



Paula Robinson, Flathead County MT by JL

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Upon recording, please return to:  
Flathead Land Trust Inc.  
P.O. Box 1913  
Kalispell, MT 59903

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**DEED OF CONSERVATION EASEMENT**  
Moses Family Trust – Flathead County, MT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is made this 13th day of December, 2011, by Jackson Moses and Judy Moses, Trustees under the Moses Family Trust, having an address of 38 North Portola, Laguna Beach, CA 92651 (hereafter together with their heirs, personal representatives, successors and assigns referred to as “Landowners”), and the FLATHEAD LAND TRUST INC., a nonprofit corporation organized under the laws of the State of Montana, with the address of 33 Second Street E., Suite 5, P.O. Box 1913, Kalispell, MT 59903, and its successors and assigns (hereinafter together with its successors or assigns referred to as the “Holder”).

Exhibits to this Deed of Conservation Easement include the following:

- Exhibit A- Legal Description of the Property
- Exhibit B- Permitted and Prohibited Uses and Practices
- Exhibit C- Map of the Property
- Exhibit D- Acknowledgment of Accuracy of Baseline Documentation



## RECITALS

A. Landowners are the owners of certain real property in Flathead County, Montana, consisting of 121 acres, more or less, legally described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter the “Property”).

B. The Property is depicted for illustrative purposes on the map attached hereto and incorporated herein by this reference as Exhibit C.

C. The Property constitutes a valuable component of the natural habitat, scenic and open-space lands in the Flathead Valley and the Property remains largely undeveloped and retains its agricultural and natural habitat characteristics; and,

D. Preservation of the wildlife habitat, wetlands, forested and meadow ecosystems, scenic and open-space values, found on the Property provides substantial benefits to the people of the State of Montana, Flathead 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.:

1. The Engelmann spruce/skunk cabbage habitat type in the southwestern portion of the property (Forested Area 4 as shown on Exhibit C), listed as an “Imperiled” community by the Montana Natural Heritage Program, a program of the Montana State Library’s Natural Resource Information System.

2. Significant relatively natural habitat including forestland, wetlands, and open meadow communities that provide a variety of habitats for native wildlife and plants including the following species: whitetail deer, black bear, grizzly bear, foxes, coyotes, mountain lions, and many bird and small mammal species. The habitat for bird species includes nesting, feeding and resting habitat for both resident and migratory species.

3. Important soils classified as “prime farmland” by the U.S.D.A. Natural Resource Conservation Service on over fifty percent of the property.

4. Open-space lands that provide opportunities for agricultural operations and ensure that such lands remain available for agriculture and to continue traditional agricultural practices as encouraged and supported by Title XV, Subtitle C, Part I, subpart a, Section 15302 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 923, May 22, 2008 (and extensions thereof).

5. Scenic views of forested land and the Swan Mountain Range (Flathead National Forest) for members of the public traveling on U.S. Highway 35 and its zoned scenic corridor.



(hereafter collectively referred to as the “Conservation Values”);

E. By granting this Easement, Landowners and Holder desire and intend that the Conservation Values of the Property be preserved and maintained by a continuation of land uses that will not interfere with or substantially impair those Conservation Values.

F. The Flathead County, Montana, Commissioners have expressly recognized in the Flathead County Growth Policy, adopted March 19, 2007, the importance of preserving and protecting critical fish and wildlife habitat to preserve the area’s unique outdoor amenities and quality of life, water resources within the Flathead watershed, and water quality, wetlands, and riparian areas in Flathead County, Montana, from the encroachment of incompatible or unrelated uses.

G. This Easement directly adjoins other private land on which Flathead Land Trust Inc. holds another conservation easement, and this Easement therefore complements the protection of the conservation values held for the benefit of the public under the terms of this conservation easement, as endorsed by Treasury Regulation Section 1.170A-14(d)(4)(iv)(A)(4).

H. The Property is within the Scenic Corridor Zoning District, adopted by Flathead County, Montana, Commissioners, which has the specific intent and purpose of protecting and maintaining the scenic views along Hwy. 35.

I. 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.

J. This Easement is created pursuant to the Internal Revenue Code, as amended (hereinafter referred to as the "Code") at 26 U.S.C., Sections 170(h)(1)-(6), 2031, 2055 and 2522.

K. Landowners own the rights to identify, preserve, and protect in perpetuity the natural habitat, open-space character and scenic value of the Property.

L. By conveying this Easement and its associated rights to Holder freely, voluntarily, and irrevocably, Landowners intend to preserve and protect in perpetuity the Conservation Values of the Property.

M. The Holder is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized for the purpose of preserving and protecting such Conservation Values within Flathead County for aesthetic, scientific, charitable and educational purposes; and is an organization duly qualified under Section 170(h)(3) of the Internal Revenue Code of 1986 to receive and hold conservation easements for such purposes.



N. The Property meets the Holder's criteria for acceptance of conservation easements, and Holder's Board of Directors has duly adopted a resolution approving Holder's execution, delivery and acceptance of this Easement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Easement, and as an absolute, unconditional, unqualified and voluntary gift, the Landowners hereby give, grant, transfer, and convey to Holder, and the successors and assigns of Holder, with warranties of title, this perpetual Easement on, over and across the Property in accordance with the terms and conditions set forth below. Holder acknowledges that no goods or services were received in consideration of the grant of this Easement, which Holder received as of the date noted on page 1 of this Easement.

### **SECTION I** **Rights Conveyed**

The rights conveyed to the Holder by this Conservation Easement are as follows:

A. Identification and Protection. To identify, preserve, restore, and protect in perpetuity the Conservation Values of the Property, and to enforce the terms and conditions of this Easement, subject to Landowners' reserved rights as provided herein, 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. Upon reasonable prior notice to the Landowners, to enter upon and inspect the Property in a manner that will not unreasonably interfere with the use of the Property by the Landowners as necessary to determine that the Property is being used in a manner consistent with this Easement, and to enforce the rights granted in this Easement. Holder also has the express right to enter the Property to enforce the rights granted to Holder in this Easement. Landowners therefore convey to Holder a right of immediate entry onto the Property if, in Holder's reasonable judgment 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 sentence of this paragraph B, this Easement does not grant to Holder, or 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 terms and purposes of this Easement and to compel the reasonable restoration of such areas or attributes of the Property as may be damaged by such activity or use.

