



Protecting Montana's  
Open Landscapes

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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 the Round Grove Ranch Company (Ingalls) on a potential conservation easement on a portion of their 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.

## ROUND GROVE RANCH I (HOME-SOILS)

The Ingalls Family (owners of the Round Grove Ranch) would like to work with the Reliance and the Department of Agriculture (through the Natural Resource and Conservation Services (NRCS) Agricultural Land Easement (ALE) program) to place a conservation easement on a portion of their ranch. This 3,456-acre parcel is primarily the farming unit and also encompasses all of the development on the ranch. This land qualifies as a soils project under the ALE program with 49.3 percent of the land classified as "prime farmland if irrigated; and 12.43 percent classified as "farmland of statewide importance" (the remainder is grassland).

The Round Grove Ranch is primarily a sheep operation, but the family runs a number of cattle on the ranch as well. The Ingalls Family is a long-time farming and ranching family in the valley, with family members serving on the Conservation District Board at various times over the last 10 years, participating in local 4-H activities, and serving on various community boards (i.e., hospital, museum, library). The family hosts annual field trips for elementary school children each spring during lambing season as part of their efforts to educate "city kids" about production agriculture.

The ranch lies on the east side of Canyon Ferry Lake, approximately 9 miles northeast of Townsend. Highway 284, the major route to Canyon Ferry Lake on the east side, runs through the lower ranch. Two county roadways (Gurnett Creek and North Ray Creek) run through the property and provide access for various agricultural lands in the area. Gurnett Creek and the North Fork of Ray Creek traverse this portion of the ranch. The ranch is host to a number of whitetail and mule deer, elk, bear, grey wolves, turkeys, and a variety of birds, including the bald and golden eagle, various hawk species, pheasant, and a variety of songbirds.

### Human Development:

#### Existing:

- Various pivots.
- Three existing residential dwelling units with associated garages and outbuildings are located in two building envelopes consisting of 17 acres.
- One inhabitable homestead.
- Agricultural buildings including lambing/calving barns, corrals, sheds, etc.

#### Permitted:

- Allow for two additional residential dwelling units. Building envelopes will be placed around each of the residential dwelling units and consist of 5-12 acres.
- Allow for three agricultural building envelopes (11 acres, 22 acres, and 20 acres) designated around the lambing/calving barns, corrals, etc., as they are located away from the residential dwelling units.
- Allow for one bed and breakfast in a residential dwelling unit.
- The property would transfer in no more than two parcels.

### Relationship to MLR Goals:

The easement would protect open space, scenic views, and valuable agricultural land in Broadwater County.

**Relationship to IRS Code:**

The property is visible to the public traveling county roadways, along with Highway 284 and Highway 12. Portions of the property are adjacent to Forest Service, Bureau of Land Management, or state lands.

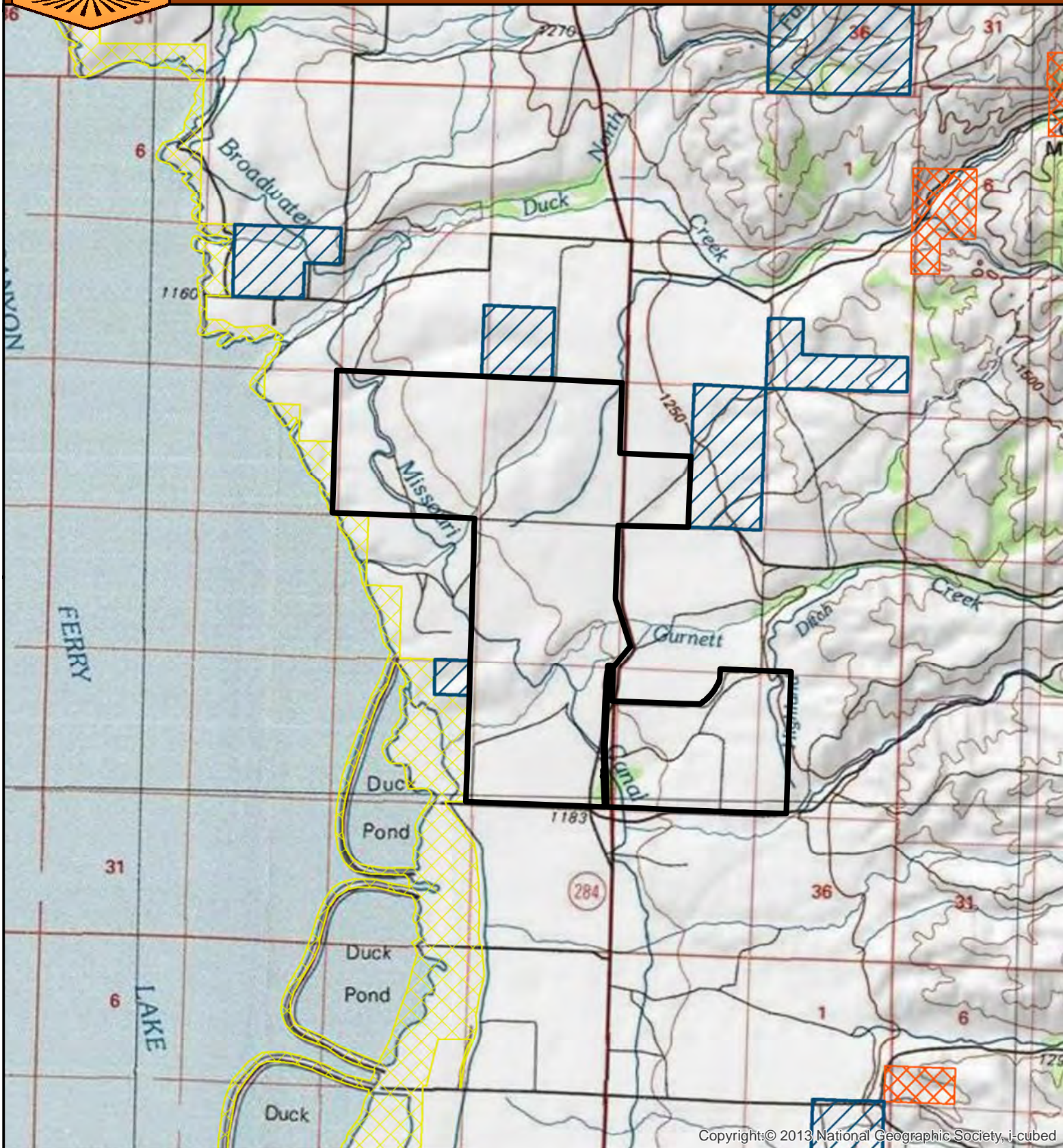
**Relationship to MLR Resources:**

The landowners have agreed to pay the project costs associated with completing the easements and to make a donation to the Land Protection Fund.


**Potential Issues and Challenges:**

ALE Program applications and easement projects take a large amount of staff time.

