

AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

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

**RATIFICATION AND AMENDMENT OF  
DEED OF CONSERVATION EASEMENT**

This RATIFICATION AND AMENDMENT OF DEED OF CONSERVATION EASEMENT (hereinafter "Ratification and Amendment") is made this 22<sup>nd</sup> day of December, 2016, by JUDITCH HUTCHINS, of P.O. Box 104, Heron, Montana 59844 (hereinafter together with her heirs, personal representatives, successors, and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a Montana nonprofit corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

**RECITALS:**

- A. Grantor owns certain real property in Sanders County, Montana, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter the "Property"), and the Property totals approximately 91 acres; and
- B. The Property has significant scenic and 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
- C. The Property constitutes a valuable component of the scenic and open-space lands in the Lower Clark Fork Valley and the Property remains largely undeveloped and retains its agricultural and natural habitat characteristics; and
- D. Grantor granted to Grantee a Deed of Conservation Easement in 2015 on and over real property owned by Grantor which is described in Exhibit A attached hereto, which Deed of Conservation Easement was recorded on December 10, 2015, as Document No. 301635, Book 1 Recordings, Page 84121, records of Sanders County, Montana (hereinafter referred to as the "Conservation Easement"); and
- E. The Conservation Easement protects and preserves in perpetuity the following scenic and open-space resources found on the Property, and thereby provides substantial benefits

to the people of the State of Montana, Sanders County, and the United States, in compliance with Section 170(h)(4)(A)(iii) of the Internal Revenue Code and Sections 76-6-101, et seq., MCA:

- 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, the private land protection policies of the State of Montana, and clearly delineated local land conservation policies adopted in Sanders County, Montana, as set forth in more detail below; and,
- b. Scenic views of historic Montana landscapes that are enjoyed by members of the general public traveling on Winchester Road, a public roadway that runs near the Property, and by members of the general public recreating on nearby Kootenai National Forest lands, and on Elk Creek, an important tributary of the Lower Clark Fork River; and,
- c. Retention of significant open space for a variety of other uses, including relatively natural wildlife habitat and ecosystems for fish, wildlife, and plants, including, but not limited to deer, elk, moose, black and grizzly bear, and numerous birds, including the bald eagle, all of which use the Property;

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

F. The Conservation Easement, at Exhibit B, paragraph 4, provides that Grantor has the right to construct one (1) new residential dwelling unit within Building Envelope #1, in addition to the residential dwelling unit already in existence in Building Envelope #1, and, further, provides that Grantor has the right to construct one (1) new residential dwelling unit within Building Envelope #2; and

G. The Conservation Easement, at Exhibit B, paragraph 5, provides that Grantor may transfer the Property in up to two parcels, defined as Parcel 1 and Parcel 2 on Exhibit A to the Conservation Easement, and as depicted, together with Building Envelope #1 and Building Envelope #2, on Exhibit F to the Conservation Easement; and

H. Grantor and Grantee mutually agree that eliminating the right reserved by Grantor in the Conservation Easement to construct one (1) of the two (2) new residential dwelling units permitted by the Conservation Easement, and instead permitting only one (1) new residential dwelling unit, within either Building Envelope #1 or Building Envelope #2, will enhance the public benefits of the Conservation Easement, and further preserve and protect the Conservation Values of the Property; and

I. Grantor and Grantee mutually agree that eliminating the right reserved by Grantor to transfer the Property in two parcels, and instead requiring that the Property transfer in only one (1) parcel, will enhance the public benefits of the Conservation Easement, and further preserve and protect the Conservation Values of the Property; and

J. In executing this Ratification and Amendment, therefore, Grantor and Grantee now intend to and do eliminate the reserved rights described in Recital H and Recital I above, to enhance and promote the permanent protection of the Conservation Values of the Property; and

K. 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

L. The Property contains montane forest and is adjacent to Elk Creek, an important tributary of the Lower Clark Fork River, an aquatic focus area delineated in the Montana Fish, Wildlife and Parks 2005 Conservation Strategy; and

M. The Property is located in the vicinity of other lands that are protected under permanent conservation easement by Grantee in the Lower Clark Fork River Valley, which is a focal area of private land conservation in Montana, and therefore, the proposed open space use is consistent with existing private conservation programs in the area and will provide significant public benefit consistent with Treasury Regulation §1.170A-14(d)(4)(iv)(A)(4); and