D. Transferable Development Rights. Landowners hereby acknowledge the conveyance to Holder, and Holder's extinguishment of, all development rights which are now appurtenant to the Property or which may later become appurtenant, except those development rights that are specifically reserved by the Landowners in this Easement. Landowners and Holder hereby agree



to execute and record any additional instruments as may be necessary or appropriate to effect the transfer of said development rights from Landowners to Holder. The Landowners and Holder specifically agree that such extinguished or transferred development rights may not be (i) used on or transferred to any portion of the Property, (ii) used on or transferred to any other land, whether adjacent to or distant from the Property, or (iii) used for the purpose of calculating permissible lot yield or density of the Property or any other land, with regard to any land use or zoning which affects or may affect the Property. If extinguishment of development rights is not permitted under pertinent laws or ordinances that authorize them, Holder will not transfer such rights for any reason to third parties and will refrain from exercising such rights for the perpetual term of this Easement.

## **SECTION II**

### **Purpose and General Effect of Easement**

A. Purpose. The purposes of this Easement are to preserve and protect the Conservation Values (explained in detail in the Recitals) of the Property 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 the Landowners and Holder 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 provisions of this Easement may no longer be accomplished, such failure of the provision shall not be deemed sufficient cause to terminate the entire Easement as long as any other provision of the Easement may be accomplished. Landowners and Holder recognize that changes in economic conditions, in technologies, and in accepted forest and agricultural management practices may result in an evolution of forest and agricultural, and other uses of the Property, and such uses are permitted provided they are and remain consistent with the purpose of this Easement.

B. Perpetual Restrictions. The Easement hereby granted shall run with the Property in perpetuity and shall bind the Landowners, and the Landowners' successors and assigns.

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

D. Landowners' Title Warranty. Landowners warrant that they have good and sufficient title to the Property and hereby promise to defend the same against all claims from persons claiming by, through or under Landowners.



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

A. The Property may not be used for any purposes or activities that are inconsistent with the specific terms and general purposes of this Easement, including the rights expressly conveyed in this Easement to Holder to preserve and protect the Conservation Values in perpetuity. Landowners nevertheless reserve all other rights incidental to 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 prohibited herein and that are not inconsistent with the terms and purposes of this Easement. Without limiting the generality of the foregoing sentence, Exhibit B, attached hereto and incorporated by this reference sets forth certain uses and activities that are expressly prohibited by this Easement and the right to engage in other uses and activities that are expressly reserved by the Landowners insofar as they do not impair, damage or destroy the Conservation Values. Furthermore, if the exercise of any of Landowners' reserved rights has the potential to impair, damage, or destroy a protected Conservation Value, Landowners must obtain Holder's prior written approval of such use or activity, pursuant to Section IV of this Easement and in accordance with Treasury Regulation 1.170A-14(g)(1).

**SECTION IV**  
**Prior Notice by Landowners and Approval of Holder**

Any use or activity proposed to be done or undertaken by Landowners which requires the prior notice to or approval of Holder, and any proposed use or activity that could impair, damage or destroy the Conservation Values, may be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. Landowners' Written Request. Prior to the commencement of any use or activity requiring Holder's approval, Landowners must send Holder written notice and request for approval of Landowners' intention to commence or undertake such use or activity. Said notice shall inform Holder of all aspects of such proposed 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 the Holder with an address to which Holder's responses should be sent, and the names and addresses of persons to contact about the request.

B. Holder's Address. Any notice or request for approval of a proposed enterprise, activity, or use shall be (a) in writing, and (b) either delivered in person with a signed and dated proof of delivery, or sent by certified United States mail (postage prepaid and with return receipt requested), or (c) sent by Federal Express or other reputable courier or delivery service, provided that the sender obtains a signed proof of delivery. Said notice shall be addressed to Holder at 33 Second Street E., Suite 5, P.O. Box 1913, Kalispell, MT 59903, or to such other address as Landowners from time to time may be informed of in writing by Holder.



C. Holder's Response. Holder shall have forty five (45) days from receipt of such notice or request, as indicated by the date of the return receipt, to review the proposed use or activity and to notify Landowners of any objection thereto; nevertheless, the 45-day period shall not begin until such time as the Holder has received adequate information from Landowners to enable Holder to evaluate the proposed activity. In the event that the Holder requires additional information to evaluate the proposed activity, the Holder shall request the information from Landowners as soon as practicable as and in any case not later than 30 days after the receipt of the notice or request of the proposed activity. Holder's objection, if any, shall be communicated to Landowners in writing and shall be based upon Holder's reasonable opinion that the proposed use or activity is inconsistent with the purposes or terms of this Easement. If, in Holder's judgment, conformity with the purposes or terms of this Easement is possible, said notice shall inform Landowners of the manner in which the proposed enterprise, use or activity may be modified to be consistent with this Easement. Except as provided in paragraph E of this Section IV, only upon Holder's express written approval may the proposed enterprise, use or activity be commenced and/or conducted, and only in the manner explicitly represented by Landowners and approved by Holder. Holder's written consent shall not be unreasonably withheld.

D. Landowners' Address. Holder's response to Landowners' notice and request for approval shall be sent by registered or certified mail, return receipt requested, or by a private delivery service that maintains delivery records and shall be addressed to Landowners at the address, provided by Landowners pursuant to Paragraph A above.