Staff contact for the project is Lois Delger-DeMars,



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 Subject Property

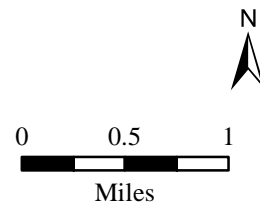
Property Acreage: 3,568

 BOR

 BLM

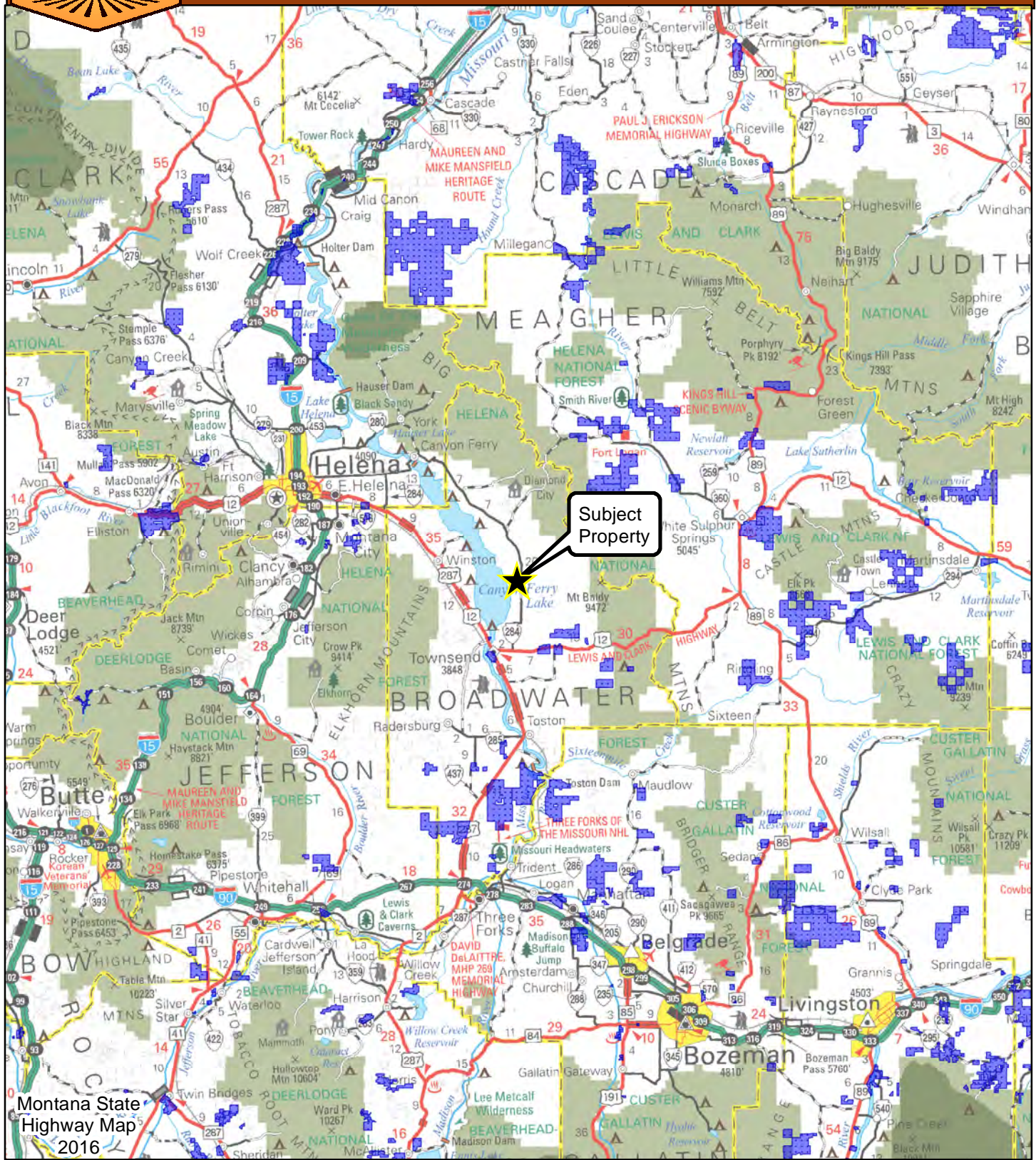
The National Land Cover Database (NLCD) Percent Tree Canopy Collection is a product of the U.S. Forest Service (USFS), and is produced through a cooperative project conducted by the Multi-resolution Land Characteristics (MRLC) Consortium ([www.mrlc.gov](http://www.mrlc.gov)).

Map Created By: kim Created On: January 24, 2019  
Projected Coordinate System: NAD 1983 State Plane Montana FIPS 2500





# ROUND GROVE RANCH (HOME)



Subject Property

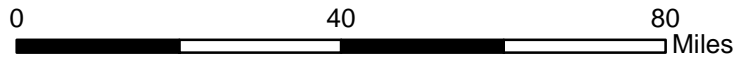
Map Created By: kim  
Map Creation Date: January 24, 2019



Subject Property



MLR Conservation Easements



1:1,500,000



*AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:*

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

## DRAFT

October 28, 2020

ROUND GROVE I (SOILS)

### DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, **ROUND GROVE RANCH COMPANY**, a Montana corporation, with a mailing address of 3437 Highway 284, Townsend, Montana 59644 (hereinafter together with its successors and assigns collectively referred to as "Grantor"), **THE MONTANA LAND RELIANCE**, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee"), and with a right of enforcement conveyed to the **UNITED STATES OF AMERICA** (the "United States"), acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC"), and as its interest appears herein.

This Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq., and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property. Baseline conditions of the Protected Property are set forth in a Resource (Baseline) Documentation Report, a copy of which is maintained in the files of Grantee and in the office of the Montana NRCS, as further described in Section IX of this Easement.

#### 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 herein by this reference, which totals approximately 3,456 acres (hereinafter referred to as the "Protected Property"); and,
2. The Protected Property includes significant open-space land, as defined in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,
3. Preservation of the Protected 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, 2,145 acres (sixty-two percent {62%}) of which are designated as agriculturally significant by NRCS, and which maintain the rural, agricultural, and natural scenic qualities of the area 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. Retention of important farmland, including, prime, prime if irrigated, and important statewide and locally important soils, as designated by NRCS; and,

c. Open-space lands which preserve scenic views of historic Montana landscapes and the Canton Valley for the enjoyment of the general public traveling on Highway 284, Lower Gurnett Creek Road, Gurnett Creek Road, Dry Gulch Road, and Lower Dry Gulch Road, public roadways that border or traverse the Protected Property, and the general public recreating on Canyon Ferry Lake and adjacent public lands; and,

d. 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 whitetail and mule deer, elk, moose, and a variety of birds, including the bald and golden eagle, various hawk species, pheasant, and various songbirds, all of which use the Protected Property

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

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

a. The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., which facilitated and provided funding for the purchase of this Easement, for the purpose of protecting grazing uses, protecting and providing habitat for threatened, endangered, or at-risk species, protecting sensitive or declining native grasslands, and protecting related conservation values; and,

b. Broadwater County, Montana, Commissioners have expressly recognized in the Broadwater County Growth Policy, adopted in July, 2003, 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,