N. The Property is located within one-quarter mile of public land under the administration of the Kootenai National Forest, federal lands managed for protection and conservation purposes pursuant to applicable forest and land management plans, 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

O. The U.S. Department of Agriculture, Forest Service, in the Forest Service Open Space Conservation Strategy: Cooperating Across Boundaries to Sustain Working and Natural Landscapes (November, 2007) recognizes that an interconnected network of open space across the landscape supports healthy ecosystems and a high quality of life for Americans, and this Conservation Easement is consistent with and advances the Forest Service's public policies; and

P. 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; and

Q. By entering into this Ratification and Amendment, and eliminating certain reserved rights as described in Recital H and Recital I above, freely, voluntarily, and irrevocably, Grantor intends to preserve and protect in perpetuity the Conservation Values of the Property; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Ratification and Amendment, and pursuant to MCA Sections 76-6-201, et seq., and Section 170(h) of the Code, and, further, as to the reserved rights described in Recitals H and I

above that are eliminated by this Ratification and Amendment, as an absolute, unconditional, unrestricted, and voluntary gift, Grantor and Grantee agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true, correct, and are incorporated into the terms of this Ratification and Amendment.

2. Purposes and Integration of Documents. The express purposes for which Grantor and Grantee execute this Ratification and Amendment are (i) to assure that the Conservation Values on the Property, as defined in the Conservation Easement and in this Ratification and Amendment, will be protected and preserved in perpetuity; (ii) to prevent any use of or activity on the Property that will significantly impair those Conservation Values; and (iii) to ratify and reaffirm the terms of the Conservation Easement, as amended herein. Grantor and Grantee mutually intend and agree that this Ratification and Amendment and the Conservation Easement will be fully integrated and shall be interpreted, construed, and enforced as one document only, and that these instruments, taken together, shall limit and restrict the use of the Property to such activities as are consistent with the purposes stated herein and in the Conservation Easement.

3. Integration of Deeds. Grantor and Grantee expressly intend and agree that all of the terms, covenants, conditions, restrictions, easements, servitudes, rights, obligations, and remedies that are set forth in the Conservation Easement shall apply to the Property, except as specifically modified below:

i. Structures and Building Envelopes. Exhibit B, paragraph 4 of the Conservation Easement is hereby replaced in its entirety with the following provision to reflect the elimination of the reserved right referenced in Recital H above:

“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 or suites that are a part of non-residential outbuildings (including agricultural facilities) as set forth in subparagraph 4b below, guest houses, employee houses, cabins, mobile homes, trailers, and other moveable living units. No more than two (2) residential dwelling units, including the one (1) existing residential dwelling unit and one (1) new residential dwelling unit are permitted on the Property. All residential dwelling units, and replacements thereof, if any, must be located within designated Building Envelopes as defined in subparagraph 4c below and must be constructed on permanent foundations. Mobile homes, trailers, or other moveable

living units used for human habitation or occupancy are not permitted on the Property.

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

c. Building Envelopes. The one (1) existing residential dwelling unit and all its associated non-residential outbuildings is located within “Building Envelope #1” delineated in Exhibit F, attached hereto and incorporated by reference. Building Envelope #1 consists of approximately two (2) acres. The one (1) additional permitted new residential dwelling unit and all its associated non-residential outbuildings must be located either within Building Envelope #1 or within “Building Envelope #2,” which consists of approximately two (2) acres. If Grantor elects to construct the one (1) additional permitted new residential dwelling unit within Building Envelope #2, electricity and other utilities may be installed within Building Envelope #2 to service the permitted residential dwelling unit and associated non-residential outbuildings.

Before construction may begin on the permitted new residential dwelling unit, Grantor must submit construction plans for Grantee’s prior review and approval, in accordance with Section IV of this Easement.