E. Holder's Failure to Respond. If Holder fails to respond to Landowners' notice and request for approval within forty five (45) days of Holder's receipt of said notice or request, or within forty five (45) days of the time that the Holder has received adequate information to evaluate the proposed activity, whichever is later, Landowners will contact Holder again to confirm that Holder received the first notice or information, and if after ten (10) days from such second contact Holder does not respond, Holder shall be deemed to have granted its approval of the proposed use or activity as set forth in Landowners' notice to Holder. Holder's failure to respond to any individual notice or request for approval shall not be deemed to be a waiver of the terms of this Easement or a waiver of any other duty and obligation of the Landowners to seek prior approval for other specific activities for which Holder's approval is necessary.

F. No Notice for Emergency Actions. Landowners shall not be required to give Holder advance notice of any prudent action taken by Landowners under emergency conditions or threat of emergency to prevent, abate or mitigate significant injury to the Property or to any person resulting from causes beyond Landowners' control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Landowners 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. Holder's Remedies. If Holder determines that Landowners, or third parties under Landowners' authority and control or acting with Landowners' knowledge or approval, are in violation of the terms of this Easement, Holder shall give written notice to Landowners of such violation. In said notice of violation, Holder shall demand corrective action by Landowners sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity that is 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 Landowners:

(i) fail to cure the violation within thirty (30) days after receipt of notice thereof from Holder; or

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

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

Holder 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 Holder, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to any Conservation Values, Holder may pursue its remedies under this paragraph without giving the notice required or without waiting for the period provided for cure to expire. Holder's rights under this Paragraph A apply equally in the event of either actual or threatened violations of the terms of this Easement, and Landowners agree that Holder shall be entitled to the injunctive relief – including ex parte injunctive relief - described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Holder 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 damaged as a result of a violation and to compensate Holder and the public for the loss and damage to the Conservation Values, Holder shall be entitled to recover damages for violation of the terms of this Conservation Easement or damage to any Conservation Value protected by this Conservation Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowners' liability therefore, Holder, in its sole discretion and if feasible, may apply any





damages recovered to the cost of undertaking any corrective action on the Property. Holder'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 Holder in enforcing the terms of this Easement against Landowners, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Landowners' violation of the terms of this Easement shall be borne by Landowners. If Landowners prevail in any action to enforce the terms of this Easement, Landowners' reasonable costs of suit, including reasonable attorneys' fees, shall be borne by Holder only in the event a specific determination is made by the Court in which it is determined the Holder lacked a reasonable basis for enforcement action.

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

D. Waiver of Certain Defenses. Landowners hereby expressly waive any defense of laches, estoppel, or prescription.

E. Acts Beyond Landowners' Control. Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Landowners for any injury to or change in the Property resulting (i) from causes beyond Landowners' control including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Landowners similar to those occurrences specified, or (ii) from any prudent action taken by Landowners under emergency conditions or threat of emergency to prevent, abate or mitigate significant injury to the Property or to any person resulting from such causes beyond Landowners' control.

F. Mediation. Landowners and Holder agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation. Mediation is therefore the parties' preferred dispute resolution procedure if circumstances do not require Landowners or Holder to seek immediate injunctive relief from the courts and if Landowners agree in writing not to proceed with the use or activity pending resolution of the dispute. In the event of any dispute between Landowners and Holder over the meaning, requirements, interpretation, or implementation of the Easement, Landowners and Holder may refer the dispute to mediation by written request served upon the other party. The non-requesting party shall have ten (10) days after receipt of a mediation request to consent thereto or to refuse to mediate the dispute.

1. Procedure. Within ten (10) days after Landowners and Holder agree to mediation of a dispute, the parties shall mutually select a mediator. Mediation hearings shall remain informal, with each party being permitted to present such facts and evidence as it may

reasonably believe supports that party's position. Costs and expense of mediation shall be divided equally between Landowners and Holder, excluding each party's legal fees.

2. Limitations. Notwithstanding any provision to the contrary, the mediation procedure set forth herein shall in no way be construed to deprive Landowners and Holder from any judicial remedies provided by law, or by agreement herein, and is intended solely as an informal dispute resolution mechanism. Neither Landowners nor Holder shall have the right to compel performance of mediated solutions, unless such solutions are reduced to a binding written agreement between Landowners and Holder at the conclusion of the mediation process.

The parties intend that each conflict and dispute submitted to mediation shall be independent, with facts, circumstances, and recommended resolutions to be determined on a case-by-case basis, without reference to prior conflicts, disputes, or the resolutions thereto.

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

Landowners 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. Landowners shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property. Holder shall pay any taxes or assessments that are lawfully assessed on this Easement, if any. Landowners 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. Landowners and Holder acknowledge and agree that Landowners retain primary ownership of the Property and therefore Landowners control day-to-day activities on, and access to, the Property, except for Holder'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, Landowners therefore agree that general liability for risks, damages, injuries, claims, or costs arising by virtue of Landowners' continued ownership, use and control of the Property shall remain with Landowners as a normal and customary incident of the right of Property ownership.

B. Indemnity. Landowners shall indemnify and hold harmless the Holder, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, judgments, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or

equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Holder may be subject or incur relating to the Property, which arise from Landowners' negligent acts or omissions, Landowner's deliberate acts or other conduct, or Landowners' breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws, including but not limited to 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. Holder Responsibility. Holder shall be responsible for its own negligent acts or omissions and the negligent acts or omissions of its employees and authorized agents occurring or arising in connection with Holder's activities relating to the Property.

D. Environmental Warranty. Landowners warrant that they are in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowners warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Landowners further warrant that they have no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law and as further defined in this paragraph below.

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

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

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals,

hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any 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 the Holder 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 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 similar state and federal statutes.

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

This Easement and its benefits are assignable by Holder, provided, that Holder may not transfer or assign its rights under this Easement except to a "qualified organization," within the meaning of MCA Sections 76-6-104(5) and 76-6-204 and 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. In the event assignment of this Easement becomes necessary, Holder shall seek an assignee which is mutually acceptable to Holder and Landowners. Any such qualified organization must agree to enforce in perpetuity the terms and purposes of this Easement in perpetuity as a condition of such transfer or assignment. Holder represents to the Landowners that its present intention is to assign its interest in this Easement only in connection with the dissolution of the Holder.