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

d. 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 Protected 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 Protected Property is in proximity to other private lands protected by conservation easements, which preserve scenic and open-space resources in the Canton Valley and Big Belt Mountains, 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);

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 Protected Property, and therefore preservation of the Protected Property will yield significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(2);

c. The Protected Property is adjacent to the Canyon Ferry Wildlife Management Area and Montana State Trust Lands, which are managed by state and federal governmental agencies for conservation purposes, including for water quality and maintenance, conservation of open space, and protection of fish and wildlife habitat, and therefore the proposed open space use is consistent with public programs for conservation in the region and will provide significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(3); and,

d. Development of the Protected 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 Protected Property, owns the rights to identify, preserve, and protect in perpetuity the Conservation Values of the Protected 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 Protected Property; and,

8. Grantor, Grantee, and NRCS acknowledge that this Easement is acquired by Grantee for the purpose of protecting the agricultural use and future viability, and related Conservation Values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, open space, and wildlife habitat. This Easement protects 2,145 acres of prime, unique, or other productive soil which is sixty-two percent (62%) of the Protected Property; and,

9. 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;

NOW, THEREFORE, for Ten Dollars and No 100's (\$10.00) paid by the United States, and other good and valuable consideration, including Grantor's express intention and agreement to make an absolute, unconditional, unrestricted, irrevocable, and voluntary gift of part of the value of this Easement, and in further consideration of the mutual promises and covenants contained in this Easement, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, and to the United States, as its interests appear herein, this perpetual Easement with warranties of title on, over, and across the Protected Property, in accordance with the terms and conditions set forth below. Except for the bargain purchase consideration paid to Grantee by the United States as set forth in Section I, paragraph D, Grantee acknowledges that no goods or services were received 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, including protecting agricultural use and related Conservation Values, and to prevent any use of, or activity on, the Protected Property that will significantly impair the Conservation Values. A further purpose of this Easement is to ensure that the Protected Property remains available for agricultural uses. In achieving these purposes, it is the mutual intent of Grantor and Grantee to permit the continuation of such uses of the Protected Property as 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 Protected 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 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 the land and burden title to the Protected Property in perpetuity and shall bind Grantor, including all future owners and tenants, Grantee, and their respective successors, agents, assigns, lessees, licensees, occupants, invitees, and users of the Protected Property, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this Easement.

C. **Dedication.** The Protected 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.

D. **Agricultural land protection.** The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of this Easement, for the purpose of protecting the agricultural use and future viability, and related Conservation Values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property.

Therefore, in order to ensure compliance with the Agricultural Conservation Easement Program, any activities that are inconsistent with the purposes and terms of this Easement are prohibited. Notwithstanding any other provision of this Easement, Grantor, Grantee and NRCS agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in this Easement, including Exhibits B and C. If any of the terms and conditions in this Easement are inconsistent with one another, the more restrictive terms and conditions will control.

**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 Protected Property, including, but not limited to, its significant open space and relatively natural features, wildlife habitat, 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 Protected Property existing at the time of conveyance of this Easement and not subordinated to this Easement. Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose, or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

B. Access. To enter upon the Protected 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 Protected Property by Grantor. Any access by Grantee to monitor the Protected Property shall be reasonably scheduled ahead of said access. Grantee shall also have the limited right to enter the Protected Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Protected 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. Access is expressly limited to Grantee, as provided in the preceding sentence, and to employees, agents, and contractors of the United States to monitor and enforce its rights pursuant to this Section II and Section V, paragraph F. The Protected Property is accessible, for monitoring and enforcement purposes, by Highway 284, Lower Gurnett Creek Road, Gurnett Creek Road, Dry Gulch Road, and Lower Dry Gulch Road, public roadways that run near the Protected Property. Aside from the rights of access granted to Grantee and the United States in the preceding sentences of this Section II, paragraph B, this Easement does not grant to Grantee, to the United States, nor to the public, any rights to enter upon the Protected Property.

C. Injunction and restoration. To enjoin any activity on, or use of, the Protected 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, and to enforce the reasonable restoration of such areas or features of the Protected Property as may be damaged by such activity or use.

D. The United States' right of enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under state or federal law if Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce this Easement against Grantor, up to the amount of the United States' contribution to the purchase of this Easement.

E. The United States' rights of inspection and entry. Grantee will annually monitor compliance with the terms and conditions of this Easement and provide the United States with an annual monitoring report that documents that Grantee and Grantor are in compliance with this Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of this Easement and the United States Cooperative Agreement with Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide twenty (20) days advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency using a reasonable person standard, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Easement and will give notice to Grantee and Grantor at the earliest practicable time.

### **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 Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein, that do not destroy or impair the Conservation Values, and that are not inconsistent with the terms and 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.

B. Prohibited uses. Any activity on, or use of, the Protected 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.

C. Agricultural Land Easement Plan. Grantee shall prepare an agricultural land easement plan (the "ALE Plan") in consultation with Grantor and as needed NRCS. Grantee agrees to update the ALE Plan, in consultation with Grantor and as needed NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with Grantee. The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible land on the Protected Property. If the NRCS standards and specifications for highly erodible land are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with Grantor and Grantee to develop and implement a revised conservation plan.

### **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) 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 and/or NRCS's approval is expressly required, or which may have an adverse impact on the Conservation Values, Grantor must send Grantee and/or NRCS written notice of the intention to commence or undertake such enterprise, use, or activity. Said notice must inform Grantee and/or NRCS 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 and/or NRCS with an address to which Grantee's and/or NRCS's responses 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) 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.

Notification of the United States and/or NRCS (including the Chief of NRCS) is required when the United States has exercised its enforcement rights under this Easement or where specifically required under the provisions of this Easement. Grantor shall address the United States' notice to the State Office of NRCS at Federal Building, Room 443, 10 E. Babcock St., Bozeman, MT 59715, or to such other address as Grantor from time to time may be informed of in writing by NRCS.

C. Time for Grantee's response. Grantee shall, within thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to 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. Grantee agrees to use reasonable diligence to respond within the time frames set out above, but approval shall not be deemed to have been given in the event of Grantee's delay in response.

D. Grantee's response to requests for approval. Except as provided in paragraph E of this Section IV, 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, provided to Grantor in writing, that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's reasonable 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 Protected 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 and NRCS 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 the terms 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 Protected Property resulting from any use or activity inconsistent with the purposes or terms of this Easement, to restore the portion of the Protected Property so injured to the condition that existed prior to the injury. 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 require the restoration of the Protected Property to the condition that existed prior to any such injury, and to recover any damages to which it may be entitled for violation of the terms of this Easement.

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 Protected 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 or Grantor in enforcing the terms of this Easement against each other, including reasonable costs of suit and attorneys' fees and any costs of restoration necessitated by either party's violation of the terms of this Easement shall be awarded to the prevailing party.

C. Grantee's discretion. 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 Protected 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 Protected Property resulting from such causes.

