Grantee written notice of Grantor's intention to commence or undertake such enterprise, use, or activity. Said notice must inform Grantee of all aspects of such proposed enterprise, use, or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity or uses, as appropriate. The request must provide Grantee with an address to which Grantee's response should be sent, and the names and addresses of persons to contact about the request.

B. Grantee's address. Any request for approval of a proposed enterprise, activity, or use shall be either:

(i) delivered in person with a signed and dated proof of delivery, or

(ii) sent by registered or certified mail, return receipt requested, or

(iii) sent by Federal Express or other reputable carrier or delivery service, provided that the sender obtains a signed proof of delivery.

Grantor's requests for approval shall be delivered to Grantee at 324 Fuller Avenue, Helena, MT 59601, or if sent by United States Mail, shall be addressed to Grantee at P.O. Box 355, Helena, MT 59624, or to such other address as Grantor from time to time may be informed of in writing by Grantee.

C. Time for Grantee's response. Within thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, Grantee shall review the proposed enterprise, use, or activity and notify Grantor of any objection thereto. The thirty (30) day period shall not begin until such time as Grantee has received adequate information from Grantor to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and in any case not later than twenty (20) days after receiving the request for permission. Grantor may not proceed with any action for which Grantor must obtain prior approval from Grantee without Grantee's express written consent. Grantee's failure to respond within the time period specified above shall be deemed Grantee's constructive denial of approval.

D. Grantee's response to requests for approval. Only upon Grantee's express written approval may the proposed enterprise, use, or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee. Grantee's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, or by other delivery or courier service with proof of delivery, to Grantor at the address provided to Grantee in Grantor's request. A decision by Grantee to disapprove a proposed activity shall be based upon Grantee's reasonable determination that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's judgment, conformity with the purposes or terms of this Easement is possible, Grantee's response shall inform Grantor of the manner in which the proposed enterprise, use, or activity can be modified to be consistent with this Easement.

E. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified. Grantor shall provide notice to Grantee of any emergency actions taken pursuant to this paragraph.

F. Rejection or refusal. Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

## **SECTION V** **Breach and Restoration**

A. Grantee's remedies. If Grantee determines that Grantor, or third parties under Grantor's authority and control or acting with Grantor's knowledge or consent, are in violation of this Easement, Grantee shall give written notice to Grantor of such violation. In said notice of violation, Grantee shall demand corrective action by Grantor sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes or terms of this Easement, to restore the portion of the Property so injured. If Grantor:

(i) fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; or,

(ii) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within thirty (30) days (or within thirty (30) days of Grantor's receipt of notice from Grantee, fails to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin); or,

(iii) fails to continue diligently to cure such violation until finally cured,

Grantee may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury, or to the condition at the time of the donation, in Grantee's sole discretion.

If Grantee, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this paragraph without giving notice of violation required above and without waiting for the period provided for a cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate Grantee and the public for the loss and damage to Grantee's rights, Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of open-space, scenic, aesthetic, or natural resource values. Without



limiting Grantor's liability therefor, Grantee, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

C. Forbearance not a waiver. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee in the exercise of its rights under this Easement in the event of any breach of any provision of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

D. Waiver of certain defenses. Grantor hereby expressly waives any defense of laches, estoppel, or prescription.

E. Acts beyond Grantor's control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor 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 taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

F. Mediation. If a dispute arises between the parties concerning the consistency of any use or activity with the terms or purposes of this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request in writing to the other that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly appoint a single independent third-party mediator to hear the matter. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Section V, paragraph F, shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section V.

## **SECTION VI** **Costs and Taxes**

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement. Any lawful tax or assessment on this Easement shall be paid by Grantee. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state, and local laws, regulations, rules, and ordinances.

**SECTION VII**  
**Indemnities**

A. Control of risks associated with Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains ownership of fee title to the Property and therefore Grantor controls day-to-day activities on, and access to, the Property, except for the limited rights conveyed to Grantee in this Easement. Grantor therefore agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's continued ownership, use, and control of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership, except as specifically provided in paragraph C of this Section VII. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Property or to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 *et seq.* ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, *et seq.*, and 75-10-601 *et seq.*, MCA, and its successor statutes, and similar state and federal statutes.

B. Grantor's obligation to indemnify. Grantor agrees to hold harmless and indemnify Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Grantee's reasonable attorneys' fees and costs of defense, arising from or in any way connected with:

(i) 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, except as set forth in paragraph C below;

(ii) the obligations specified in Section VI; and,

(iii) the obligations arising from past, present, or future presence of any hazardous substance on the Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any of Grantee's acts, omissions, conditions, or other matters for which Grantee is responsible, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance.

**SECTION VIII**  
**Assignment of Easement**

Grantee may transfer or assign this Easement, in whole or in part, provided that any such assignment or transfer must be made to a "qualified organization," within the meaning of Section 170(h)(3) of the Code, and to a "qualified private organization" or "public body" qualified to hold



conservation easements under Section 76-6-101, *et seq.*, MCA. An assignee which is a qualified private organization must be organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h)(4)(A) of the Code. Any qualified organization must agree in the assignment instrument to enforce in perpetuity the conservation purposes of this Easement. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantor. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of open space or other Conservation Values protected by this Easement as a substantial organizational purpose, and Grantee further represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

## **SECTION IX** **Documentation**

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Property, including the condition of its Conservation Values, at the time of the grant of this Easement. This information is based in part upon a site visit to the Property by Grantee or Grantee's agents on October 15, 2020, and consists of mapping of physical features and resources, building envelopes, photographs of structures, developments, and improvements, and gathering of other appropriate information to document the condition of the Property and its Conservation Values as of the date of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information gathered accurately represents the condition of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). This information shall be compiled and developed into a final Resource Documentation Report, supplemented with aerial photographs, historical, archival, and government documents, as appropriate and available, as soon as is practically feasible after the grant of this Easement. The Resource Documentation Report shall be maintained on file with Grantee. The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Property and practices thereon, and compliance with the terms and conditions of this Easement. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Resource Documentation Report contains any summaries of, or representations about, the terms or conditions of this Easement, including Exhibit F hereof, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms and conditions herein and not in the Resource Documentation Report.