### **SECTION IX** **Baseline Documentation Report**

Landowners have made available to Holder, 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 Holder or Holder's agents on September 10, 2010, and consists of mapping of physical features and resources, photographs of structures, developments, and improvements, and gathering of other appropriate information to document the condition of 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 Baseline 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).

Landowners and Holder agree that the Baseline Documentation Report may be supplemented with aerial photographs, historical, archival, and government documents, as appropriate and available.

The original Baseline Documentation Report shall be maintained on file with Holder and a copy shall be provided to Landowners. The parties intend that the Baseline Documentation Report shall be used by Holder to monitor Landowners' 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 Baseline 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 Baseline Documentation Report shall be governed by the express terms and conditions herein and not in the Baseline Documentation Report.

## SECTION X

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

A. Extinguishment. If circumstances arise in the future which render the purposes of this Conservation Easement impossible or impractical to accomplish, this Easement may be terminated or extinguished (as provided for in Treasury Regulations Section 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 Holder 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 in effect at the time, in accordance with paragraph B of this Section X. Holder shall use any such proceeds in a manner consistent with the conservation purposes of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Holder, which, for purposes of paragraph A or C 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 Landowners' 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.

C. Eminent Domain and Condemnation. If all or a portion of the Property is taken for a public purpose in exercise of eminent domain so as to abrogate the restrictions imposed by this



Easement, Landowners and Holder may join in appropriate actions to recover the full value of each party's proportionate interest in the Property (or portion thereof) taken, as established by paragraph B above, including the value of the Holder's interest as it pertains to the condemned property at the time of the taking or condemnation. Landowners and Holder 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 or paid. Proceeds shall be divided between Landowners and Holder as set forth above in paragraph B of this Section X and Holder shall use any such proceeds received from Easement condemnation in a manner consistent with the conservation purposes of this Easement.

### **SECTION XI** **INTERPRETATION**

Notwithstanding any general rule of construction to the contrary, the parties intend that the provisions of this easement shall be liberally construed to protect and preserve the Conservation Values and to effect the purposes of the easement and the policies and purposes of MCA Section 76-6-201, et seq. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

If a conflict arises between protection of one or more of the identified Conservation Values that may have an actual impact, or may have a potential impact, on one or more of the other identified Conservation Values, Holder intends to enforce this Easement, in its sole discretion, by giving the greatest level of protection to the Conservation Values in the hierarchy and order as listed in the Recital D on Page 2 of this Easement. Holder reserves the right to review this hierarchy of Conservation Values from time to time, however, as the public benefits that are provided by this Easement may change over time, and Holder also reserves the right to revise this hierarchy, after consultation with Landowners, by filing a Notice in the public records of Flathead County, Montana. The hierarchy set forth in this Section XI is intended to apply only to resolve actual or potential conflicts between protected Conservation Values, and therefore, this Section XI may not be interpreted or construed by Landowners, Holder, or any other party to justify a disregard of, or to discount, Holder's and Landowners' obligations hereunder to protect and preserve all Conservation Values if such actual or potential conflict between protected Conservation Values does not exist.

**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. "Landowners" and "Holder". The terms "Landowners" and "Holder," as used herein, and any pronouns used in place thereof, shall mean and include the above-named Landowners and their successors in interest and assigns, including but not limited to successor trustees, beneficiaries, heirs, personal representatives, executors, successors in interest, and assigns, and the Flathead Land Trust Inc. 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. Landowners agree that reference to this Easement and reference to its dates and places of recording in the Public Records of Flathead County will be made in any subsequent deed or other legal instrument by which any interest in the Property is conveyed, including any leasehold interest. Landowners agree to incorporate the terms and conditions of this Easement by expressly making reference to the Easement in any deed by which Landowners convey title to the Property. Nevertheless, Landowners' failure to make such reference in conveyance documents shall not affect the validity of this Conservation Easement or its applicability to the Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowners to use the Property as collateral for any loan, provided that any mortgage, deed of trust, or lien arising after the date of execution of this Easement shall be subordinate to the terms and purposes of this Easement and said security interest in the Property may not be foreclosed so as to create a division or subdivision of the Property that is not expressly permitted by Exhibit B, Paragraph 1 hereof.

F. Notice of Suit. Landowners must immediately provide Holder with notice of any lawsuit or administrative action involving the Property or which threatens the Holder's rights in this Easement. Notice must be sent to Holder's address in Section IV, paragraph B, and must include a copy of any lawsuit or administrative action filed. Landowners agree not to object to Holder'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.



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

H. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Landowners and Holder may jointly amend this Easement. Any amendment of this Easement shall be at the discretion of the Holder (which may establish such requirements for the submission of plans and other documentation as it deems necessary to make the determination required or permitted of it hereunder) and must comply with all applicable laws, including Section 170(h) of the Internal Revenue Code and Montana law. Any such amendment that does not comply with Section 170(h) and Montana law shall be void and of no force or effect.

In addition, any amendment must be consistent with the terms and conservation purposes 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. No amendment may confer prohibited private benefit on Landowners or other third parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Flathead County, Montana.

Landowners requesting the amendment shall reimburse Holder for all expenses, including staff time and reasonable attorneys' fees, incurred in preparing and executing the amendment.

I. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. The parties agree that the Recitals are true and correct and accurately reflect their mutual land and resource conservation intentions as of the date of this Easement.

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

IN WITNESS WHEREOF, Landowners and Holder have hereunto set their hands.