F. Enforcement rights of the United States - NRCS. The United States is granted contingent rights of enforcement of this Easement, as set forth in Section II, paragraphs D and E.

G. 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 G, 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 Protected 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 Protected 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 Protected Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Protected Property and therefore Grantor controls day-to-day activities on, and access to, the Protected Property, except for the limited rights conveyed to Grantee to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Except as specifically provided in paragraph C of this Section VII, 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 Protected Property shall remain with Grantor as a normal and customary incident of the right of property ownership. For the purposes of this Section VII, the benefits (but not the obligations) of 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.

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 Protected Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

## SECTION VIII

### Assignment of Easement

This Easement and its benefits shall be assignable by Grantee subject to the prior written approval of the United States by and through NRCS. Grantee may transfer or assign the benefits of 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, a "qualified private organization," within the meaning of Sections 76-6-104(5) and 76-6-204, MCA, and,

furthermore, the assignee must be organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h)(4)(A) of said Code. Any such qualified organization 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 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.

Nothing in this Section VIII shall be deemed to diminish or be inconsistent with the rights of the United States as set forth in Section II, paragraph D and E, and Section V, paragraph F.

Pursuant to Section 70-17-111(2), MCA, Grantor, Grantee, and the United States expressly acknowledge and agree that merger of ownership of this Easement and the fee interests in the Protected Property shall not extinguish or terminate any of the terms, conditions, rights, and restrictions in this Easement.

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

Grantor and Grantee agree that the natural characteristics, ecological features, and physical and man-made conditions of the Protected Property on the date of this Easement are documented in a Resource Documentation Report prepared by Grantee and signed and acknowledged by Grantor establishing the condition of the Protected Property on the date of this Easement and including reports, maps, photographs, and other documentation. The parties hereby agree that the information compiled within the Resource Documentation Report accurately represents the condition of the Protected Property as of the date of the grant of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The original Resource Documentation Report is, and shall remain, on file with Grantee and in the office of Montana NRCS.

The parties intend that the documentation shall be used by Grantee to monitor Grantor's compliance with the terms and conditions of this Easement, and Grantee may use the Resource Documentation Report in enforcing provisions of this Easement, but Grantee is not limited to the use of the Resource Documentation Report to show a change of conditions. If the Resource Documentation Report contains any summaries of, or representations about the terms or conditions of this Easement, the parties agree and intend that 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. The Resource Documentation Report is incorporated into this Easement by reference.

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

A. **Extinguishment and condemnation – ALE requirements.** This Easement vests a real property interest in Grantee and a right of enforcement in the United States and Grantee. These rights and interests may only be extinguished with the necessary approval of Grantee, and the United States, as specified in this Easement. Due to the federal interest in this Easement the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its federal interest in the Protected Property.



With respect to a proposed extinguishment, termination, or condemnation action Grantor, Grantee, and the United States stipulate that the appraised fair market value of this Easement for bargain-sale acquisition purposes totals \$ *insert applicable number*. The United States contributed *insert applicable number* dollars (\$ *insert applicable number* or *insert applicable number* percent (*insert applicable number* %) of the acquisition value of the Easement, and Grantee contributed *insert applicable number* dollars (\$ *insert applicable number* or *insert applicable number* percent (*insert applicable number* %) of the acquisition value of the Easement (collectively referred to as the "Bargain Purchase Price"). The difference between the appraised fair market value of the Easement for acquisition purposes and the Bargain Purchase Price, *insert applicable number* dollars, or *insert applicable number* (*insert applicable number* %) of the value of the Easement, represents the value that Grantor contributed or donated to Grantee toward the acquisition of this Easement. The sum of these contributions as divided by the fair market value of the land unencumbered by this Easement (\$ *insert applicable number*) at the time of the creation of this Easement is hereinafter referred to as the "Proportionate Share." The Proportionate Share equals *insert applicable number* percent (*insert applicable number* %) of the appraised fair market value of the Protected Property unencumbered by this Easement at the time of its creation and will remain constant over time.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then Grantor must reimburse Grantee and the United States in an amount of proceeds equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this Easement after extinguishment, termination or condemnation in accordance with this paragraph A and, if a federal income tax deduction is claimed by Grantor, in accordance with paragraph B below. The fair market value of the Protected Property for the purposes of determining the proceeds due to the parties will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned.

Unless otherwise provided in paragraph B, the allocation of the proceeds received after Easement extinguishment, termination, or condemnation between Grantee and the United States will be as follows: (a) to Grantee or its designee, *insert applicable number* percent (*insert applicable number* %) of the Proportionate Share, or the proportionate value established by paragraph B below, whichever is greater; and (b) to the United States *insert applicable number* percent (*insert applicable number* %) of the Proportionate Share (less the higher amount of proceeds due to Grantee required by the Treasury Regulations in paragraph B, if applicable). Until such time as Grantee and the United States receive the Proportionate Share from Grantor or Grantor's successors or assigns, Grantee and the United States shall have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, as required by paragraph B below, or to the United States, each party agrees to reimburse the other parties up to the amount of the allocation of Proportionate Share to which they are entitled, as set forth in this paragraph A, unless the federal Treasury Regulations require otherwise. Grantee agrees that all such proceeds it receives from termination, extinguishment, or condemnation must be used in a manner which is consistent with the conservation purposes of this Easement. If Grantee receives more than its Proportionate Share as set forth in this paragraph A because of the Treasury Regulation requirements of paragraph B below, Grantee must obtain the United States' written approval of its use of such additional funds to achieve conservation purposes that are consistent with the purposes of this Easement.

B. Extinguishment and condemnation for purposes of a federal income tax deduction. As provided for in Section 1.170A-14(g)(6)(i) of the Treasury Regulations, if a subsequent unexpected change in the conditions surrounding the Protected Property arise in the future which makes impossible or impractical the continued use of the Protected Property for the conservation purposes

set forth herein, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. For the purposes of Grantor's claim of a federal income tax deduction under IRC Section 170(h) and associated Treasury Regulations, the fair market value of the Easement at the time of condemnation, termination, or extinguishment shall be determined by multiplying the fair market value of the Protected Property unencumbered by the Easement at the time of termination by the ratio of the value of the Easement at the time of this grant to the value of the Protected Property without deduction for the value of the Easement at the time of the grant. The ratio referred to in the preceding sentence shall be established by a qualified appraisal for federal income, gift and estate tax deduction purposes, pursuant to Treasury Regulation §1.170A-13 and §1.170A-14(h), and the ratio shall remain constant.

Pursuant to Treasury Regulation §1.170A-14(g)(6)(ii), after termination of this Easement, in whole or in part, on a subsequent sale, exchange, or involuntary conversion of the Protected Property, Grantee must be entitled to a portion of the proceeds that is at least equal to the proportionate value of the Easement as established by this paragraph B. All of Grantee's proceeds, as determined above, must be used by Grantee in a manner consistent with the conservation purposes of the original contribution.