## **SECTION X** **Extinguishment: Grantee's Entitlement to Proceeds**

A. **Extinguishment.** If circumstances arise in the future which render the purposes of this Easement impossible or impractical to accomplish, this Easement may be terminated or extinguished (as provided for in Treasury Regulation §1.170A-14(g)(6)(i)), whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined in accordance with paragraph B of this Section X and Treasury Regulation §1.170A-14(g)(6)(ii). Grantee shall use any such proceeds received from easement termination in a manner consistent with the conservation purposes of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value at least equal to the proportionate value that this Easement on the date of this grant bears to the value of the Property as a whole on the date of this grant. This proportionate value (the "Proportionate Share") shall be expressed as a percentage determined by (1) the fair market value of this Easement on the date of this grant (numerator), over (2) the fair market value of the Property as a whole, without deduction for the value of this Easement, on the date of this grant (denominator). The values in the preceding sentence shall be those values established by Grantor's qualified appraisal (pursuant to Treasury Regulation §1.170A-13 and §1.170A-14(h)) for federal income tax purposes.

This Proportionate Share shall remain constant over time. In the event of a whole or partial termination, extinguishment, or condemnation under paragraph A or C of this Section X, Grantee shall be compensated for the fair market value of its property right, in an amount determined by multiplying (1) the fair market value of the Property (or portion thereof, in the case of partial termination, extinguishment, or condemnation) unencumbered by the Easement at the time of termination, by (2) the Proportionate Share. Within one (1) year of completion of the qualified appraisal, Grantor, Grantee, and Grantor's appraiser shall sign a written acknowledgment of the values thus established on a form similar to the sample attached hereto as Exhibit E. The original of said acknowledgment shall be held on file with Grantee at Grantee's normal place of business.

C. Eminent domain. If all or a portion of the Property is taken for a public purpose in the valid exercise of eminent domain so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee may join in appropriate actions to recover the value of each party's interest in the Property (or portion thereof) taken, as established in paragraph B of this Section X, including the value of Grantee's Easement as it pertains to the condemned property at the time of the taking or condemnation. Grantor and Grantee shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned and for which such damages are awarded. Proceeds shall be divided between Grantor and Grantee in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X, and Grantee shall use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

**SECTION XI**  
**Grantor's Representations and Warranties**

\_\_\_\_\_ as \_\_\_\_\_ of Grantor represents and warrants that, after reasonable investigation and to the best of his/her knowledge, as of the date of the conveyance of this Easement:

A. Grantor has clear title to the Property, Grantor has the right to convey this Easement to Grantee, and the Property is free and clear of any encumbrances, except those encumbrances that have been expressly approved by Grantee.

B. 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. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.



C. No underground storage tanks are 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 the applicable federal, state, and local laws, regulations, and requirements.

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

E. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.

F. 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 failing 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.

## SECTION XII Miscellaneous Provisions

A. Partial invalidity. 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 and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. “Grantor” and “Grantee”. The terms “Grantor” and “Grantee,” as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns, and The Montana Land Reliance and its successors and assigns, respectively.

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

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the public records of Broadwater County will be made in any subsequent deed or other legal instrument by which Grantor conveys any interest in the Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to all or any portion of the Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantor to use the Property as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

F. Notice of suit. Grantor must immediately provide Grantee with notice of any lawsuit or administrative action involving the Property or which threatens the integrity of this Easement. Notice must be sent to Grantee’s address in Section IV, paragraph B, and must include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to Grantee’s intervention in any such lawsuit or action. Such lawsuit or action could include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental clean-up or enforcement, or

any other lawsuit or action affecting the Property and/or potentially affecting the Conservation Values protected by this Easement.

G. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute, without regard to conflict of laws.

H. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate pursuant to Grantee's policies then in effect, this Easement may be amended, subject to the limitations in this paragraph. No amendment shall be allowed if, in the sole and exclusive judgment of Grantee, the amendment would adversely affect the perpetual duration of this Easement, the perpetual protection of the Conservation Values, or the qualifications of this Easement under any applicable laws, including Sections 76-6-101, MCA, et seq., and the Code. Amendments must serve the public interest and be consistent with Grantee's charitable mission, must not jeopardize Grantee's tax-exempt status under federal or state law, must be consistent with the conservation purposes and intent of this Easement, and either must enhance, or have no effect on, the Conservation Values protected by this Easement. Further, no amendment shall be allowed if the amendment would result in private inurement or impermissible private benefit to Grantor or any other parties. Any Easement amendment must take the form of a valid legal instrument signed by all appropriate parties, and must be recorded in the public records of Broadwater County. Grantee retains sole and unlimited discretion whether to consent to any amendment and to make determinations regarding the criteria contained in this paragraph.

I. Conservation intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates perpetual protection and preservation of the Conservation Values and the policy and purposes of MCA Section 76-6-101, et seq. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

J. Entire agreement and merger of previous understanding. This Easement, including all Exhibits attached hereto, constitutes the entire understanding between the parties hereto with respect to Grantor's grant of this Easement on and over the Property described in Exhibit A, and all prior or contemporaneous negotiations, communications, conversations, understanding, and agreements had between the parties hereto, oral or written, are merged in this Easement.

K. Disclaimer. Grantee does not warrant, guarantee, or otherwise offer any assurance as to the deductibility, if any, of the contribution of this Easement, or its qualification under any applicable state or federal laws. Grantor has been advised by Grantee to secure qualified independent legal and tax advice, and Grantor has had ample opportunity to do so.

