

AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

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

### DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 12<sup>th</sup> day of November, 2007, by Ole E. Leivestad and Russlyn Ann Leivestad of 28 Fern Hollow, Trout Creek, Montana 59874-9516 (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");

#### RECITALS:

1. Grantor is the owner of certain real property in Sanders County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"); and the Property totals approximately 100 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 element of the Clark Fork Valley and its open space lands which are of great importance to Grantor and to the people of Sanders County, the State of Montana, and the United States, that are worthy of preservation and that provide opportunities to continue traditional agricultural practices; and,
4. The Property provides significant benefit to the people of the State of Montana, Sanders County, and the United States by preserving and providing the following important resources, in perpetuity, in compliance with Section 170(h)(4)(A) 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 State of Montana; and,

b. Retention of significant scenic open space for a variety of other uses, including wildlife habitat and recreation;

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

5. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the open space character, scenic values, and significant relatively natural features and other Conservation Values of the Property; and,

6. 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,

7. 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,

8. Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open space purposes, and is an organization described in Section 170(h)(3) of the 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, unqualified, 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.

## 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 provided that such uses and practices are consistent with the purposes 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, 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 relatively natural features, habitat, scenic, historic, and open space 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 limited 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 judgement, 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 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 and are not inconsistent with the terms 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 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 which requires the prior approval of Grantee pursuant to an express provision of this Easement (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 the 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 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, Montana 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 judgement, 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 post its response 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 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, claims, 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 ("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 the benefits of 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 Internal Revenue 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 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. The parties acknowledge that this information shall be compiled and developed into a final Resource Documentation Report as soon as is practically feasible after the grant of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information compiled prior to the time of the grant of this Easement, which shall be incorporated into the final Resource Documentation Report, accurately represents 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). The parties intend that the documentation shall be used by Grantee to monitor Grantor's compliance with the terms and conditions of this Easement. The documentation shall be on file with Grantee. If the Resource Documentation Report contains any summaries of, or representations about the terms or conditions of this Easement, including Exhibit F hereof, 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.

## SECTION X

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

A. **Extinguishment.** If circumstances arise in the future which render the purposes of this Easement impossible to accomplish, this Easement may only 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) 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 in 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. Any expense incurred by Grantor or Grantee in any such action shall be first reimbursed out of the recovered proceeds; the remainder of such 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.

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

Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge:

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 Sanders 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. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute, without regard to conflict of laws.
- G. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including MCA Section 76-6-101, et seq., and the Code. Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to Grantor or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the Public Records of Sanders County.





**EXHIBIT A  
LEGAL DESCRIPTION**

Township 25 North, Range 31 West, M.P.M., Sanders County, Montana

Section 30: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

And

N $\frac{1}{2}$ SE $\frac{1}{4}$ , LESS that portion deeded to Sanders County for highway right-of-way, in Book 6 of Deeds, Page 309, Sanders County Records being a 20-foot strip along the East line of the E $\frac{1}{2}$ E $\frac{1}{2}$  of said Section 30.

**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 non-commercial hunting of game animals 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. Maintenance and structures. Grantor retains the right to construct, maintain, repair, remodel and make additions to, and replace the following structures on the Property:
  - a. non-residential structures and other improvements as may be necessary for agricultural purposes, including, but not limited to, barns, shelters, sheds, equipment/machine shops, and corrals. Provided, however, that no in-door riding arenas may be constructed upon the Property. All such agricultural structures on the Property must be located within the Development Area delineated in Exhibit F, attached hereto and incorporated by reference.
  - b. one (1) existing residence on the Property at the time of the grant of this Easement and one (1) new residence located within the Development Area delineated in Exhibit F.

The one (1) existing residence, one (1) new permitted residence and all their associated outbuildings shall be located within the Development Area delineated in Exhibit F. The one (1) new permitted residence shall be limited to 1,200 square feet of enclosed living space as measured from exterior wall dimensions but not including exterior decks and porches, and shall not be more than fourteen (14) feet from the top of the foundation to the top of the roof. To ensure that the one (1) permitted new residence will adhere to the size and height limitations referenced in the preceding sentence, Grantor shall submit copies of architectural plans to Grantee for prior notification and approval, as provided in Section IV hereof, which approval shall not be unreasonably withheld. Whether the one (1) new permitted residence is used as a guest house or full time residence is at Grantor's discretion. The purposes of the Development