## SECTION XI

### Grantor's Representations and Warranties

A. General warranties and representations. Grantor represents and warrants on behalf of itself and its employees and agents, after reasonable investigation and to the best of its knowledge, as of the date of the conveyance of this Easement:

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

2. 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 Protected 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 Protected Property, in violation of applicable law.

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

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

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

6. 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 Protected 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.

B. The United States' general disclaimer and general warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any federal, state, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Easement or violations of any federal, state, or local laws, including all Environmental Laws (defined below).

C. Grantor's Environmental Warranty. For the purposes of this Easement, the terms "Environmental Law" and "Environmental Laws" mean any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker, and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

For the purposes of this Easement, the term "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws with respect to the Protected Property. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that they have no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law. Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath, or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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 Protected Property or to become an "owner" or "operator" of the Protected 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.

## 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 in interest 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 they convey any interest in the Protected 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 Protected Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantor to use the Protected 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 shall immediately provide Grantee with notice, as provided by Section IV, paragraph B, and a copy of any lawsuit or administrative action involving the Protected Property or which threatens the integrity of this Easement, and Grantor agrees not to object to Grantee's or NRCS's intervention in any such lawsuit or action. Such lawsuit or action can 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 Protected 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 and of the United States shall govern resolution of such dispute, without regard to conflict of laws.

H. Amendment. This Easement may be amended only if, in the sole and exclusive judgment of Grantee and the United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations, including MCA Section 76-6-101, et seq., and the Code. 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 or the perpetual protection of the Conservation Values. 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, 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 must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recording of the amended Easement in Broadwater County, such amendments must be mutually agreed upon by Grantee, Grantor, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States will be considered null and void.

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 Protected 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: ROUND GROVE RANCH COMPANY,  
a corporation

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

Its: \_\_\_\_\_

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

This instrument was signed or acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_ acting in the capacity of \_\_\_\_\_ on behalf of Round Grove Ranch Company.

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

Affix seal/stamp as close to signature as possible.

GRANTEE: THE MONTANA LAND RELIANCE,  
a corporation

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

Its: \_\_\_\_\_

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 8 North, Range 2 East, M.P.M., Broadwater County, Montana

- Section 14: SW $\frac{1}{4}$  less Hwy  
Section 15: All  
Section 16: All  
Section 22: E $\frac{1}{2}$ ; E $\frac{1}{2}$ NW $\frac{1}{4}$ ; W $\frac{1}{2}$ NW $\frac{1}{4}$ ; SW $\frac{1}{4}$   
Section 23: 17.42 acre tracts in W $\frac{1}{2}$ W $\frac{1}{2}$   
Section 25: W $\frac{1}{2}$ W $\frac{1}{2}$   
Section 26: E $\frac{1}{2}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , EXCLUDING THEREFROM the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  SW $\frac{1}{4}$   
and the N $\frac{1}{2}$ SW $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$   
Section 27: ALL W of Hwy and 15.67 ac E of Hwy, EXCLUDING THEREFROM all that  
part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  lying east of Highway 12

**ALL OF THE FOREGOING DESCRIBED PROTECTED PROPERTY IS CONVEYED SUBJECT TO all third party rights of record in the Protected 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 and grasslands. The provisions of this Easement will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property (except feedlots which are expressly prohibited), so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purpose of this Easement. No uses will be allowed that violate federal laws, including federal drug laws, or that decrease the Easement's protection for the purpose of this Easement. Allowed agricultural uses of the Protected Property include the production, processing, and marketing of agricultural crops and livestock consistent with the terms of this Easement and the ALE plan.

2. Recreational use. To use the Protected 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 Protected Property must remain consistent with protection and preservation of the Conservation Values, including maintaining the Protected Property for the purpose of this Easement. Any agreement between Grantor and outfitters or guides pertaining to the use of the Protected Property for commercial recreation, including hunting and fishing, shall not be considered a prohibited commercial use of the Protected 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. The Protected Property may also be used (i) by Grantor and Grantor's invitees, and (ii) in conjunction with the bed and breakfast business and/or the guest ranching business if developed in accordance with this Exhibit B, paragraphs 12 and 13. All existing and subsequently constructed structures and improvements that are permitted by this Easement in the Building Envelopes defined in this Exhibit B, paragraph 4d, and Exhibit E, 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. All uses of the Protected Property pursuant to this paragraph 2 must remain compatible with permitted agricultural and forestry operations.

3. Water resources and surface alteration. Subject to the impervious surface limitation referenced in Exhibit C, paragraph 11, Grantor reserves the right to maintain, enhance, and develop water resources on the Protected Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation. Permitted uses include, but are not limited to, the following: to locate, construct, repair, and maintain irrigation systems; to develop stock watering facilities; and the right to restore and enhance existing water resources.

Further, Grantor retains the right, with prior approval of Grantee pursuant to Section IV, to develop new ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation; erosion and sediment control; soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purpose of this Easement; and, agricultural activities and related conservation



activities conducted in accordance with the terms and conditions of this Easement and the ALE plan as described in Section III, paragraph C.

4. Maintenance and structures. Subject to the impervious surface limitation referenced in Exhibit C, paragraph 11, 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 Protected Property:

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 contained within associated outbuildings and agricultural structures as set forth in subparagraphs 4b and 4c below, guest houses, employee houses, and cabins. No more than five (5) residential dwelling units, including the three (3) existing residential dwelling units and two (2) additional residential dwelling units are permitted on the Protected Property. All residential dwelling units must be located within “Residential Building Envelopes as defined in subparagraphs 4(d)(i) and (ii), and must be constructed on permanent foundations. Mobile homes, trailers, or other moveable living units not on permanent foundations and used for human habitation or occupancy are not permitted on the Protected Property, except in connection with permitted agricultural uses of the Protected Property as provided in subparagraph 4e below. No other permanent habitations, living, or sleeping quarters are permitted.

b. Associated outbuildings. Non-residential outbuildings that are used in association with the existing and permitted residential dwelling units, including, but not limited to, garages, workshops, sheds, and recreational facilities (hereinafter “associated outbuildings”). All associated outbuildings must be located within Residential Building Envelopes as defined in subparagraphs 4d(i) and (ii) below.

c. Agricultural structures. Non-residential structures and other improvements used for agricultural purposes, including, but not limited to, barns, shelters, sheds, and corrals (hereinafter “agricultural structures”) may be constructed within the “Agricultural Building Envelopes” delineated in Exhibit E, or within Residential Building Envelopes defined in subparagraphs 4d(i) and (ii) below. With prior written approval of Grantee, agricultural structures not constructed or placed on permanent foundations, including, but not limited to, livestock corrals, three-sided livestock/wind/loafing/ calving shelters, and hay storage areas may be located anywhere on the Protected Property, provided that such agricultural structures neither individually nor collectively have an adverse impact on the purpose of this Easement. For the purposes of this Easement, the term “agricultural structures” does not include indoor riding arenas,. One (1) indoor riding arena is permitted on the Protected Property. The one (1) permitted indoor riding arena must be located within one of the Agricultural Building Envelopes delineated in Exhibit E.

d. Building Envelopes. All new or replacement structures and improvements must be located within the Building Envelopes delineated in Exhibit E, as further provided in this subparagraph.