L. Separate counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

TO HAVE AND TO HOLD all and singular the above-described Easement unto Grantee and its successors and assigns, in perpetuity.



IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands.

GRANTOR: **DREAMING FIELDS, LLC,**  
a limited liability company

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 \_\_\_\_\_ : ss.  
 County of \_\_\_\_\_ )

This instrument was signed or acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_, acting in the capacity of \_\_\_\_\_ on behalf of Dreaming Fields, LLC.

\_\_\_\_\_  
 (Notary's Signature) (SEAL)

Affix seal/stamp as close to signature as possible.

GRANTEE: **THE MONTANA LAND RELIANCE,**  
a corporation

By: \_\_\_\_\_  
 [Name and title]

STATE OF \_\_\_\_\_ )  
 \_\_\_\_\_ : ss.  
 County of \_\_\_\_\_ )

This instrument was signed or acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_ acting in the capacity of \_\_\_\_\_ on behalf of The Montana Land Reliance.

\_\_\_\_\_  
 (Notary's Signature) (SEAL)

Affix seal/stamp as close to signature as possible.

**EXHIBIT A  
LEGAL DESCRIPTION**

Township 3 North, Range 1 East, P.M.M., Broadwater County, Montana

Section 8: All

Section 9: All

**ALL OF THE FOREGOING DESCRIBED PROPERTY IS CONVEYED SUBJECT TO** all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.



**EXHIBIT B  
PERMITTED USES AND PRACTICES**

The following uses and practices, though not an exhaustive recital of consistent uses and practices, are hereby deemed to be consistent with the purposes of this Easement and are expressly permitted. Some of these consistent land uses and practices are identified below as being subject to specified conditions or to the provisions of Section IV requiring Grantee's prior approval. The remainder of these consistent uses shall not be limited so long as they are conducted in a manner consistent with the terms and purposes of this Easement.

1. Agricultural activities. To conduct farming, ranching, and other agricultural activities, including raising and managing livestock and planting, raising, and harvesting agricultural crops.

a. Temporary agricultural structures. For purposes of this subparagraph, "temporary agricultural structures" are defined as agricultural structures that are not constructed or placed on permanent foundations or footings, and that are used in conjunction with agricultural activities and opportunities permitted by this Easement. Subject to Grantee's prior approval pursuant to Section IV, temporary agricultural structures may be temporarily located anywhere on the Property, provided such locations are consistent with sound agricultural and management practices and with protection of the Conservation Values, including the scenic values set forth in Recital 3b. Temporary agricultural structures may include, but are not limited to, corrals for livestock management, three-sided wind/loafing/calving shelters for livestock safety especially in extreme winter weather, and hay or crop storage structures to preserve and protect crops and feed from wildlife depredation and the elements. Temporary agricultural structures do not include pole barns, sheds, or anything utilizing a foundation or posts cemented in the ground.

b. Unimproved tracks and trails necessary for agricultural purposes. Consistent with sound agricultural and management practices, Grantor may use and create unimproved tracks and trails that are necessary for farming, ranching, and other agricultural purposes protected by this Easement. Such unimproved tracks and trails may include, but shall not be limited to, two-track byways used by farm equipment and off-road vehicles for crop cultivation, field access, for livestock management and monitoring purposes, and for access to irrigation ditches, pumps, and infrastructure.

2. Recreational use. To use the Property for undeveloped non-commercial recreation and undeveloped commercial recreation, including, but not limited to, hunting of game animals and birds, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantor and invitees, provided that all such recreational activities on the Property must remain consistent with protection and preservation of the Conservation Values. Any agreement between Grantor and third parties pertaining to the use of the Property for commercial recreation, including hunting and fishing, shall not be considered a prohibited commercial use of the Property pursuant to Exhibit C of this Easement, as long as such agreements are made expressly subject to the terms and conditions of this Easement. All existing and subsequently constructed structures and improvements that are permitted by this Easement in the Building Envelopes defined in this Exhibit B, subparagraph 4c, and Exhibit F, attached hereto and incorporated by reference, may be used in conjunction with recreational activities permitted under this paragraph 2. Nothing in this Exhibit B, paragraph 2 may be construed to permit construction or development of any recreational facilities in locations outside of the Building Envelopes described in Exhibit B, subparagraph 4c and Exhibit F.

3. Water resources. To maintain, enhance, and develop water resources on the Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and recreational uses. Permitted uses include, but are not limited to, the following: the right to restore, enhance, and

develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.

4. Structures and Building Envelopes. To construct, maintain, repair, remodel, and make limited additions to, and in the event of their removal or destruction, to replace the following structures on the Property. New or replacement structures must be constructed in a manner consistent with protection of the Conservation Values. All new or replacement structures shall be constructed with non-reflective, neutral-tone building materials. Further, no new or replacement structures may exceed three stories above finished grade in height. Grantee shall have sole discretion to make determinations regarding the criteria in this paragraph.

a. Residential dwelling units. For the purpose of this Easement, the term “residential dwelling unit” means a structure, or a portion thereof, with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. The definition of residential dwelling units includes, but is not limited to, residences; apartments or suites that are a part of non-residential outbuildings as set forth in subparagraph 4b below; guest houses; employee houses; cabins; mobile homes, trailers, and other moveable living units. At the time of this grant there are no residential dwelling units or other structures on the Property. No more than two (2) residential dwelling units are permitted on the Property. All residential dwelling units, and replacements thereof, if any, must be located within the Building Envelopes defined in subparagraph 4c below. No other permanent habitations, living, or sleeping quarters are permitted on the Property.

b. Non-residential outbuildings. Non-residential outbuildings, including, but not limited to, barns, shelters, corrals, other agricultural facilities, garages, workshops, sheds, and recreational structures (hereinafter “non-residential outbuildings”). All non-residential outbuildings must be located within designated Building Envelopes as defined in subparagraph 4c. For the purposes of this Easement, the term “non-residential outbuildings” does not include indoor riding arenas, which are expressly prohibited on the Property.

c. Building Envelopes. The two (2) permitted residential dwelling units, and all their associated non-residential outbuildings must be located within the two “Building Envelopes” delineated in Exhibit F. Each Building Envelope consists of approximately five (5) acres and shall encompass one (1) of the permitted residential dwelling units and all of its associated non-residential outbuildings.