The purposes of the Building Envelopes are to allow Grantor flexibility in use of the residential dwelling units and non-residential outbuildings and to cluster residential uses and other structures on the Property to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Building Envelopes.

c. Art studio. At the time of this grant, there is one (1) art studio on the Property within Building Envelope #2. The art studio may not be used as a residential dwelling unit, for any other habitation or overnight accommodation, or for commercial purposes involving regular visits to the Property by the general public or by delivery trucks.

d. Primitive cabin. At the time of this grant, there is one (1) primitive cabin on the Property within Building Envelope #2. For the purposes of this Easement the term “primitive cabin” refers to a structure that is further defined in this paragraph. The primitive cabin may not be used as a residential dwelling unit, as defined in subparagraph 4a above, unless the primitive cabin is improved and designated as the one (1) new permitted residential dwelling unit. If the

primitive cabin is not so improved and designated as the one (1) new permitted residential dwelling unit, electrical power may not be transported to the primitive cabin via electrical transmission or distribution lines, either above ground or buried, but electrical power may be generated by on-site solar panels, wind generators, or portable generators, provided the generating equipment is located on, or within one-hundred (100) feet of the associated primitive cabin. Stoves and heaters, using wood, portable propane, or other portable fuels, may be used in the primitive cabin.

In lieu of constructing the one (1) permitted new residential dwelling unit, Grantor may elect to upgrade the primitive cabin for use as a permanent residential dwelling unit. If the existing primitive cabin is converted for use as the one (1) permitted new residential dwelling unit, no other residential dwelling units will be allowed on the Property. If the converted primitive cabin is demolished or returned back to a primitive cabin, one (1) new residential dwelling unit may be placed on the Property, pursuant to the terms of this paragraph 4.”

ii. Transfer of land. Exhibit B, paragraph 5 of the Conservation Easement is hereby replaced in its entirety with the following provision to reflect the elimination of the reserved right referenced in Recital I above:

“5. Transfer of land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively “transfer”) all or any portion of Grantor’s right, title, estate, and interest in the Property in unified title and as 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.”

iii. Subdivision. Exhibit C, paragraph 1 of the Conservation Easement is hereby replaced in its entirety with the following provision to reflect the elimination of the reserved right referenced in Recital I above:

“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, partitions 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 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.”

iv. Substitution of Exhibits. Exhibit A of the Conservation Easement is hereby replaced in its entirety with the revised Exhibit A to this Ratification and Amendment, to reflect the elimination of the reserved right referenced in Recital I above. Exhibit F of the Conservation Easement is likewise replaced in its entirety with the revised Exhibit F to this Ratification and Amendment, to reflect the elimination of the reserved right referenced in Recital I above.

4. Documentation. Grantor made available to Grantee, prior to the execution of the Conservation Easement, information sufficient to document the condition of the Conservation Values of the Property at the time of the grant of the Conservation Easement, and after the time of the conveyance of the Conservation Easement, Grantor and Grantee prepared a report that documented the condition of the Conservation Values on the Property, all in compliance with Treasury Regulation §1.170A-14(g)(5). Grantee has monitored the condition of the Property since obtaining the Conservation Easement and has compiled information about the uses, features, and resources on the Property as a result of these monitoring activities (hereafter collectively referred to as the “Conservation Easement Baseline Information”). In compliance with Treasury Regulation §1.170A-14(g)(5), Grantor and Grantee agree that this Conservation Easement Baseline Information accurately represents the condition of the Property as of the date of this Ratification and Amendment.

Grantor has also specifically documented the condition of the Conservation Values of the Property at the time of the grant of this Ratification and Amendment in an Addendum to the Conservation Easement Baseline Information, based in part upon a site visit to the Property by Grantee on August 17, 2016, and consists of maps of physical features and resources, aerial photographs, historical, archival, and government documents, and photographs of structures, developments, and improvements. The Addendum supplements the above-mentioned Conservation Easement Baseline Information. By executing this Ratification and Amendment, the parties hereby agree that the Conservation Easement Baseline Information and the Addendum, taken together, accurately represent the condition of the Property as of the date of the grant of this Restated Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The Conservation Easement Baseline Information and the Addendum shall be maintained on file with Grantee.

The parties intend that the Conservation Easement Baseline Information and the Addendum 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 on the Property, 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 Conservation Easement Baseline Information

and/or the Addendum contains any summaries of, or representations about, the terms or conditions of this Ratification and Amendment, any conflict or inconsistency between the terms and conditions of this Ratification and Amendment and the Conservation Easement Baseline Information and/or Addendum shall be governed by the express terms and conditions herein and not in the Conservation Easement Baseline Information and/or Addendum.