(i) Existing Residential Building Envelopes. The three (3) existing residential dwelling units and all of their associated outbuildings and agricultural structures are located within the two (2) existing “Residential Building Envelopes” delineated in Exhibit E. The existing Residential Building Envelopes together contain approximately seventeen (17) acres. New associated outbuildings and agricultural structures are permitted within the existing Residential Building

Envelopes. Further, Grantor may construct any permitted additional residential dwelling units within existing Residential Building Envelopes.

(ii) *Potential Residential Building Envelopes.* Grantor retains the right to select up to two (2) of the five (5) "Potential Residential Building Envelopes" delineated on Exhibit E as designated Residential Building Envelopes. The Potential Residential Building Envelopes range in size from five (5) to twelve (12) acres. Prior to beginning construction of any structure within any Potential Residential Building Envelope, Grantor shall provide notice to Grantee pursuant to Section IV of Grantor's designation of such Potential Residential Building Envelope as one of the up to two (2) designated Residential Building Envelopes within which construction may occur. No structures are allowed within any Potential Residential Building Envelope until such designation is noticed to Grantee. After such designation, Grantor may construct any permitted additional residential dwelling units, associated outbuildings, and agricultural structures within such designated Residential Building Envelope.

(iii) *Agricultural Building Envelopes.* Agricultural structures described in subparagraph 4c may be located within the Agricultural Building Envelopes delineated in Exhibit E. The three (3) Agricultural Building Envelopes consist of approximately eleven (11), twenty-two (22), and twenty (20) acres, respectively.

The purposes of the Building Envelopes are to limit development to locations on the Protected Property consistent with preservation and protection of the Conservation Values, 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 Protected Property. If necessary, wells and drain fields may be located outside of the Building Envelopes.

e. Sheep wagons. Grantor and Grantee acknowledge that at the time of this grant, the Protected Property is operated as an active sheep operation. As such, Grantor reserves the right to place sheep herder wagons and other simple portable structures without permanent foundations on the Protected Property on a temporary basis, provided that the use or placement of any such temporary structures does not adversely impact the Conservation Values.

f. 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.

g. Structural remains. At the time of this grant, there is one (1) uninhabitable homestead residence and several associated structures on the Protected Property as delineated in Exhibit E. Grantor reserves the right to remove these structures from the Protected Property. At no time may these structures be repaired, replaced, utilized, or occupied as residential dwelling units pursuant to this paragraph 4.

5. Minerals. If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this Easement is executed, 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 paragraph 5. Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage and does not harm the purpose of this Easement.

(a) Subsurface mineral exploration and extraction. Subsurface mineral development on the Protected Property is allowed in accordance with this paragraph 5, if approved by Grantee and the Chief of the NRCS. Grantee and Grantor must demonstrate that such subsurface mineral development:

(i) Is not accomplished by any surface mining method;

(ii) Is accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or Conservation Values of the Protected Property;

(iii) Does not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;

(iv) Is within the impervious surface limits of this Easement;

(v) Uses practices and technologies that minimize the duration and intensity of impacts to the Purpose of this Easement; and,

(vi) Shall comply with a subsurface mineral development plan approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity that must include a plan for reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, after cessation of subsurface mineral development activities.

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement. Grantor agrees that Grantee and the Chief of the NRCS must approve in advance, in writing any lease or agreement pertaining to use of the surface of the Protected Property for mining, between Grantor and owners or lessees of minerals (including oil and gas), which approval Grantee may withhold in its discretion if it determines that the proposed surface use is not consistent with the Conservation Values of the Protected Property, including but not limited to the Protected Property's use for agriculture or is not consistent with the terms of this paragraph.

Impervious surfaces as defined in Exhibit C, paragraph 11, of this Easement include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

(b) *Additional restrictions on mineral exploration, development, and extraction.*

i. 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.

ii. Subsurface mining restrictions. 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 Protected

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 irretrievably destructive of the Conservation Values and if impacts are limited, localized, and temporary. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:

(A) *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 Protected Property.

(B) *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 by reclaiming land contours, by restoring soils, by replanting native vegetation, and by husbanding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.

(C) *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 Protected Property.

(D) *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.

(E) *Structures*. The number and kind of 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.

(F) *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.

(G) *Surface-use agreements and other agreements*. In the case of mineral, oil, gas, or hydrocarbon exploration, extraction, development, production, and 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 to negotiate and enter surface-use agreements, right-of-way agreements, leases, and 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. The Protected Property must not be divided or subdivided into, or separately conveyed as, more than two (2) separate parcels (one division allowed). At no time may any of the Building Envelopes defined in this Exhibit B, paragraph 4, and depicted on Exhibit E, be divided or split by boundary line between parcels that are separately owned.

a. NRCS approval. To protect the purpose of this Easement, the boundaries of such divisions must be approved in writing by Grantee and the Chief of NRCS or the Chief's authorized designee (Chief of NRCS) before any such division, subdivision, or separate conveyance occurs. The Chief of NRCS may only approve the division, subdivision, or separate conveyance of the Protected Property into separately conveyable farm or ranch parcels when:

(i) Grantee requests the Chief of NRCS approval to subdivide the Protected Property into separate farm or ranch parcels, after receiving a request from Grantor;

(ii) Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all farm or ranch parcels in production and viable for agricultural use and that any new owners of the subdivided Protected Property farm or ranch parcels intend to use such parcels for agricultural operations; and

(iii) The Chief of NRCS determines that the:

A. Parcels resulting from the subdivision of the Protected Property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels, and

B. The resulting parcel will not be below the median size of farms in the county or parish as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey (NASS).

b. Allocation of reserved rights. In any deed, contract, or other instrument which conveys legal or equitable title to a portion of the Property pursuant to this Exhibit B, paragraph 6, Grantor expressly agrees to allocate the following reserved rights between the parcels of the Property that are transferred and/or held in separate title:

i. The rights to designate one or both of the up to two (2) Potential Residential Building Envelopes which may be designated as Residential Building Envelopes for purposes of this Easement, as provided in this Exhibit B, paragraph 4(d)(ii), if such rights have not yet been exercised at the time of the transfer and separation of title to the Protected Property into distinct parcels; and,

ii. The rights to construct one or both of the up to two (2) additional residential dwelling units, as provided in this Exhibit B, paragraph 4a, if such rights have not yet been exercised at the time of the transfer and separation of title to the Protected Property into distinct parcels.

iii. The right to construct the one (1) indoor riding arena, as provided in this Exhibit B, paragraph 4c, if such right has not yet been exercised at the time of the transfer and separation of title to the Protected Property into distinct parcels.