The purposes of the Building Envelopes are to limit development to locations on the Property consistent with preservation and protection of the Conservation Values, in perpetuity; to allow Grantor flexibility in use of the residential dwelling units and non-residential outbuildings; and to cluster residential uses and other structures on the Property. Grantor and Grantee have carefully selected the location and sizes of the permitted Building Envelopes to ensure that Grantor’s reserved rights must be exercised consistently with perpetual protection of the Conservation Values and other significant conservation interests, including soils of special significance and value, unique and important wildlife habitat, and viewsheds from public roadways. If necessary, wells and drain fields may be located outside of the Building Envelopes.

e. Temporary structures. Grantor reserves the right to place tents, teepees, and other simple portable structures without permanent foundations on the Property on a temporary basis, provided that the use or placement of any such temporary structures does not adversely impact the Conservation Values.



5. Minerals. Subject to the prior approval of Grantee as provided in Section IV hereof, to explore for and extract oil, gas, and other subsurface minerals (or to lease, sell, or otherwise dispose of the rights thereto) in or under the Property, subject, however, to the following conditions:

a. Surface mining prohibited. There shall be no extraction or removal of any minerals by any surface mining method, within the meaning of Section 170(h)(5)(B) of the Code and the regulations promulgated thereunder; and there shall be no extraction or removal of any non-mineral substance (including, but not limited to, soil, sand, gravel, rock, and peat) by surface mining methods.

b. Subsurface mining. There shall be no exploration for or extraction of oil, gas, or other subsurface minerals by any subsurface mining method if such activity would result in the permanent or irreparable destruction or impairment of any Conservation Value of the Property. In accordance with Treasury Regulation §1.170A-14(g)(4)(i), subsurface mineral exploration or extraction may be permitted, after prior approval of Grantee, only if the mining methods used are not irreparably destructive of the Conservation Values and if impacts are limited, localized, and temporary. No method of mining may be used that is or would be inconsistent with the Conservation Values intended to be protected by this Easement. If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Property at the time of this grant, and their interests have not been subordinated to this Easement, Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this subparagraph 5b. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:

(i) Water. No exploration or extraction shall take place within any stream, waterway, or protected wetland, and no mining operation or oil and gas extraction activities may materially degrade the quality of any lake, pond, well, stream, groundwater, or surface water, including, but not limited to, any source of water utilized by Grantor for agricultural or residential purposes. Any waste water resulting from permitted exploration or extraction activities which is of materially poorer quality than existing water supplies must be treated so that its quality is substantially equivalent to existing natural water quality where the waste water is discharged or released into surface waters and when groundwater is reinjected or otherwise disposed of on or under the Property.

(ii) Surface disturbance. Any surface disturbance resulting from permitted exploration or extraction activities must be limited, localized, and temporary, and the surface of the land shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance. This shall be accomplished by reclaiming land contours, restoring soils, replanting native vegetation, and husbanding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.

(iii) Reclamation. All permitted exploration or extraction activities and associated reclamation activities shall be in compliance with other provisions of this paragraph 5, and with applicable state and federal laws. Any surface alteration pursuant to this paragraph 5 must be restored to its original state and approximate contour and revegetated with self-sustaining grasses, forbs, and other plants that are consistent with surrounding areas of the Property.

(iv) Roads. Whenever possible, access to exploration or extraction sites shall be by existing roads. Any new road shall be subject to prior approval by Grantee as provided in Section IV and shall be sited and maintained in accordance with this Exhibit B, paragraph 9, so as to minimize adverse impact to the Conservation Values. Any new roads shall be reclaimed after exploration and extraction activities are concluded.

(v) Structures. The number and kind of disturbance areas and structures used in the exploration for or extraction of oil, gas, and other subsurface minerals shall be limited to the minimum necessary to accomplish said exploration or extraction. All such structures shall be removed at the termination of exploration and extraction activities and the site shall be restored pursuant to subparagraph (ii) above.

(vi) Notification. Grantor shall advise Grantee in writing at least sixty (60) days prior to engaging in any exploration for or extraction of oil, gas, and other subsurface minerals (or leasing, selling, or otherwise disposing of the rights thereto) whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance. For the purpose of this paragraph 5, Grantee's period in which to grant or deny prior approval of any mineral exploration or extraction proposal under Section IV, paragraph C, shall be extended to sixty (60) days.

c. Limited-impact activities. Subject to the prohibition on surface mining in Exhibit C, paragraph 2 and Section 170(h)(5)(B) of the Code, Grantor may extract sand and gravel, solely under the criteria set forth in this paragraph. Any sand or gravel extracted pursuant to this subparagraph may only be used on the Property. Any surface disturbance resulting from permitted extraction activities may not use surface mining methods and must be limited, localized, and not irretrievably destructive of any Conservation Value or other significant conservation interests. The surface alteration must be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, restoring soils, replanting vegetation, and husbanding replanted vegetation until the vegetation is mature, established, and self-perpetuating. Sale or transport of sand, gravel, rock, or other materials or minerals off of the Property is expressly prohibited pursuant to Exhibit C, paragraph 2. Any such limited-impact activity shall require Grantor to adhere to the conditions set forth in subparagraph b of this Exhibit B, paragraph 5.

d. Surface-use agreements and other agreements. In the case of mineral, oil, gas, or hydrocarbon exploration, extraction, development, production, or removal activities, Grantor hereby grants to Grantee the non-exclusive right to protect Grantee's vested property rights and its obligations under the terms of this Easement to preserve the Conservation Values in perpetuity. The rights granted to Grantee by this subparagraph include, but are not limited to, the rights to negotiate and enter surface-use agreements, right-of-way agreements, leases, assignments, non-surface occupancy agreements, including agreements for the payment of surface damages, and any other agreements arising from or related to mineral, oil, gas, or hydrocarbon exploration and extraction, development, production, and removal activities.