LANDOWNERS: THE MOSES FAMILY TRUST, DATED NOVEMBER 10, 1982

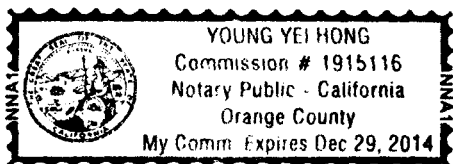
LANDOWNERS:

By: Jackson Moses Trustee  
Jackson Moses, Trustee

By: Judy Moses Trustee  
Judy Moses, Trustee

State of Montana CA  
Flathead County ORANGE county

This instrument was acknowledged before me on this 13 day of DEC, 2011, by Jackson Moses, TRUSTEE and Judy Moses, TRUSTEE of the Moses Family Trust dated November 10, 1982.



Y. Yei Hong  
(Notary Signature)  
YOUNG YEI HONG  
(Name)

(seal)

Title/Rank: NOTARY PUBLIC  
Residing at: LAGUNA NIQUEL  
My commission expires: DEC 29-2014

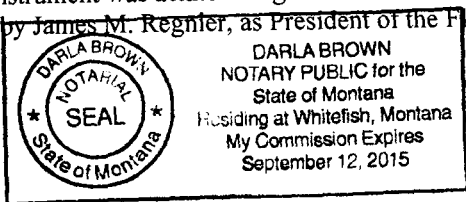
HOLDER:

THE FLATHEAD LAND TRUST, INC.  
a State of Montana non-profit corporation

By: James M. Regnier  
James M. Regnier, Board President

State of Montana  
Flathead County

This instrument was acknowledged before me on this 9<sup>th</sup> day of December, 2011, by James M. Regnier, as President of the Flathead Land Trust, a State of Montana non-profit corporation.



[Signature]  
(Notary Signature)  
  
\_\_\_\_\_  
(Name)

(seal)

Title/Rank: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT A  
LEGAL DESCRIPTION**

**Approximately 121 acres, more or less, in Flathead County, Montana.**

A tract of land situated, lying and being in the Northwest Quarter (NW1/4) of Section 14, Township 28 North, Range 20 West, P.M.M. Flathead County, Montana, and more particularly described as follows to wit:

Beginning at the Southwest corner of the NW1/4 of Section 14, Township 28 North, Range 20 West, P.M.M., Flathead County, Montana, which is a found iron pin; thence North 00°03'22" East, and along the West boundary of said NW1/4 a distance of 1319.89 feet to a set iron pin which is the Southwest corner of the W1/2NW1/4NW1/4 of said Section 14; thence North 88°27'39" East and along the South boundary of said W1/2NW1/4NW1/4 a distance of 663.89 feet to a set iron pin and the Southeast corner thereof; thence North 00°04'59" East and along the East boundary of said W1/2NW1/4NW1/4 a distance of 1315.90 feet to a point on the North boundary of said NW1/4; thence North 88°17'21" East and along said North boundary a distance of 1329.13 feet to the Northeast corner of the W1/2E1/2NW1/4 of said Section 14; South 00°08'12" West and along the East boundary of said W1/2E1/2NW1/4 a distance of 2639.84 feet to the Southeast corner thereof; thence South 88°37'57" West and along the South boundary of said NW1/4 a distance of 1989.65 feet to the Point of Beginning.

Tract 1, Certificate of Survey No. 9249.

AND

PARCEL 1:

That portion of the Southwest 1/4 of the Northeast 1/4, Section 14, Township 28 North, Range 20 West, Principal Meridian, Flathead County, Montana described as follows:

Commencing at the North Quarter Section Corner of Section 14, Township 28 North, Range 20 West; thence South 00°01'15" West 1291.32 feet to the POINT OF BEGINNING of the parcel being described, said point being the northwest corner of that tract of land shown on Certificate of Survey No. 6930; thence along the northerly boundary of said tract of land, North 88°23'46" East 325.94 feet; thence South 00°01'44" West 439.85 feet to the northeast corner of Parcel A of Certificate of Survey No. 5639; thence along the northerly boundary of said Parcel A, South 88°21'20" West 326.37 feet; thence North 00°05'02" East 440.09 feet to the Point of Beginning containing 3.293 acres of land, more or less, as shown on Certificate of Survey No. 19247 which is herewith incorporated in and made a part of this legal description.



PARCEL 2:

The South Half of the South 880.00 feet of the North 1760.00 feet of the East Half of the East Half of the Northwest Quarter, Section 14, Township 28 North, Range 20 West, Flathead County, Montana, excepting therefrom the Westerly 40.00 feet of the East Half of the East Half of the Northwest Quarter of said Section 14.

AND

That portion of the North Half, Section 14, Township 28 North, Range 20 West, Flathead County, Montana, described as follows:

Beginning at the Northwest corner of the East Half of the East Half of the Northwest Quarter (E1/2E1/2NW1/4) of Section 14; thence along the West line of the E1/2E1/2NW1/4 South 0°21'11" East 2178.29 feet; thence North 88°08'31" East 647.39 feet; thence North 0°21'48" West 140.03 feet; thence North 88°07'30" East 60.70 feet; thence North 0°21'49" West 140.00 feet; thence North 88°09'10" East 282.57 feet; thence North 0°20'46" West 142.64 feet; thence South 87°59'02" West 326.41 feet; thence South 87°46'17" West 624.37 feet; thence North 0°21'11" West 1760.85 feet to the North line of Section 14; thence along the North line South 87°46'17" West 40.00 feet to the point of beginning, (Parcel A on Certificate of Survey No. 5639)

AND

That portion of the North Half (N1/2), Section 14, Township 28 North, Range 20 West, Flathead County, Montana, described as follows:

Commencing at the Northwest corner of the E1/2E1/2NW1/4, Section 14; thence along the West line of the E1/2E1/2NW1/4 South 0°21'11" East, 2178.29 feet; thence North 88°08'31" East 647.39 feet to the Point of Beginning; thence continuing North 88°08'31" East 343.18 feet; thence North 0°20'46" West 280.00 feet; thence South 88°09'10" West 282.57 feet; thence South 0°21'49" East 140.00 feet; thence South 88°07'30" West 60.70 feet; thence South 0°21'48" East 140.03 feet to the Point of Beginning.

