

# S A M P L E D R A F T

## DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_ of \_\_\_\_\_ (hereinafter together with their heirs, personal representatives, successors, and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

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

1. Grantor is the owner of certain real property in *[insert appropriate name]* County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"), and the Property totals approximately *[insert appropriate figure]* acres; and,

2. The Property has significant open-space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

3. The Property constitutes a valuable component of the scenic and open-space lands in the *{insert applicable river}* Valley and the Property remains largely undeveloped and retains its agricultural and natural habitat characteristics; and,

4. Preservation of the scenic and open-space values found on the Property provides substantial benefits to the people of the State of Montana, *[city and/or county]*, and the United States by preserving and providing the following significant resources, in perpetuity, in compliance with Section 170(h)(4)(A)(iii) of the Internal Revenue Code and Sections 76-6-101, et seq., M.C.A.:

a. Open-space lands 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 the federal tax policies (Federal Farm Bill of 2008, 15 U.S.C. Section 15302 and extensions thereof), the private land protection policies of the State of Montana, and clearly delineated local land conservation policies adopted in \_\_\_\_\_ County, Montana; and,

b. Scenic views of an historic Montana landscape and working agricultural lands in the *{insert applicable river}* Valley that is enjoyed by members of the general public traveling on *{insert names of applicable roads/highways}*, a public roadway that borders/traverses the Property and by the recreating public on the *{insert name}* River; and

c. Retention of open space for a variety of other uses, such as riparian habitats along \_\_\_\_\_ *[Creek/River]* which flows through the Property, relatively natural wildlife habitat and ecosystems for fish, wildlife, and plants, including cover and forage for *{insert applicable species of wildlife, fish, etc.,}*, all of which use the Property;

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

5. The *[insert appropriate name]* County, Montana, Commissioners have expressly recognized in the *[insert appropriate name]* County Comprehensive Plan, dated *[insert date plan adopted, amended, etc]*, the importance of preserving open space and agricultural lands in *[insert appropriate name]* County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

6. The *[insert appropriate name]* County Master Plan specifically encourages use of conservation easements to preserve open space and agricultural lands in the area; and,

7. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the open-space character and scenic values of the Property; and,

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

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

10. 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 Internal Revenue Code of 1986 (hereinafter the "Code") qualified to receive and hold conservation easements;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Easement, and as an absolute, unconditional, unrestricted, and voluntary gift, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Property in accordance with the terms and conditions set forth below. 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 assure that the Conservation Values will be maintained in perpetuity and to prevent any use of, or activity on, the Property that will significantly impair those Values. In achieving these purposes, it is the mutual intent of Grantor and Grantee to permit the continuation of such uses of the 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 economic conditions, in technologies, in accepted farm, ranch, and forest management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Property which are allowed, provided that such uses and practices are consistent with the purposes and terms of this Easement.

B. Perpetual restrictions. This Easement shall run with and burden title to the Property in perpetuity and shall bind Grantor and all future owners and tenants.

C. Dedication. The Property is hereby declared to be open space pursuant to MCA Section 76-6-107, and may not, except as specifically provided herein and pursuant to statute, be converted from open space.

**SECTION II**  
**Rights Conveyed**

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

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

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

C. Injunction and restoration. To enjoin any activity on, or use of, the Property which is inconsistent with the purposes and terms of this Easement and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activity or use.

### **SECTION III** **Reserved Rights and Prohibited Uses**

A. Reserved rights. Grantor reserves to themselves and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited 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 Property that is inconsistent with the terms and purposes of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

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

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

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

- (i) delivered in person with a signed and dated proof of delivery, or
- (ii) sent by registered or certified mail, return receipt requested, or

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

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

C. Time for Grantee's response. Grantee shall have 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. Nevertheless, 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.

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 that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's judgment, conformity with the purposes or terms of this Easement is possible, Grantee's response shall inform Grantor of the manner in which the proposed enterprise, use, or activity can be modified to be consistent with this Easement.