Grantor and Grantee agree that neither party shall unilaterally enter into oil, gas, or other subsurface mineral exploration and extraction leases, surface-use agreements, or non-surface occupancy agreements with a third party regarding any oil, gas, or mineral development, production, and removal activities.

6. Transfer of land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively "transfer") all or any portion of Grantor's right, title, estate, and interest in the Property in unified title and as no more than two (2) parcels, subject to the terms, conditions, rights, restrictions, and obligations contained in this Easement. Further, each of the Building Envelopes provided for in this Exhibit B, paragraph 4, must remain wholly intact and undivided in any transfer, and at no time may any Building Envelope be divided or split by boundary line between parcels that are separately owned.



Grantor shall furnish Grantee with a copy of any document or instrument of conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

Whether conveyed as a single tract or whether conveyed as separate parcels pursuant to this paragraph 6, the Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Furthermore, if Grantor elects to divide the Property as herein provided, Grantor must comply with all federal, state and local laws, ordinances and regulations concerning subdivision, as applicable, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review.

Nothing in this Easement shall be construed to prevent Grantor from owning the Property in co-tenancy or joint tenancy, wherein each cotenant or joint tenant shall have undivided interests in the whole of the Property, as described in Exhibit A, or in one of the two (2) parcels into which the Property may be divided. Grantor also retains the right to enter into leases, licenses, or other transfers of a right to use the Property and/or to occupy the residential dwelling units, provided such agreements are made expressly subject to the terms and conditions of this Easement. Grantor expressly conveys to Grantee the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from tenants, lessees, licensees, occupants, invitees, and users of the Property with Grantor's knowledge or consent.

All leases, including all short-term leases or rental agreements that confer rights of use or occupancy, must include reference to this Easement and include an obligation of the lessee to comply with the terms and conditions of this Easement.

7. Timber management. To conduct forest management activities and selectively harvest timber on the Property in accordance with all federal, state, and local laws, regulations, rules, and ordinances, provided such activities protect and minimize impacts to the Conservation Values, as further detailed below.

a. Select management for personal use and safety. Grantor reserves the right to remove select trees that present a hazard to persons or property, and to cut firewood, posts, and poles for personal use, solely under the criteria set forth in this paragraph. All timber removed by Grantor pursuant to this subparagraph 7a must be used or disposed of on the Property. Further, all timber removal must be conducted consistent with protection of the Conservation Values, including the scenic values set forth in Recital 3b. All timber management activities pursuant to this subparagraph must protect and minimize impacts to the Conservation Values and must not be destructive of other significant conservation interests within the meaning of Treasury Regulation §1.170A-14(e)(2). In connection with the upkeep, maintenance, and repair of permitted structures, Grantor specifically reserves the right to clear brush; to prune, trim, and remove trees; and to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes, all within the Building Envelopes described in paragraph 4 of this Exhibit B.

b. With prior written approval of an approved plan pursuant to Section IV. Upon obtaining the prior approval of Grantee as provided in Section IV hereof, Grantor may selectively harvest timber for the abatement of disease or insect infestations, and for sale, trade, exchange, or use off the Property, provided such harvest is conducted consistently with protection of Conservation Values and does not interfere with the essential scenic quality of the land. Grantor and Grantee recognize and agree certain limited timber harvest may be necessary or desirable for sound land management practices and for perpetual protection of the Conservation Values and desire to permit such harvest solely under the conditions in this paragraph. Any timber harvest permitted by this subparagraph 7b must be consistent with the conservation intentions of the parties as expressed in

this paragraph and in this Easement taken as a whole, must protect and minimize adverse impacts to the Conservation Values, and shall require preparation, at Grantor's expense, of a timber harvest plan by a qualified natural resource professional. Grantor shall contact Grantee prior to the preparation of a timber harvest plan to obtain the required information to be included in any such plan, in addition to evaluation of the criteria in this subparagraph, to ensure that the Conservation Values are protected in perpetuity. The timber harvest plan shall be furnished to Grantee in connection with Grantor's request for approval of any proposed timber harvest pursuant to this subparagraph 7b, and any timber harvest, if approved by Grantee as provided in Section IV hereof, shall be conducted in accordance with said plan. Grantor and Grantee will mutually determine the completeness of the timber harvest plan and its adherence to the general and specific intentions of this Easement prior to the approval of such plan and prior to the initiation of any timber harvest pursuant to this subparagraph 7b. Notwithstanding the foregoing, Grantee shall not approve any timber harvest plan which is inconsistent with perpetual protection of the Conservation Values or which permits the destruction of other significant conservation interests within the meaning of Treasury Regulation §1.170A-14(e)(2).

8. Fences. To construct, maintain, and repair fences, including livestock corrals, loading chutes, holding pens, and other enclosed fencing for temporary livestock management and transport, on the Property.