Parcel B, Certificate of Survey No. 5639.

----- END EXHIBIT A -----



## EXHIBIT B PERMITTED AND PROHIBITED USES AND PRACTICES

The following, though not an exhaustive recital, are the uses and practices that are hereby deemed to be either consistent or inconsistent with the objectives of this Conservation Easement and are expressly permitted or prohibited, depending on the specific uses or practices discussed:

1. Transfer of Land and Identification of Residential Building Envelopes. Landowners reserve the right to grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively "transfer") all or any portion of Landowners' right, title, estate, and interest in the Property as no more than three (3) parcels, provided the parcels contain the minimum acreage set forth below, and further provided that all parcels are transferred subject to the terms, conditions, rights, restrictions, and obligations contained in this Easement. The Property may be divided and transferred as follows:

a. Parcel 1 must include Forested Area 1 (approximately 10.3 acres in size; as identified in Exhibit C) and shall be at least 20 acres in size. The Residential Building Envelope for Parcel 1 shall be identified prior to the construction of any new structures or improvements built after the date of this Easement (existing structures and improvements are identified in the Baseline Documentation Report), shall be rectangular in shape, shall include the existing buildings (one (1) single family residence, two (2) sheds and one (1) garage with a residential apartment), shall not exceed a maximum four (4) acres in size and shall be located entirely within Forested Area 1. The location of the Residential Building Envelope for Parcel 1 shall be solely at the discretion of the Landowners as long as it includes existing structures. At the time the Residential Building Envelope is identified, its perimeter boundary shall be located with reasonable definiteness employing a means mutually agreeable to the parties. The parties will use their best efforts to locate the building envelope without resort to a formal survey. It shall be the responsibility of the Landowner to provide the Holder with boundaries of the perimeter of the building envelope located with the degree of definiteness reasonably necessary under the circumstances and as contemplated by this paragraph. The Holder will verify that the location of the Residential Building Envelope is within Forested Area 1 and meets the requirements for size and shape as described above.

b. Parcel 2 must be at least ten (10) acres in size and shall include all or part of Forested Area 2 as identified on Exhibit C. The Residential Building Envelope for Parcel 2 shall be identified prior to the construction of any structures or improvements required to be located within a building envelope by this Easement. The Residential Building Envelope for Parcel 2 must be within Forested Area 2 (which is about 11.2 acres in size; as identified in Exhibit C), shall be rectangular in shape, and shall not exceed a maximum of three (3) acres in size. The location of the Residential Building Envelope for Parcel 2 within Forested Area 2 shall be solely at the discretion of the Landowners as long as it meets the above described requirements. At the time the Residential Building Envelope is identified, its perimeter boundary shall be located with reasonable definiteness employing a means mutually agreeable to the parties. The parties will use their best efforts to locate the building envelope without resort to a formal survey. It shall be



the responsibility of the Landowner to provide the Holder with boundaries of the perimeter of the building envelope located with the degree of definiteness reasonably necessary under the circumstances and as contemplated by this paragraph. Although the Residential Building Envelope may be located anywhere within Forested Area 2, no structures are to be built within a setback of 75 feet from the boundary lines of Forested Area 2 on the north and south sides. The Holder will verify that the location of the Residential Building Envelope is within Forest Area 2 and meets the requirements for size, shape, and setbacks as described above.

c. Parcel 3 must be at least ten (10) acres in size and shall include all or part of Forested Area 3 as identified on Exhibit C. The Residential Building Envelope for Parcel 3 shall be identified prior to the construction of any structures or improvements required to be located within a building envelope by this Easement. The Residential Building Envelope for Parcel 3 must be within Forested Area 3 (which is about 6.5 acres in size; as identified in Exhibit C), shall be rectangular in shape and shall not exceed a maximum of two (2) acres in size. The location of the Residential Building Envelope for Parcel 3 within Forested Area 3 shall be solely at the discretion of the Landowners as long as it meets the above described requirements. At the time the Residential Building Envelope is identified, its perimeter boundary shall be located with reasonable definiteness employing a means mutually agreeable to the parties. The parties will use their best efforts to locate the building envelope without resort to a formal survey. It shall be the responsibility of the Landowner to provide the Holder with boundaries of the perimeter of the building envelope located with the degree of definiteness reasonably necessary under the circumstances and as contemplated by this paragraph. Although the Residential Building Envelope may be located anywhere within Forested Area 3, no structures are to be built within a setback of 75 feet from the boundary lines of Forested Area 3 on the north, east and south sides. The Holder will verify that the location of the Residential Building Envelope is within Forested Area 3 and meets the requirements for size, shape, and setbacks as described above.

d. Following the first division of the Property as permitted by this Paragraph 1, the right to create a second division of the property is owned by the owner of the two remaining potential building envelopes.

Upon Landowners' exercise of any rights reserved under this Paragraph 1, to convey or transfer a portion of the Property in separate parcels, Holder shall be entitled to record in the public records of Flathead County notices to document the exercise of such rights for the benefit and information of Landowners, Holder, and the public.

Whether conveyed as a single tract or whether conveyed as separate tracts pursuant to this Paragraph 1, the Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Furthermore, if Landowners elect to divide the Property as herein provided, Landowners must comply with all federal, state and local laws, ordinances and regulations governing such division and conveyance.

If either or both of the divisions of the Property permitted under the terms of this Easement can be accomplished by means of the reconfiguration of the existing multiple parcels, or the process commonly referred to as a boundary line adjustment, that is permissible, and nothing contained

in this Easement shall be construed to prevent or limit the Landowners from accomplishing the permitted divisions by means of any such process. In addition, nothing in this Easement is intended, and no provision of this Easement shall be construed, to require the Landowners, in accomplishing the divisions of the Property permitted under the Easement, to undergo or become subject to any governmental oversight or review, including any state or local subdivision review, that the Landowners would not be required to undergo if this Easement was not in place.