5. Ratification. All of the terms and conditions and all of Grantor's and Grantee's rights, remedies, and obligations stated in the Conservation Easement are hereby restated and reaffirmed by the parties, except as expressly amended in paragraph 3 above. Nothing in this Ratification and Amendment shall be interpreted to extinguish, modify, or amend the terms and conditions of the Conservation Easement as that instrument applies to, and encumbers title to, the Property, except as expressly amended in paragraph 3 above. Furthermore, nothing herein shall change the rights, claims, interests, or priorities of any third parties, including creditors or potential creditors, in or to the Property.

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

7. Governing Law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Ratification and Amendment, the laws of the State of Montana shall govern resolution of such dispute.

8. Entire Agreement. This Ratification and Amendment, including all Exhibits attached hereto, embodies and constitutes the entire understanding between the parties hereto with respect to Grantor's grant of the rights reserved by Grantor under the Conservation Easement but eliminated by the execution of this Ratification and Amendment, as described in Recital H and Recital I herein, and all prior or contemporaneous negotiations, communications, conversations, understandings, and agreements had between the parties, hereto, oral or written, are merged in this Ratification and Amendment.

9. "Grantor" and "Grantee". The term "Grantor" as used herein, and any pronouns used in place thereof, shall mean and include Judith Hutchins, and her heirs, successors in interest, and assigns. The term "Grantee" as used herein, and any pronouns used in place thereof, shall mean and include The Montana Land Reliance and its successors and assigns.

10. Grantee's Acknowledgement. Grantee acknowledges that no goods or services were received in consideration of the grant of the rights reserved in the Conservation Easement and eliminated by this Ratification and Amendment, which Grantee received as of the date noted on page 1 of this Ratification and Amendment.

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

GRANTOR: JUDITH HUTCHINS

J Hutchins

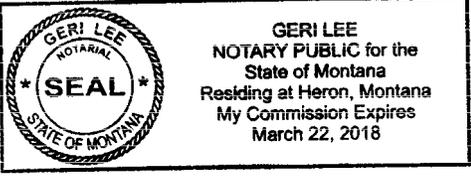
State of Montana  
 County of SANDERS

This instrument was signed before me on 12/20/2016

by Judith HUTCHINS  
 Print name of signer(s)

Ger Lee  
 Notary Signature

Affix seal/stamp as close to signature as possible.



GRANTEE: THE MONTANA LAND RELIANCE, a corporation

By: George S. Olsen President  
 [Name and title]

State of Montana  
 County of Lewis & Clark

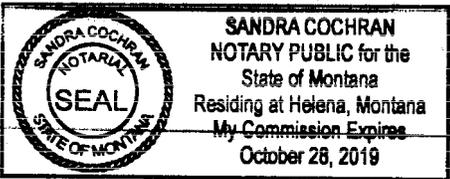
This instrument was signed before me on Dec. 22, 2016

by George S. Olsen acting in the capacity of President  
 Print name of signer(s)

on behalf of Montana Land Reliance

Sandra Cochran  
 Notary Signature

Affix seal/stamp as close to signature as possible.