9. Roads. To repair, maintain, and improve existing roads on the Property, as delineated in Exhibit F and as documented in the Resource Documentation Report. Grantor also reserves the right to construct, repair, improve, and maintain new roads: (a) for farming, ranching, and other agricultural uses that are protected and preserved as Conservation Values in this Easement; (b) for access to the residential dwelling units and other structures, as permitted in this Exhibit B; or (c) for access to parcels transferred as permitted in this Exhibit B. New roads may not be paved or constructed of concrete, asphalt, or other impervious material that does not allow water to percolate into the soil, except inside the Building Envelopes. Any new roads must be sited and maintained so as to minimize adverse impact on the Conservation Values. New roads shall be subject to prior written approval of Grantee pursuant to Section IV to ensure that the Conservation Values are protected. Grantor's written notice shall include a construction plan describing the purpose of the road and how it is consistent with protection of the Conservation Values, its location on a topographic map, and, to the extent deemed necessary by Grantee, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns such as culvert placement, bridges, fords, buffer strips between roads and streams, and potential fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation on exposed road cuts, fills, and banks shall be required.

Grantor may grant right-of-way easements to neighbors over existing roads or over new roads that are constructed pursuant to the terms of this paragraph 9. Grantor may also grant right-of-way easements to appropriate governmental entities for the improvement and/or expansion of public roads bordering and/or traversing the Property. Any governmental entity seeking the right-of-way easement must document the public necessity of such easement in accordance with the provisions of Title 70, Chapter 30 of the Montana Code Annotated and other applicable laws pertaining to condemnation of real property interests for public uses.

10. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines (hereafter "utilities" and "utility services") upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements permitted by this Easement, solely under the criteria set forth in this paragraph. Any such utilities or utility services must be buried where technically and economically feasible, and must not impair the Conservation Values or permit destruction of other significant conservation interests, in Grantee's sole judgment. Within the Building Envelopes, Grantor retains the right to construct wind, solar,



hydroelectric, geothermal, and other types of renewable energy generation facilities (hereafter “renewable energy production”) solely for uses permitted on the Property by this Easement, except that any incidental surplus energy may be sold commercially for use off of the Property or credited to Grantor’s utility service (net metering). Grantor also retains the right to grant right-of-way easements for buried utility services to neighboring properties, provided that any such new right-of-way easements do not impair the Conservation Values protected by this Easement or permit destruction of other significant conservation interests, pursuant to Treasury Regulation §1.170A-14(e)(2).

With the prior approval of Grantee pursuant to Section IV of this Easement, Grantor may also permit the replacement, maintenance, and repair of existing utility distribution services running through the Property, including the construction of new electrical utility distribution lines to replace existing infrastructure (but not electrical transmission lines which are prohibited by Exhibit C, paragraph 10). Further, with prior approval of Grantee pursuant to Section IV, Grantor may grant associated right-of-way easements, if Grantor’s exercise of these reserved rights does not impair the Conservation Values protected by this Easement or permit destruction of other significant conservation interests, pursuant to Treasury Regulation §1.170A-14(e)(2). Grantee’s prior approval of new or upgraded utility distribution services and right-of-way easements will require submission by Grantor of a construction/installation plan to ensure that the Conservation Values are protected. Grantor shall contact Grantee prior to the preparation of the construction/installation plan to obtain the required information to be included in any such plan, which shall include, but not be limited to, a description of how such plan is consistent with protection of the Conservation Values. Grantor and Grantee will mutually determine the completeness of the utility construction/installation plan and its adherence to the general and specific intentions of this Easement prior to the approval of such plan. Any construction/installation, if approved by Grantee as provided in Section IV hereof, must be conducted in accordance with said plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Broadwater County, signed by Grantor, Grantee, and the utility service provider prior to beginning construction.

11. Rental. The leasing or rental for consideration of any residential dwelling unit, or portion thereof, on the Property for any term, including, but not limited to, short-term vacation rentals, is expressly permitted under this Exhibit B, paragraph 11.

12. Bed and breakfast business. To use the residential dwelling units on the Property, as described in this Exhibit B, paragraph 4, for the operation of a bed and breakfast business.

13. Guest ranching and eco-tourism. To use the Property, or to enter into agreements with third parties to enable them to use the Property for commercial guest ranching or eco-tourism. Any agreement between Grantor and others pertaining to the use of the Property for commercial guest ranching activities must be made expressly subject to the terms and conditions of this Easement. Consistent with this paragraph, Grantor may use all existing or subsequently constructed structures and improvements that are expressly permitted by this Easement or replacements thereof for guest ranching purposes. Notwithstanding any provision in this Easement that may be construed to the contrary, however, Grantor and third parties may not construct any facilities or structures on the Property, except as provided for in this Exhibit B, paragraph 4, specifically to accommodate guest ranching operations. Grantor and third party operators may use only permitted residential dwelling units for guest ranch lodging purposes.

14. Carbon. Grantor retains all rights relating to carbon, which are appurtenant to the Property, as such rights may exist on the date this Easement was executed, or as may be granted, discovered, created, declared, or developed in the future. Such carbon rights include, but are not limited to, the right to trade, sell, transfer, credit, or lease these rights, and the right to use, store,

sequester, accumulate, and/or depreciate carbon within the Property by flora that exists, or may exist, on the Property. This Easement shall be interpreted to enhance the security and economic viability of any such carbon rights appurtenant to the Property.

15. Commercial activities. Businesses, trades, professions, arts, crafts, and other commercial activities (hereafter “commercial activities”) that are consistent with protection of the Conservation Values are permitted within the Building Envelopes, including within the residential dwelling units, provided that any such business is not a sales or service business involving regular visits to the Property by the general public or delivery trucks. The retail sale of goods produced and manufactured by such businesses shall not take place on the Property.

With Grantee’s prior approval in accordance with Section IV, commercial activities that are small-scale and low-impact may be permitted outside the Building Envelopes, so long as such commercial activities are conducted in a manner consistent with the protection of the Conservation Values. Grantor’s request for prior approval of such commercial activities shall inform Grantee of the duration, location, and scale of the proposed activities, and such other information as Grantee may require to assess the impact of the proposed activities on the Conservation Values.