E. Grantee's failure to respond. If Grantee fails to respond to Grantor's request for approval within the response time set forth in paragraph C above, the proposed enterprise, use, or activity shall automatically be deemed consistent with the purposes of this Easement, Grantee having no further right to object to the enterprise, use, or activity identified by such notice. Grantee's failure to respond to any individual request for approval shall not be deemed to be a waiver of any other duty and obligation of Grantor to seek prior approval for other specific activities for which Grantee's approval is necessary.

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

G. 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 approval, 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 Property resulting from any use or activity inconsistent with the purposes and terms of this Easement, to restore the portion of the 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 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 therefore, Grantee, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

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

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 Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

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

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

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

**SECTION VII**  
**Indemnities**

A. Control of risks associated with Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Property and therefore Grantor controls day-to-day activities on, and access to, the Property, except for Grantee's limited rights 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 Property shall remain with Grantor as a normal and customary incident of the right of Property ownership.

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 act, omission, condition, or other matter related to or

occurring on or about the Property, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Property or to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., MCA, and its successor statutes, and similar state and federal statutes.

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

Grantee may transfer or assign this Easement, 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, 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 scenic 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.

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

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Conservation Values of the Property at the time of the grant of this Easement. This information is based in part upon a site visit to the Property by Grantee or Grantee's agents on \_\_\_\_\_, 20 \_\_\_\_, and consists of mapping of physical features and resources, photographs of structures, developments, and improvements, and gathering of other appropriate information to document the Conservation Values of the Property as of the date of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information gathered has been compiled into a Resource Documentation Report, and that the

information and the Report accurately represent the condition of the Conservation Values of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). Grantor and Grantee agree that the Resource Documentation Report may be supplemented with aerial photographs, historical, archival, and government documents, as appropriate and available. The Resource Documentation Report shall be maintained on file with Grantee. The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Property and practices thereon. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Resource Documentation Report contains any summaries of, or representations about, the terms or conditions of this Easement, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms and conditions herein and not in the Resource Documentation Report.

## SECTION X

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

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

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee, which, for purposes of paragraph A of this Section X, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Grantor's qualified appraisal (pursuant to Treasury Regulation §1.170A-13 and §1.170A-14(h)) for federal income, gift, or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement, as established at the time of this grant, shall remain constant. Within one (1) year of completion of the qualified appraisal, Grantor, Grantee, and Grantor's appraiser shall sign a written acknowledgment of the values thus established on a form similar to the sample attached hereto as Exhibit E. The original of said acknowledgment shall be held on file with Grantee at Grantee's normal place of business.

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

## **SECTION XI**

### **Grantor's Representations and Warranties**

Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge, as of the date of the conveyance of this Easement:

1. Grantor has clear title to the Property; that Grantor has the right to convey this Easement to Grantee, and that the 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 Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.
3. No underground storage tanks are located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.

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 Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **SECTION XII**

### **Miscellaneous Provisions**

A. Partial invalidity. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. "Grantor" and "Grantee". The terms "Grantor" and "Grantee," as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and their heirs, personal representatives, executors, 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 *[insert appropriate name]* County will be made in any subsequent deed or other legal instrument by which they convey any interest in the Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to the Property.

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

F. Notice of Suit. Grantor must immediately provide Grantee with notice of any lawsuit or administrative action involving the Property or which threatens the integrity of this Easement. Notice must be sent to Grantee's address in Section IV, paragraph B, and must include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to Grantee's intervention in any such lawsuit or action. Such lawsuit or action 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 Property and/or potentially affecting the Conservation Values protected by this Conservation Easement.



GRANTEE:

**THE MONTANA LAND RELIANCE,**  
a corporation

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

STATE OF _____ ) : ss. County of _____ )
This instrument was acknowledged before me on this _____ day of _____, 20_____, by _____, as _____ of The Montana Land Reliance.
(SEAL) _____ (Notary's Signature) _____ (Notary's Name, please print/type) Notary Public for the State of _____ Residing at _____ My commission expires ____/____/20_____