**EXHIBIT A  
LEGAL DESCRIPTION**

Township 26 North, Range 34 West, P.M.M., Sanders County, Montana

Section 10: SW $\frac{1}{4}$ SE $\frac{1}{4}$

Township 26 North, Range 34 West, P.M.M., Sanders County, Montana

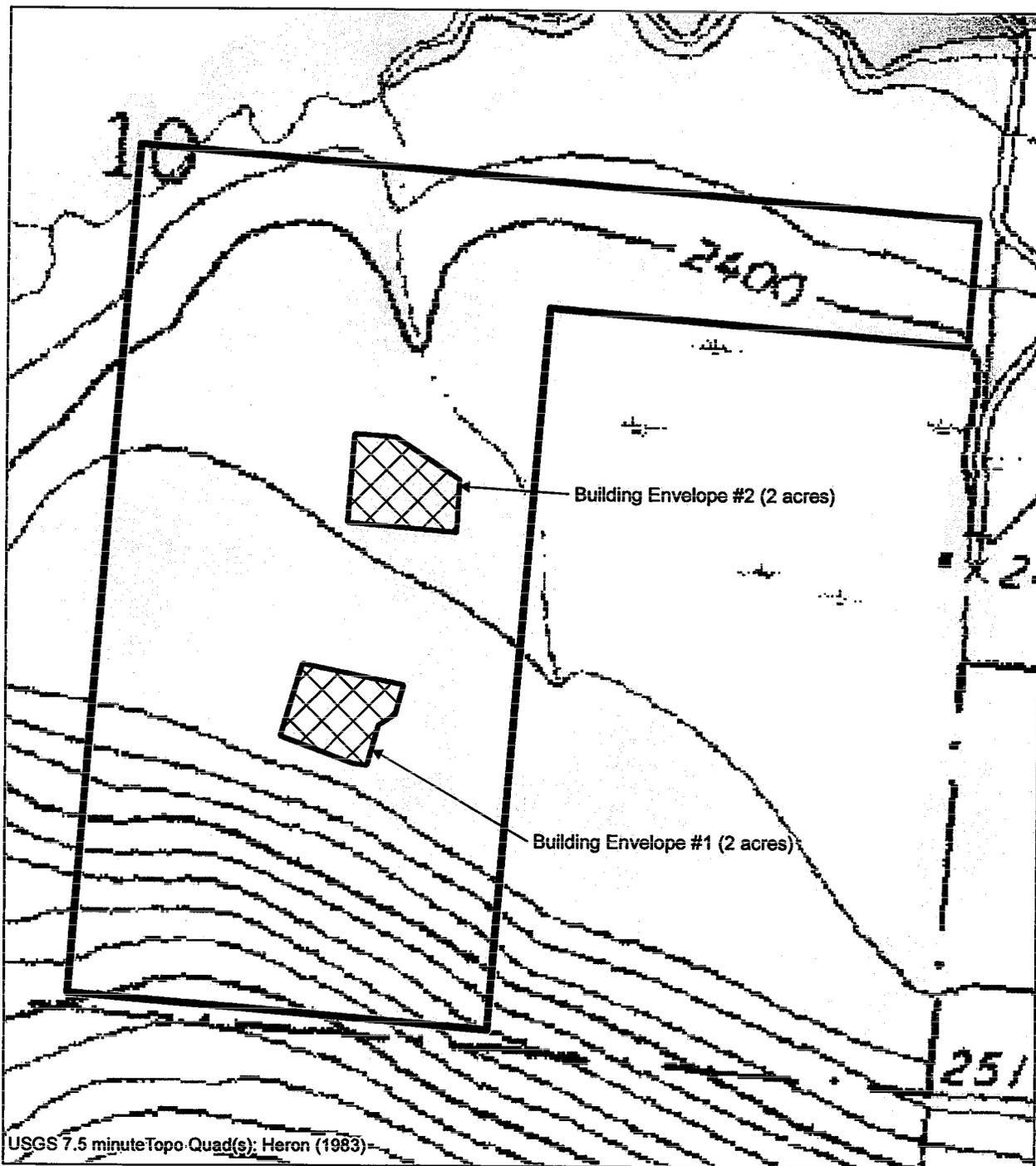
Section 10: The North 24 Rods of the SE $\frac{1}{4}$  of said Section 10, according to  
Certificate of Survey No. 3287

AND

A tract of land located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 10, further described as Tact 1 on  
Certificate of Survey No. 2227, on file in the office of the Clerk and Recorder of Sanders  
County, Montana.

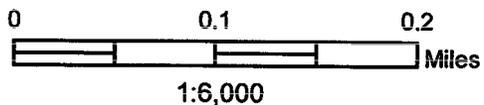
**ALL OF THE FOREGOING DESCRIBED PROPERTY IS CONVEYED SUBJECT TO  
all third party rights of record in the Property existing at the time of conveyance of this Easement  
and not subordinated to this Easement.**

EXHIBIT F (REVISED)



-  Easement Boundary
-  Building Envelope

Date: December 19, 2016  
Hutchins VI Property



Location: T26N, R34W, Sec.10, SE1/4

305031 BOOK: 1 RECORDINGS PAGE: 86932 Pages: 11

STATE OF MONTANA SANDERS COUNTY

RECORDED: 12/27/2016 3:38 KOI: CONSV EASE

NICHOL SCRIBNER CLERK AND RECORDER

FEE: \$77.00

BY: *Brett J. [Signature]*

TO: MONTANA LAND RELIANCE P.O. BOX 355, HELENA, MT 59624

ropes only and should not be relied upon to identify legal boundaries