The provisions of this paragraph 15 do not apply to permitted uses addressed separately in this Easement, including, but not limited to, agricultural activities, timber harvests, commercial recreation, mineral activities, guest ranching, bed and breakfast operations, and rentals.

----- END EXHIBIT B -----



**EXHIBIT C  
PROHIBITED USES AND PRACTICES**

The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Easement and are expressly prohibited:

1. Subdivision. Grantor and Grantee mutually intend that the entire Property described in Exhibit A shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as no more than two (2) parcels under separate ownership, which may be joint and undivided. Even if the Property consists of more than one (1) parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one (1) parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Property as a whole, as well as each parcel transferred and conveyed. Therefore, except as provided in Exhibit B, paragraph 6, the division, subdivision, or de facto subdivision of the Property is expressly prohibited. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions in kind among tenants-in-common or joint tenants, judicial partitions in kind, partitions in kind in bankruptcy, allocation of title among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, time-share or interval ownership arrangements, or other process, including tax sales, by which the Property is divided into lots or in which title to different portions of the Property are held by different owners. Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

2. Mineral removal. Surface mining or removal of any minerals or materials by surface mining methods is prohibited pursuant to Section 170(h)(B)(5) of the Code. Exploration for, or the removal or extraction of any subsurface mineral or non-mineral materials or substance, including, but not limited to oil, gas, and hydrocarbons, by any subsurface mining or extraction method is prohibited except as provided in Exhibit B, paragraph 5.

3. Alteration of land surface or natural waters. Except as expressly provided for in Exhibit B or in necessary conjunction with a use permitted by Exhibit B, the alteration of the surface of the land, or the adverse change in or to any natural water courses, wetlands, or natural bodies of water. Alteration of the surface of the land includes, but is not limited to, the movement, excavation, or removal of soil, rock, peat, or sod. Nothing in this paragraph shall be interpreted to preclude Grantor from taking emergency actions to mitigate flooding, or engaging in activities that restore or enhance the Conservation Values or otherwise further the conservation purposes of this Easement.

4. Commercial activities and facilities. The establishment of any commercial or industrial activities or facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement). Prohibited activities and facilities include, but are not limited to, commercial feed lot, retail sales businesses, service businesses (except as provided in Exhibit B, paragraphs 12 and 13), restaurants, night clubs, campgrounds, trailer parks, motels, hotels, commercial recreation facilities, gas stations, retail outlets, or facilities for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).

5. Dumping. The dumping or other disposal of non-compostable refuse on the Property, except nonhazardous wastes generated by activities permitted in Exhibit B, including any forest management and timber harvest operations, and provided such dumping does not harm the Conservation Values or permit destruction of other significant conservation interests.

6. Construction. The construction or placement of any improvements, buildings, or other structures, except for those specifically permitted in Exhibit B.

7. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles is prohibited, provided, however, Grantor may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4; and Grantor and Grantor's guests may park and use campers, trailers, or recreational vehicles on the Property on a temporary basis to accommodate short-term visitation. Except as provided in Exhibit B, paragraph 4, campers, trailers, or recreational vehicles may not be inhabited or used as residential dwelling units.

8. Billboards. The construction, maintenance, or erection of any billboards. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.

9. Roads. The construction of roads, and granting or reservation of right-of-way easements across or upon the Property, except as permitted in Exhibit B, paragraph 9.

10. Utilities. The construction of utilities, utility services, or utility infrastructure, except as permitted in Exhibit B, paragraph 10; the granting of utility transmission lines and utility transmission corridor right-of-way easements; and the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements.

11. Game, fur, or fish farms. The raising or confinement for commercial purposes of (i) "alternative livestock" and "game animals" as defined in MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "non-game wildlife" as defined in MCA Section 87-5-102(6), or its successor statute.

12. Timber harvest. Except as provided in Exhibit B, paragraph 7, the harvest of timber on the Property is prohibited.

----- END EXHIBIT C -----

**EXHIBIT D**  
**ACKNOWLEDGMENT OF RESOURCE DOCUMENTATION SITE VISIT REPORT**

In accordance with Treasury Regulation §1.170A-14(g)(5)(i), DREAMING FIELDS, LLC, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and THE MONTANA LAND RELIANCE of Helena, Montana, as Grantee of said Easement, hereby mutually acknowledge, declare, and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Property which shall be subject to this Easement.
2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.
3. The documentation was compiled by a representative of Grantee on a site visit to the Property on October 15, 2020, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.
4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of the condition of the Property to be subject to this Easement at the time of its grant.
5. Additional information and documentation will be gathered as historical, government, and archival documents and aerial photographs are made available to Grantor and Grantee.
6. Grantor and Grantee further agree that a final Resource Documentation Report shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final Resource Documentation Report shall be reviewed and approved in final form by both Grantor and Grantee, and shall be on file with Grantee in Grantee's normal place of business.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

GRANTOR: DREAMING FIELDS, LLC  
a limited liability company

By: \_\_\_\_\_  
[Name and title]

GRANTEE: THE MONTANA LAND RELIANCE,  
a corporation

By: \_\_\_\_\_  
[Name and title]



**EXHIBIT E**  
**SAMPLE OF FORM TO BE USED FOR**  
**ACKNOWLEDGMENT OF VALUE OF THE DREAMING FIELDS, LLC**  
**CONSERVATION EASEMENT**

DREAMING FIELDS, LLC, of Three Forks, Montana, Grantor of a Deed of Conservation Easement dated \_\_\_\_\_, 20\_\_\_\_, and recorded on \_\_\_\_\_, 20\_\_\_\_, as Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana; THE MONTANA LAND RELIANCE, of Helena, Montana, Grantee of said Conservation Easement; and, \_\_\_\_\_, appraiser of the property subject to the Conservation Easement, (hereinafter the "Property"), hereby acknowledge, declare, and agree as follows:

1. That Grantor's qualified appraisal determined the value of the Property immediately prior to encumbrance by the grant of the Conservation Easement to be \$\_\_\_\_\_, and determined the value of the Property immediately after the conveyance of the Conservation Easement to The Montana Land Reliance to be \_\_\_\_\_ (\$\_\_\_\_\_). Therefore, Grantor's qualified appraisal determined the fair market value of the Conservation Easement on the date of the grant to be \_\_\_\_\_ (\$\_\_\_\_\_).