Area are to allow Grantor flexibility in use of the residences and associated residential structures and to cluster residential uses on the Property to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Development Area.

c. one (1) homestead cabin that is located outside of the Development Area delineated in Exhibit F. In the event of removal or destruction of the existing homestead cabin, it may be replaced with another cabin of the same size and in the same location. At no time may the homestead cabin be used as a permanent residence. Electrical power may not be transported via power lines, either above ground or buried, to the cabin. However, electrical power may be generated or propane used on the site of the cabin.

d. non-residential, non-commercial outbuildings in association with the existing and permitted residences, including, but not limited to, garages, workshops, sheds, and recreational facilities. All such associated outbuildings shall be located within the Development Area delineated in Exhibit F.

Aside from the one (1) existing residence, one (1) permitted new residence and one (1) existing homestead cabin, no other habitations, living or sleeping quarters are permitted on the Property.

Except as provided in this paragraph 4, subparagraph c, in the event of removal or destruction of any or all of said structures and improvements permitted on the Property, to replace them with structures and improvements of a similar function and use, of the same approximate size and in the same general locations.

5. Transfer of land. To grant, sell, exchange, devise, gift, or otherwise convey or dispose of all or any portion of Grantor's right, title, estate, and interest in the Property as one (1) parcel only. 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.

6. Timber removal. To conduct forest management activities on the Property.

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

8. Roads. The repair, maintenance, and improvement existing roads on the Property at the time of this grant.

Grantor retains the right to grant right-of-way easements to the appropriate public authority for the improvement and/or expansion of Fern Hollow Road and Swamp Creek Road, public roads that borders the Property.

9. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements permitted expressly by this Easement. Grantor retains the right to grant right-of-way easements for utility services to neighboring properties, so long as any such utility services to neighbors are buried.

10. Residence-based business. Persons living on the Property may conduct businesses within their residence 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. However, client and/or customer visits by appointment shall be permitted. 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.
2. Mineral removal. There shall be no exploration for, extraction or removal of any minerals (including oil, gas, hydrocarbons, gravel, and hard-rock minerals) by any surface or subsurface mining method; there shall be no exploration for, or exploitation of, hydrothermal resources; and there shall be no extraction or removal of any non-mineral substance (including soil, rock and peat).
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 business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility 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 normal agricultural, ranching and forestry operations.
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 8.

Aside from right-of-way easements Grantor may elect to grant pursuant to Exhibit B, paragraph 8, 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 in cases

where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee.

8. Utilities. The granting of major utility corridor right-of-way easements or the expansion of existing major utility corridor right-of-way easements. Such right-of-way easements may be granted by mutual agreement of Grantor and Grantee in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee.

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 Ole E. Leivestad and Russlyn Ann Leivestad of Trout Creek, Montana, 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 October 5, 2007, 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 shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final resource documentation report

shall be reviewed and approved in final form by both Grantor and Grantee, and shall be on file with Grantee in Grantee's normal place of business.

DATED this 12<sup>th</sup> day of November, 20 07.

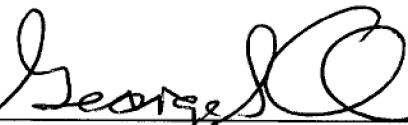
GRANTOR:

  
\_\_\_\_\_  
OLE E. LEIVESTAD

  
\_\_\_\_\_  
RUSSLYN ANN LEIVESTAD

GRANTEE:

**THE MONTANA LAND RELIANCE,**  
a corporation

By:  Sec. Treas  
[Name and title]

**EXHIBIT E**  
**SAMPLE OF FORM TO BE USED FOR**  
**ACKNOWLEDGMENT OF VALUE OF THE LEIVESTAD PROPERTY**  
**CONSERVATION EASEMENT**

Ole E. Leivestad and Russlyn Ann Leivestad of Trout Creek, Montana, 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.