**EXHIBIT A  
LEGAL DESCRIPTION**

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

## EXHIBIT B PERMITTED USES AND PRACTICES

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

1. Agricultural activities. To conduct farming, ranching, and other agricultural activities, including raising and managing livestock and planting, raising, and harvesting agricultural crops.
2. Hunting and fishing. To use the Property for recreational hunting of game animals, game birds (including waterfowl), and fishing.
3. Water resources. To maintain, enhance, and develop water resources on the Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.
4. Structures and Building Envelopes. To construct, maintain, repair, remodel and make limited additions to, and in the event of their removal or destruction, to replace the following structures on the Property:
  - 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. Such residential dwelling units include, but are not limited to, residences, apartments, suites, guest houses, employee houses, cabins, mobile homes, trailers, and other moveable living units. No more than *{insert applicable number}* residential dwelling units, including the *{insert applicable number}* existing residential dwelling unit and *{insert applicable number}* additional residential dwelling units are permitted on the Property. All residential dwelling units must be located within designated *development areas/building envelopes* as defined in subparagraph d.
  - 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 structures (hereinafter “associated outbuildings”). All associated outbuildings must be located within designated *development areas/building envelopes* as defined in subparagraph d.
  - 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”). Agricultural structures may be located anywhere on the

Property. For the purposes of this Easement, the term “agricultural structures” does not include indoor riding arenas, which are expressly prohibited on the Property.

d. Building Envelopes. The *{insert applicable number}* existing residential dwelling units and all their associated outbuildings are located within the *development/building envelope* which is approximately \_\_\_\_\_ acres and is delineated in Exhibit E, attached hereto and incorporated by reference. The *{insert applicable number}* permitted residential dwelling units, and all their associated non-residential outbuildings must be located either within *{insert applicable details}* Building Envelopes that are proposed by Grantor and approved in writing by Grantee, pursuant to Section IV of this Easement. Each Building Envelope may not exceed *{insert applicable number}* acres in size, and must be sited in locations that are consistent with protection of the Conservation Values, including protection of the scenic resources of the Property.

The purposes of the Building Envelopes are to allow Grantor flexibility in use of the residential dwelling units and associated outbuildings and to cluster residential uses and other structures on the Property to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Building Envelopes. Pursuant to Section IV, Grantor must obtain Grantee’s prior approval of the location, size, and dimensions of each Building Envelope prior to beginning construction or development of any permitted residential dwelling units and non-residential outbuildings. After Grantee approves a Building Envelope, Grantor and Grantee agree that Grantee may file in the public records of Sweet Grass County notices of the location and description of the Building Envelope, as applicable, at no cost to Grantor.

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

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

b. Subsurface mining. There shall be no exploration for or extraction of oil, gas, or other subsurface minerals by any subsurface mining method if such activity would result in the permanent or irreparable destruction or impairment of any Conservation Value of the Property. In accordance with Treasury Regulation §1.170A-14(g)(4)(i), subsurface mineral exploration or extraction may be permitted, after prior approval of Grantee, only if the mining methods used are not irreparably destructive of the Conservation Values and if impacts are limited, localized, and temporary. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:

(i) Water. No exploration or extraction shall take place within any stream, waterway, or protected wetland, and no mining operation shall materially degrade the quality of any lake, pond, well, stream, groundwater, or surface water. Any waste water resulting from permitted exploration or extraction activities which is of materially poorer quality than existing water supplies shall 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.

(ii) Surface disturbance. Any surface disturbance resulting from permitted exploration or extraction activities must be limited, localized, and temporary, and the surface of the land shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance 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.

(iii) Reclamation. All permitted exploration or extraction activities and associated reclamation activities shall be in compliance with other provisions of this paragraph 5, and with applicable state and federal laws.

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

(v) 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.

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

c. Limited-impact activities. Notwithstanding the foregoing provisions of this paragraph 5, Grantor may extract minerals, for non-commercial purposes and for use solely on the Property, provided such activities have temporary, limited, and localized impacts on the Conservation Values and that such activities are not irretrievably destructive of any Conservation Value, within the meaning of Treasury Regulation § 1.170A-14(g)(4)(i) or its successor provision, and further provided the surface alteration is restored to its original state and

approximate contour. Any such limited-impact activity shall require Grantor to adhere to the conditions set forth in subparagraph b of this Exhibit B, paragraph 5.