2. That for purposes of compliance with Treasury Regulation §1.170A-14(g)(6), and pursuant to Section X of the Conservation Easement and the figures set forth in paragraph 1 above:

a. the numerator to be used in the calculation of the Proportionate Share is the fair market value of the Conservation Easement on the date of the grant, which was \$\_\_\_\_\_;

b. the denominator to be used in the calculation of the Proportionate Share is the fair market value of the Property as a whole, without deduction for the value of the Conservation Easement, on the date of the grant, which was \$\_\_\_\_\_;

c. The Proportionate Share established by the fraction created by the numerator and denominator above, expressed as a percentage, equals \_\_\_\_\_ percent (\_\_\_\_%).

The original of this Acknowledgment is to be retained in the files of The Montana Land Reliance, or its successors and assigns, at its normal place of business.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DREAMING FIELDS, LLC

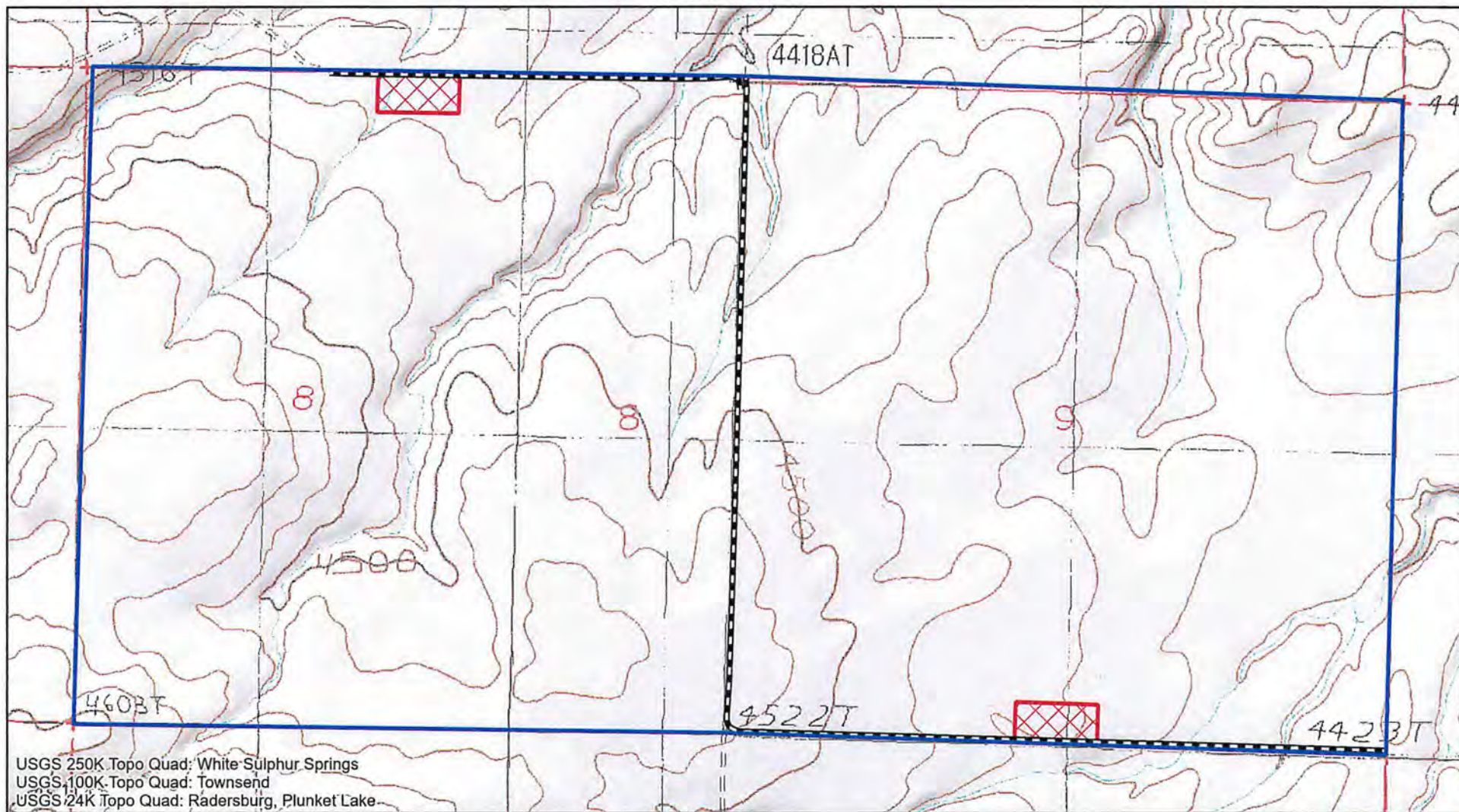
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\_\_\_\_\_  
THE MONTANA LAND RELIANCE


\_\_\_\_\_  
DATE


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APPRAISER

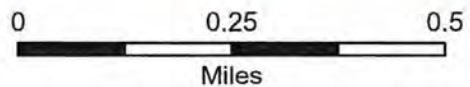
# EXHIBIT F



 Easement Boundary

 Building Envelopes

 Existing Roads



Location: T3N, R1E, Sections 8 & 9



Folkvord (Dreaming Fields) II  
Map Creation Date: September 14, 2020