If Grantor does not allocate such designation or construction rights, all rights not allocated at the time of transfer shall remain with the retained parcel unless Grantor is completely divested of title when the separate parcels are created and transferred and therefore there is no "retained parcel." In such an event, allocation of unallocated rights between parcels may occur only with the prior written approval of Grantee pursuant to Section IV hereof and with the written consent of all of Grantor's successors-in-interest currently owning a portion of the Protected Property.

c. *Miscellaneous provisions.* Whether conveyed as a single tract or whether conveyed as separate parcels pursuant to this paragraph 6, the Protected 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 Protected 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.

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

Nothing in this Easement shall be construed to prevent Grantor from owning the Protected Property in co-tenancy or joint tenancy, wherein each cotenant or joint tenant shall have undivided interests in the whole of the Protected Property, as described in Exhibit A, or in either of the two (2) parcels into which the Protected Property may be divided. Grantor also retains the right to enter into leases, licenses, or other transfers of a right to use the Protected 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 Protected 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 removal. Forest management and timber harvesting is allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. Accordingly, Grantor may conduct forest management activities and selectively harvest timber on the Protected 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. Without prior approval. Grantor specifically reserves the right, without seeking Grantee's prior approval, to remove select trees that present a hazard to persons or property, and to cut firewood, posts, and poles for non-commercial use, provided that all timber removed by Grantor pursuant to this subparagraph 7a must be used or disposed of on the Property. All non-commercial timber management activities must protect and minimize impacts to the Conservation Values. 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, without obtaining any approval from Grantee.

b. With prior approval. 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, or for sale, trade, exchange, or use off the Property. Any timber harvest permitted by this subparagraph 7b must be consistent with the 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. 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.

8. Fences. Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purpose of this Easement. Grantor reserves the right to construct fences impassable to wildlife around building envelopes, haystacks, harvested crops, residential gardens, and kennels or enclosures for domestic animals other than pastured livestock.

9. Roads. Subject to the impervious surface limitation set forth in Exhibit C, paragraph 11, maintenance of existing roads documented in the Resource Documentation Report is allowed, provided that existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee pursuant to Section IV, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. New roads may be constructed with the prior written approval of Grantee pursuant to Section IV if they are: (i) within the impervious surface limits, (ii) necessary to carry out the agricultural operations or other allowed uses on the Protected Property, (iii) necessary to provide access to permitted Building Envelopes described in Exhibit B, paragraph 4, and Exhibit E; and (iv) located and constructed consistent with protection of the Conservation Values.

Except for new and existing roads described above that are constructed to provide access to permitted parcels and Building Envelopes, the granting or modification of right-of-way easements for roads is prohibited when the road will adversely impact the purpose of this Easement as determined by Grantee in consultation with the Chief of NRCS.

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 Protected Property to existing and subsequently constructed structures and improvements that are expressly permitted on the Protected Property by this Easement, so long as any such utility services are buried where technically and economically feasible. New utility services to serve approved buildings and structures, including on-farm energy structures, may be installed, maintained, repaired, and replaced provided that they neither individually nor collectively have an

adverse impact on the purpose of this Easement. Such utility services may be located outside of the Building Envelopes with prior written approval of Grantee pursuant to Section IV.

Except for utility services that are constructed to provide services to permitted structures, the granting or modification of right-of-way easements for utilities is prohibited when the utility will adversely impact the purpose of this Easement as determined by Grantee in consultation with the Chief of NRCS. If Grantor grants any right-of-way easements for utility services to neighboring properties, such utility services across the Protected Property must be buried.

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 9), and 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. 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, shall 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. Off-road activities. To drive off-road on the Protected Property for agricultural purposes and necessary related maintenance activities. Subject to Exhibit C, paragraph 12, limited use of vehicles off-road to carry out permitted recreational use is allowed only if such use does not significantly adversely impact the Conservation Values and access cannot be reasonably achieved on existing roads and trails.

12. Bed and breakfast business and/or residence-based businesses. To use the residential dwelling units on the Protected Property for the operation of one (1) bed and breakfast business. Persons living on the Protected Property may also conduct businesses within their residence as long as any such businesses and, other than the bed and breakfast business permitted above, are not sales or service businesses involving regular visits to the Protected Property by the general public or delivery trucks. All uses of the Protected Property pursuant to this paragraph 12 must remain compatible with the purpose of this Easement. The retail sale of goods produced and manufactured by such businesses may not take place on the Protected Property.

13. Guest ranching operations. To use the Protected Property, or enter into agreements with third parties to enable them to use the Protected Property for guest ranching operations provided that it remains compatible with the purpose of this Easement. Any agreement between Grantor and others pertaining to the use of the Protected Property for 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 expressly permitted by this Easement or replacements thereof for guest ranching purposes. Grantor and third parties may not construct any facilities or structures on the Protected Property, except as provided for in this Exhibit B, paragraph 4, specifically to accommodate a guest ranching operation.



14. On-farm energy production. Renewable energy production is allowed for the purpose of generating energy for the agricultural needs, residential needs, and commercial sale of excess power (as described below) of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits set forth in Exhibit C, paragraph 11, and within Building Envelopes described in Exhibit B, subparagraph 4d, with minimal impact on the Conservation Values of the Protected Property and consistent with the purposes of this Easement.

15. Allowed commercial uses. Consistent with the restriction on industrial and commercial uses set forth in Exhibit C, paragraph 3, the following uses shall be considered allowed commercial uses, as long as they are conducted in a manner that does not impair or destroy the Conservation Values.

- (i) Agricultural production and related uses in accordance with the terms and conditions of this Easement in Exhibit B, paragraph 1;
- (ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purpose of this Easement and in accordance with the terms and conditions of this Easement;
- (iii) Temporary or seasonal outdoor activities or events that do not harm the purpose of this Easement and as permitted under Exhibit B, paragraph 2;
- (iv) Commercial enterprises related to agriculture or forestry, including, but not limited to, agritourism, processing, packaging, and marketing of farm or forest products.

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

**EXHIBIT C**  
**PROHIBITED USES AND PRACTICES**

The following uses and practices, are hereby deemed to be inconsistent with the purposes of this Easement and are expressly prohibited, subject to the qualifications stated below and in Exhibit B:

1. Subdivision. Grantor and Grantee mutually intend that the entire Protected Property described in Exhibit A shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in no more than two (2) parcels under separate ownership, which may be joint and undivided. Even if the Protected 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, unless divided, transferred, and conveyed in accordance with the terms of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole, as well as each parcel transferred and conveyed. Therefore, except as provided in Exhibit B, paragraph 6, the following activities are expressly prohibited: The division, subdivision, or de facto subdivision of the Protected Property. 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 Protected Property is divided into lots or in which title to different portions of the Protected Property are held by different owners.

Notwithstanding any provision herein that may be construed to the contrary, the Protected Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

2. Mineral removal. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited, except as provided in Exhibit B, paragraph 5.

3. 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 Protected Property expressly permitted by this Easement) including, but not limited to, commercial feed lot, any retail sales or service businesses, except as provided in Exhibit B, paragraphs 12, 13, and 15, 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 Protected Property in connection with purposes expressly permitted in Exhibit B hereto).