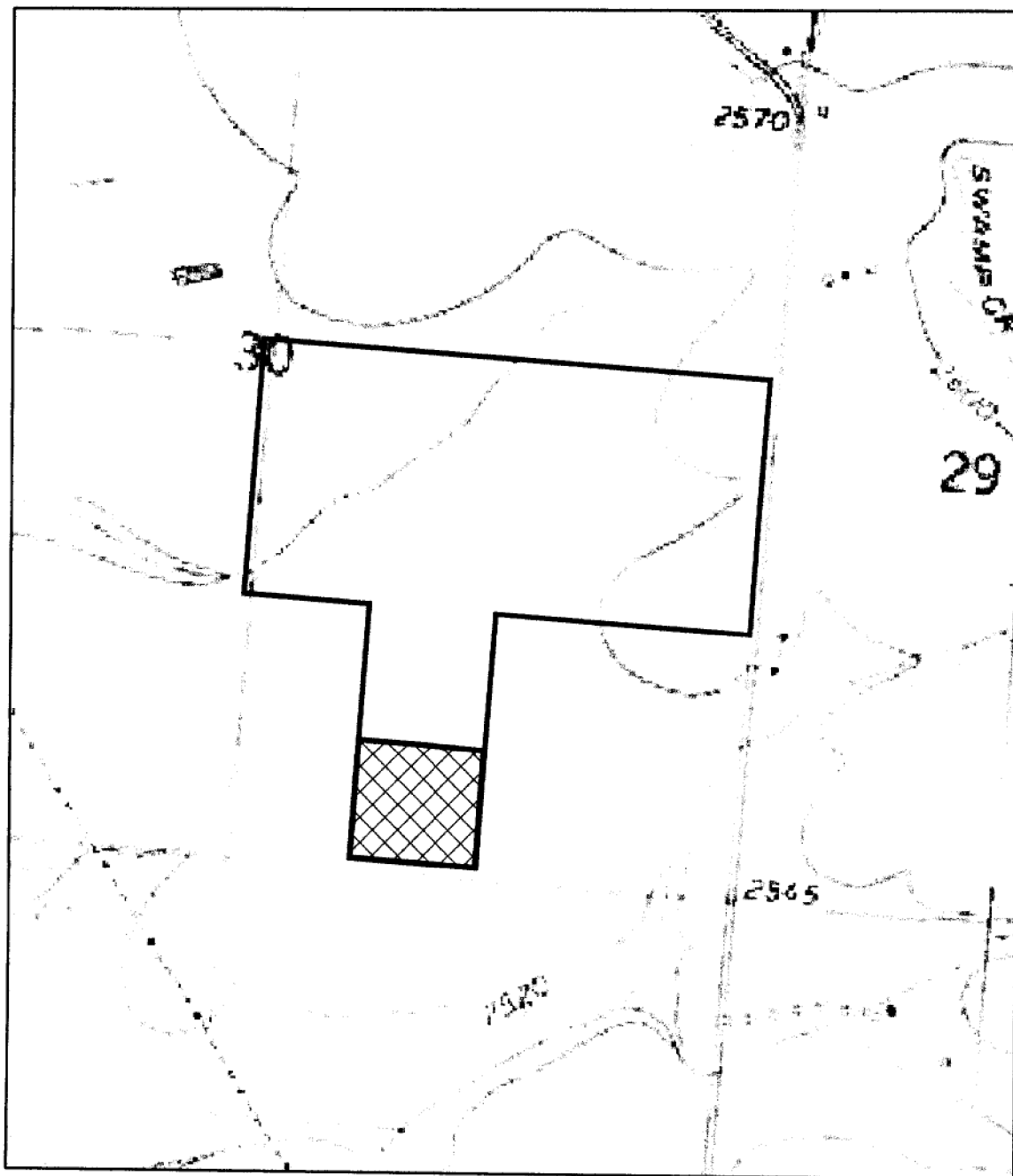
\_\_\_\_\_  
DATE OLE E. LEIVESTAD



\_\_\_\_\_  
DATE RUSSLYN ANN LEIVESTAD

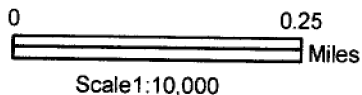
\_\_\_\_\_  
DATE THE MONTANA LAND RELIANCE

\_\_\_\_\_  
DATE APPRAISER

Exhibit F



-  Easement Boundary
-  Development Area



Date: October 5, 2007

Location: T25N, R31W, Sec. 30

Disclaimer: information provided on this map is for illustrative purposes and should not be relied upon to identify legal boundaries

272993 BOOK: 1 RECORDINGS PAGE: 60334 Pages: 24  
 STATE OF MONTANA SANDERS COUNTY  
 RECORDED: 11/13/2007 12:32 KOI: EASEMENT-R  
 JENNINE ROBBINS CLERK AND RECORDER  
 FEE: \$168.00 BY: *Brenda Frank*  
 TO: MONTANA LAND RELIANCE P.O. BOX 355, HELENA, MT 59624