Nothing in this Easement shall be construed to prevent Landowners from owning the Property in co-tenancy, wherein each cotenant shall have undivided interests in the whole of the Property. Landowners also retain the right to enter into leases, licenses, or other transfers or indicia of a right of occupancy or use of the residences on the Property, provided such agreements are made expressly subject to the terms and conditions of this Easement. Landowners expressly convey to Holder the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from, all tenants or other occupants residing on or using the Property with Landowners' knowledge or consent.

2. Prohibited Land Divisions. Except as provided in Exhibit B, Paragraph 1, the division, subdivision, or de facto subdivision of the Property is expressly prohibited. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions 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.

3. Existing Structures and Maintenance. Landowners may maintain, repair, remodel, and make additions to existing structures and improvements on the Property, including, the one (1) existing single family residence, two (2) sheds, one (1) garage with a residential apartment, fences, and roads, all as shown in the Baseline Documentation Report. In the event of removal or destruction of any or all of said structures and improvements, Landowners may replace them with structures and improvements of a similar function and use in the same general locations or in a different location provided that the Residential Building Envelope is designated as described in Paragraph 1 a. above and the structure or improvement is located within the Residential Building Envelope.

4. New Structures and Maintenance. Landowners are prohibited from constructing or placing on the property any new buildings, camping accommodations, living quarters of any sort, mobile homes, antennas, cell phone towers, or other structures, except as set forth below, provided that any new structure is consistent with the terms and purpose of this Easement and is to be located in the designated building envelopes and outside of the riparian and wetland areas:



a. Parcel 1. Landowners reserve the right to construct, maintain, repair, and remodel new structures within the Residential Building Envelope for Parcel 1 provided the Envelope is first established in accordance with the terms of Paragraph 1 above, including, but not limited to, a second single family residence which the parties intend shall be used by Landowners' immediate family or for the temporary, occasional use by guests, sheds, garages, barns, fences, outbuildings for agricultural purposes, a septic system, and roads. Landowners must notify Holder of plans for additional structures prior to construction solely for the purpose of allowing Holder to verify that the structures are within the established Residential Building Envelope. If structures are deemed to be within the Residential Building Envelope, Holder will not inhibit building of the structures. Holder may require Landowners to survey the Residential Building Envelope, if deemed necessary to ensure the structure is located wholly within the Residential Building Envelope.

b. Parcels 2 and 3. One (1) new single family residence plus one (1) additional single family residence (which the parties intend to be used by immediate family or for the temporary, occasional use by guests) to be located entirely within each of the two Residential Building Envelopes established in accordance with Paragraph 1 above. Landowners must notify Holder of plans for new residential structures in either the Residential Building Envelope for Parcel 2 or the Residential Building Envelope for Parcel 3 prior to construction solely for the purpose of allowing Holder to verify that the structures are within the established Residential Building Envelope. If structures are deemed to be within the Residential Building Envelope, Holder will not inhibit building of the structures.

c. All other residential outbuildings, including but not limited to garages, barns, outbuildings for agricultural purposes, greenhouses, gazebos, workshops, sheds, satellite dish, and utility poles, must be constructed entirely within the established Residential Building Envelopes. Wells, septic systems, and drain fields may be located outside the Residential Building Envelopes if necessary.

d. Temporary recreational structures including but not limited to yurts, tents, and hunting blinds, and temporary parking of recreational vehicles and campers, may be located on the Property anywhere outside of the Residential Building Envelopes and used in conjunction with activities such as recreational outings or non-commercial weddings. Such temporary structures may not be used as residences. Location and design of said structure(s) may not adversely affect the Conservation Values protected by this Easement.

e. In the event of removal or destruction of any structure described in this Paragraph 4, Landowners may replace them with structures anywhere within the established applicable Residential Building Envelope.

5. Commercial and Industrial Uses and Facilities. Landowners are prohibited from establishing any commercial, industrial, manufacturing, mining, or drilling operations except for those uses expressly permitted by this Easement, including those uses identified in this Exhibit B. Such prohibited uses include but are not limited to guest ranching, outfitting, commercial feedlots, retail sales or service businesses, restaurants, night clubs, commercial campgrounds,

trailer parks, motels, hotels, commercial recreation facilities, gas stations, or facilities for the manufacture and distribution of any non-permitted product.

6. Recreational Uses. Landowners reserve the right to use the Property for hunting of game animals and game birds and waterfowl, fishing, camping, hiking, bird watching, photography, skiing, and other types of quiet enjoyment by the Landowners and the Landowners' family and invitees on a non-commercial basis.

7. Bed and Breakfast Businesses/Residence-based Business. Persons living on the Property may conduct businesses within their residences as 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. Landowners also reserve the right to use the residences on the Property for the operation of bed and breakfast businesses.

8. Renting or Leasing Activities. Landowners may rent or lease the Property and structures on annual or seasonal terms for purposes not inconsistent with this Easement and such activities shall not be deemed a prohibited commercial use under the terms of this Easement.

9. Fences and Gates. Landowners may construct, maintain, repair, replace and/or remove fences and gates on and around the Property. The fences should be natural looking and blend in with the surroundings. When practicable, such fences and gates shall not prevent or materially hinder the movement of wildlife. Landowners reserve the right to construct wildlife enclosures to protect habitat and forest plantings, agricultural crops, agricultural improvements, landscaping, and forest plantings. Landowners also reserve the right to build wildlife proof storage areas and domestic livestock pens outside the Residential Building Envelopes to protect livestock forage, hay, and grain supplies, and to secure domestic livestock.

10. Billboards and Signs. The construction, maintenance, or erection of billboards is prohibited. Roadside signs are permitted only for the purposes of posting the name of the Property, identifying historical sites, controlling public access, education, providing public notification of this Easement, and advertising the Property for sale.