4. Dumping. The accumulation or dumping of trash, refuse, sewage, junk, toxic materials, or other disposal of non-compostable refuse on the Protected Property, except for storage of farm machinery, brush piles, composting sites, biodegradable organic matter, agricultural products, agricultural byproducts, and other materials generally related to agricultural, forestry, and wildlife management as permitted by this Easement, and provided such dumping does not harm the Conservation Values.

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

6. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles is prohibited, provided, however, that Grantor may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4; that Grantor may place sheep herder wagons and other simple portable structures without permanent foundations on the Property on a temporary basis, as provided in Exhibit B, paragraph 4; and Grantor and Grantor's guests may park and use campers, trailers, or recreational vehicles on the Protected Property on a temporary basis to accommodate normal visitation.

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

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

9. Utilities. The construction of new utilities and granting of utility line rights-of-way except as permitted in Exhibit B, paragraph 10. Notwithstanding any provision of this Easement that may be construed to the contrary, the granting of utility transmission line and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements is expressly prohibited.

10. 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.

11. Impervious surfaces. Impervious surfaces may not exceed two (2) percent of the total Easement acreage, excluding NRCS-approved conservation practices. "Impervious surfaces" are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public or other roads owned and controlled by parties with rights superior to the rights conveyed to Grantee by this Easement.

12. Motorized recreation and off-road uses. Motorized recreational use of the Protected Property, except as permitted under Exhibit B, paragraph 11, and provided that all such uses must remain consistent with the protection and preservation of the Conservation Values. Off-road vehicle use for any purposes that results in significant soil erosion, including, but not limited to, moto-cross racing or four-wheeling and off-road racing, is prohibited.

13. Surface alteration. Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as provided in Exhibit B, paragraph 3, and related to permitted agricultural activities pursuant to Exhibit B, paragraph 1 and mineral removal pursuant to Exhibit B, paragraph 5.

14. Commercial timber harvest. Except as provided in Exhibit B, paragraph 7, the harvest of timber on the Protected Property is prohibited.

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

**EXHIBIT D  
RESOURCE DOCUMENTATION REPORT &  
ACKNOWLEDGMENT OF ITS ACCURACY**

In accordance with Treasury Regulation §1.170A-14(g)(5)(i), ROUND GROVE RANCH COMPANY, of Townsend, Montana, Grantor of a Deed of Conservation Easement, and THE MONTANA LAND RELIANCE, Grantee of said Conservation Easement, hereby acknowledge, declare, and agree that they have reviewed the information contained in the Resource Documentation Report and that the Resource Documentation Report is an accurate representation of the condition of the real property to be protected by this Easement at the time of the transfer.

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

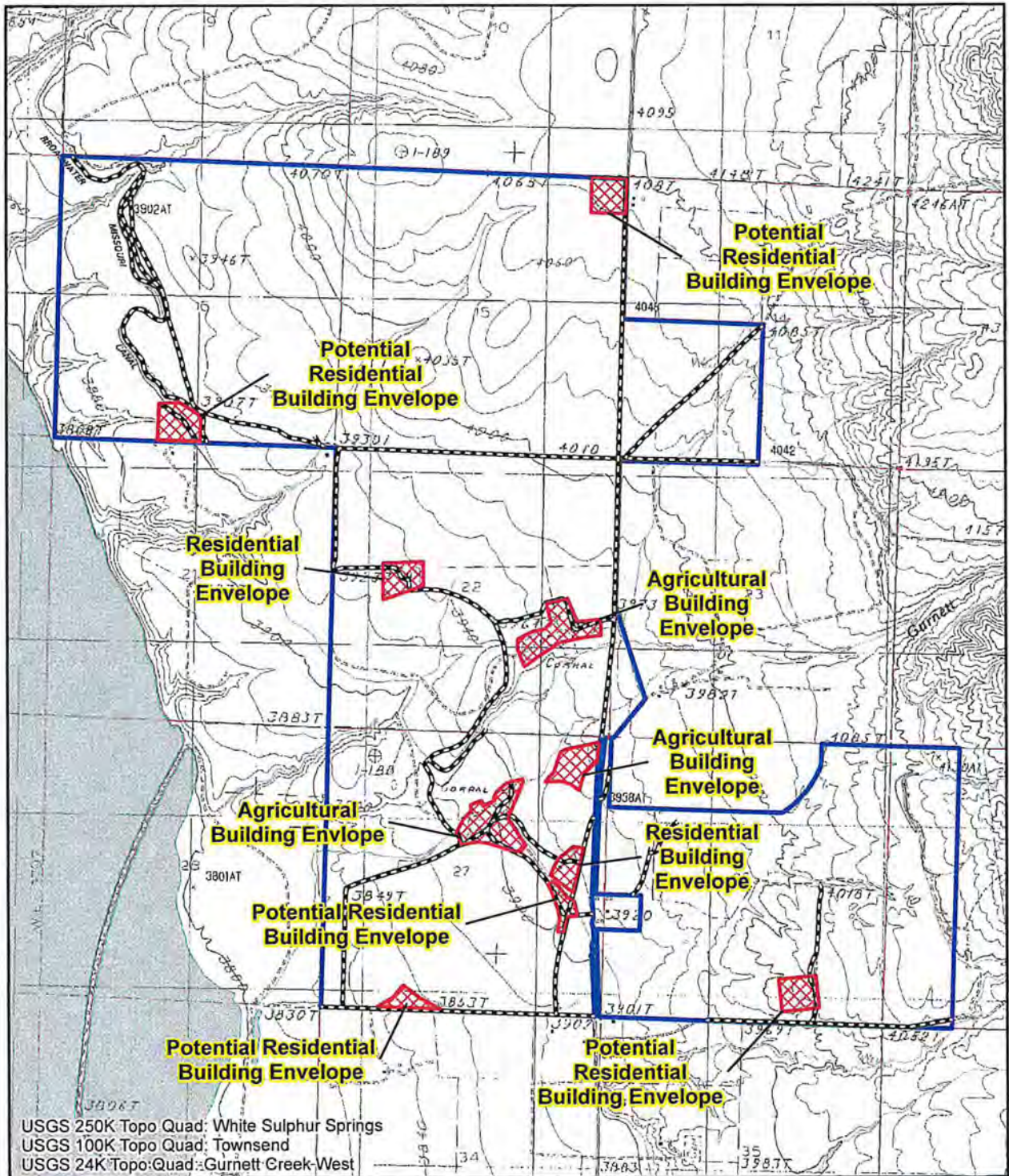
GRANTOR: ROUND GROVE RANCH COMPANY,  
a corporation

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

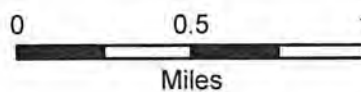
GRANTEE: THE MONTANA LAND RELIANCE,  
a corporation

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

# EXHIBIT E



-  Easement Boundary
-  Building Envelopes
-  Existing Roads



Location: T8N, R2E

Round Grove (Home)(Soils)  
 Map Creation Date: September 21, 2020