6. Transfer of land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively “transfer”) all or any portion of Grantor's right, title, estate, and interest in the Property as one (1) parcel only, subject to the terms, conditions rights, restrictions, and obligations contained in this Easement. Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

7. Timber removal.

a. Commercial timber harvest with prior approval. Upon obtaining the prior approval of Grantee as provided in Section IV hereof, Grantor may selectively harvest timber for commercial purposes in accordance with those forestry practices which are consistent with the general and specific intentions of Grantor and Grantee, as those intentions are specifically expressed in this Exhibit B, paragraph 6, and those intentions are more generally expressed in this Easement taken as a whole. For the purposes of this Easement, the term “commercial timber harvest or thinning” is defined as any timber harvest in which the product of such harvest is sold, traded, exchanged, or used off the Property.

Any timber harvest permitted hereunder must protect and minimize adverse impacts to the Conservation Values of the Property. Furthermore, any commercial timber harvest or thinning, including those for the abatement of disease or insect infestation, shall require preparation, at Grantor’s expense, of a timber harvest plan by qualified natural resource professionals. 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.

Timber harvest plan must be furnished to Grantee in connection with Grantor’s request for approval of any proposed commercial timber harvest, and any commercial timber harvest, if approved by Grantee as provided in Section IV hereof, must 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 commercial timber harvest.

b. Non-commercial timber removal. Notwithstanding any provision in this Easement to the contrary, Grantor specifically reserves the right, without seeking Grantee’s prior approval, to remove select trees that present a hazard to persons or property, or to cut firewood, posts and poles for non-commercial use on the Property. All timber removed by Grantor pursuant to this subparagraph b, 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 structures and residences, Grantor specifically reserves the right to clear brush, and prune, trim and remove

trees; or to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes without obtaining any approval from Grantee.

8. Fences. To construct, maintain, and repair fences on the Property.

9. Roads. To repair, maintain, and improve existing roads on the Property; and to construct, repair, improve, and maintain new roads in connection with farming, ranching, and other agricultural uses; timber removal; mineral exploration and extraction as provided in this Exhibit B; ~~and~~ for access to the residential dwelling units, Building Envelopes, and other structures permitted in this Exhibit B; and in conjunction with granting of rights-of-way easements as permitted in the following paragraph. Any new road that is constructed pursuant to this paragraph 9, must be sited and maintained so as to minimize adverse impact to the Conservation Values.

Grantor retains the right to grant right-of-way easements: 1) to appropriate governmental entities for the improvement and/or expansion of public roads bordering and/or traversing the Property, provided the governmental entity seeking the right of way easement documents the public necessity of such roadway easements in accordance with the provisions of Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses; and 2) to neighbors over existing or permitted roads on the Property.

10. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines (hereafter “utilities” and “utility services”) upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements that are expressly permitted on the Property by this Easement. Grantor also retains the right to grant right-of-way easements for utility services to neighboring properties, provided that any such new right-of-way easements do not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation 1.170A-14(e)(2).

With the prior approval of Grantee pursuant to Section IV of this Easement, Grantor may also permit the expansion of existing utility distribution services running through the Property, including the construction of new electrical utility distribution lines (but not electrical transmission lines which are prohibited by Exhibit C, paragraph 8), and may grant associated right-of-way easements, if Grantor’s exercise of these reserved rights does not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation 1.170A-14(e)(2). Grantee’s prior approval of new or upgraded utility distribution services and right-of-way easements will require submission by Grantor of a construction/installation plan. 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. 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 \_\_\_\_\_ County, signed by Grantor, Grantee, and the utility service provider prior to beginning construction.

11. Renewable energy production for use on the Property. Grantor retains the right to construct wind, solar, hydroelectric, geothermal, and other types of renewable energy generation facilities (hereafter “renewable energy production”) solely for uses on the Property as such uses are permitted by this Easement, except that any incidental surplus energy may be sold commercially for use off of the Property or credited to Grantor’s utility service. Any renewable energy production for use on the Property and associated distribution facilities, including power lines and pipelines, permitted hereunder must be consistent with protection and preservation of the Conservation Values, including the scenic resources protected by this Easement. Because of the potential impact on riparian areas and other protected Conservation Values, Grantor may only generate hydroelectricity for use on the Property with the prior approval of Grantee, pursuant to Section IV hereof.

12. Residence-based business. Persons living on the Property may conduct businesses within their residential dwelling unit so long as any such business is not a sales or service business involving regular visits to the Property by the general public or delivery trucks. The retail sale of goods produced and manufactured by such businesses shall not take place on the Property.

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

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

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

1. Subdivision. The division, subdivision, or de facto subdivision of the Property. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, 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 by which the Property is divided into lots or in which title to different portions of the Property are held by different owners. Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

2. Mineral removal. Exploration for, or the removal or extraction of any mineral or non-mineral substance by any surface or subsurface mining or extraction method, except as provided in Exhibit B, paragraph 5.

3. Commercial facilities. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, guest ranching, outfitting, commercial feed lot, any retail sales or service businesses, except as provided in Exhibit B, paragraph \_\_\_\_, restaurants, night clubs, campgrounds, trailer parks, motels, hotels, commercial recreation facilities, gas stations, retail outlets, or facilities for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).

4. Dumping. The dumping or other disposal of non-compostable refuse on the Property, except nonhazardous wastes generated by activities permitted in Exhibit B, including forestry operations and provided such dumping does not harm the Conservation Values.

5. Construction. The construction or placement of any buildings, mobile homes, trailers, or other structures, except for those specifically permitted in Exhibit B, and except that vehicular campers owned by Grantor or Grantor's guests may be parked on the Property on a temporary basis.

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

7. Roads. The construction of roads and granting of road rights-of-way except as permitted in Exhibit B, paragraph 9.

Aside from right-of-way easements Grantor may elect to grant pursuant to Exhibit B, paragraph 9, granting of road right-of-way easements upon or across the Property is prohibited. Right-of-way easements may be granted by mutual agreement of Grantor and Grantee only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

8. Utilities. The granting of utility transmission lines and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements. Such right-of-way easements may only be granted by mutual agreement of Grantor and Grantee only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

9. 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.

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

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

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ of \_\_\_\_\_, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and THE MONTANA LAND RELIANCE of Helena, Montana, as Grantee of said Easement, hereby mutually acknowledge, declare, and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Conservation Values associated with the Property which shall be subject to this Easement.

2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Conservation Values of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.

3. The documentation was compiled by a representative of Grantee on a site visit to the Property on \_\_\_\_\_, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.

4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of the Conservation Values of the Property to be subject to this Easement at the time of its grant.

5. Additional information and documentation will be gathered as historical, government, and archival documents and aerial photographs are made available to Grantor and Grantee.

6. Grantor and Grantee further agree that a final Resource Documentation Report has been completed, reviewed and approved in final form by both Grantor and Grantee, and an original, signed copy is stored on file with Grantee in Grantee's normal place of business.

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

GRANTOR:

\_\_\_\_\_

GRANTEE:

THE MONTANA LAND RELIANCE,  
a corporation

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

[Name and title]

**EXHIBIT E**  
**SAMPLE OF FORM TO BE USED FOR**  
**ACKNOWLEDGMENT OF VALUE OF \_\_\_\_\_**  
**CONSERVATION EASEMENT**

\_\_\_\_\_ of \_\_\_\_\_, Grantor of a Deed of Conservation Easement dated \_\_\_\_\_, 20\_\_\_\_, and recorded on \_\_\_\_\_, 20\_\_\_\_, at Book \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana; THE MONTANA LAND RELIANCE, of Helena, Montana, Grantee of said Conservation Easement; and, \_\_\_\_\_, appraiser of the property subject to the Conservation Easement, (hereinafter the "Property"), hereby acknowledge, declare, and agree as follows:

1. That the value of the Property immediately prior to encumbrance by the grant of the Conservation Easement was \_\_\_\_\_, and the value of the Property immediately after the conveyance of the Conservation Easement to The Montana Land Reliance was \_\_\_\_\_.

2. Thus, the parties hereto agree that the grant of the Conservation Easement reduced the value of Grantor's interest in the Property by \_\_\_\_\_ percent (\_\_\_\_\_%).

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
APPRAISER