11. Water Resources. Landowners reserve the right to develop water resources on the Property to drill wells; to allow stock watering; and to maintain and enhance water resources for fisheries and wildlife habitat improvement in accordance with applicable state and federal laws and regulations. Said activities shall not significantly degrade the natural conditions of existing wetlands, stream channels, and riparian habitat on the Property. Manipulation or alteration of the natural water courses and/or wetlands and ponds on the Property, or the creation of new water impoundments or water courses, is prohibited, except when said activity is a part of work with governmental agencies or private contractors hired by Landowners to restore or protect natural wetlands, stream channels, and riparian habitat on the Property in accordance with applicable state and federal laws and regulations and after all necessary permits have been obtained. Upon prior written approval from the Holder, a new 1-2 acre pond is also permitted if in accordance with applicable state and federal laws and regulations. The pond shall be constructed and the



soils and materials produced by the said excavation may be disposed of in an ecologically sensitive manner that must protect and minimize impacts to the Conservation Values of the Property including the existing wetlands, open meadow communities, and forested areas of the Property. Upon prior written approval from the Holder, the existing pond may also be enhanced if in accordance with applicable state and federal laws and regulations, as long as such enhancement does not negatively affect the Conservation Values.

12. Alteration of Land, Excavation, and Mineral Activities. Alteration of the surface of the Property is prohibited, including, without limitation, the filling, excavating, dredging, mining, drilling, exploration for, removal, or extraction of minerals, coal, hydrocarbons, including oil and gas, soils, sand, gravel, rock, sod, peat, decorative rock, or other material on or below the surface of the Property, except in conjunction with a use or activity expressly allowed under Exhibit B. The exceptions listed in Exhibit B shall not be interpreted to permit any extraction or removal of surface materials inconsistent with Section 170(h)(5) of the Code and the applicable Treasury Regulations.

13. Dumping. The dumping, storage, or other disposal of toxic and/or hazardous materials and the dumping or other disposal of any kind of refuse, old vehicles and machinery, bio-solids and/or non-compostable refuse on the Property is prohibited, except for non-hazardous wastes generated by normal agricultural, forestry, and ranching operations and as allowed under applicable federal, state, and local laws.

14. Roads. Driveways or roads to serve uses permitted by this Easement, including driveway access to the Residential Building Envelopes described in Paragraph 1, logging roads and farm roads, are permitted, provided any such roads are located and constructed so as to minimize negative impacts on the Property's Conservation Values. In addition, the road accessing the neighboring property to the north and east and currently located within Forested Area 1 as depicted on Exhibit C, may be relocated in the future, so long as such relocation meets the standards set forth in the previous sentence. Notwithstanding the foregoing, roads may not be built in riparian or wetland areas. Except as provided above with respect to the road located within Forested Area 1 as of the date of this Easement, driveways and roads, including farm and logging roads, may not be used to access or service other lands or properties without Holder's prior written permission. Holder's written consent shall not be unreasonably withheld.

15. Off-road Motorized Use. Landowners, or invited guests, may use the Property for personal, noncommercial motorized purposes, provided that all such uses are consistent with the terms and purpose of this Easement and do not adversely affect the Conservation Values. Off-road vehicle use that results in significant soil erosion is expressly prohibited.

16. Rights of Way, Easements, and Utilities. Landowners are prohibited from granting rights-of-way or easements for utilities, roadways, or other purposes that are inconsistent with the purposes and terms of this Easement. Landowners are also prohibited from granting rights-of-way or easements for the installation of utility structures, lines, conduits, cables, wires or pipelines upon, over, under, within or beneath the Property, except in connection with the construction or use of permitted agricultural or other structures, as provided in Exhibit B of this

Easement and approved by Holder. Easements and rights-of-way may be granted by mutual agreement of Landowners and Holder in cases where eminent domain statutes apply and clear public necessity has been demonstrated to the parties.

Landowners may place or allow to be placed on the Property utility lines and systems to serve permitted structures and improvements on the Property. With Holder's prior approval pursuant to Section IV, new utilities lines and systems may be placed on the Property which continue through the Property to serve other properties nearby, as long as such utilities do not impact the Conservation Values of this Easement. Unless approved in advance by Holder in writing, all utilities not already on the Property prior to the date of this Easement shall be placed underground, and the site restored to native or pre-existing conditions.

Subject to Section X, paragraph B, of this Easement, utility easements and rights-of-way may be granted by mutual agreement of Landowners and Holder only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to the parties 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.

17. Management of Vegetation and Trees.

a. Building Envelopes: Landowners may take actions to plant, prune, trim, cut, mow, or otherwise manage grass and shrub vegetation and trees within the Residential Building Envelopes, or to access the Residential Building Envelopes (see Exhibit B, Paragraph 1).

Forested Areas 1, 2 and 3: The intent of the management of the vegetation and trees in Forested Areas 1, 2 and 3 (designated in Exhibit C) is to maintain natural forest habitat. However, Landowners are permitted to plant, cut, prune, trim, or otherwise manage shrub vegetation and trees in Forested Areas 1, 2 and 3 to enhance wildlife habitat, establish and maintain views of and from the Property, improve access to portions of the Property, create a buffer to forest fires, and enhance the natural vegetation community. Landowners can also salvage log fallen, wind-damaged, dead and dying trees; or cut firewood, posts and poles for non-commercial use. All forest management activities must protect and minimize impacts to the Conservation Values.

Forested Area 4: Forested Area 4 contains the Engelmann spruce/skunk cabbage habitat type in the southwestern portion of the Property, listed as an "Imperiled" community by the Montana Heritage Program. The intent of the management of the vegetation and trees in this area is to maintain the native Engelmann spruce/skunk cabbage habitat type. No commercial timber harvest is allowed in this area unless necessary to maintain the Engelmann spruce/skunk cabbage habitat type; if this becomes necessary, a Forest Management Plan must be prepared or approved by a professional forester or specialist in the field of silviculture of the Landowners' choosing and will be subject to review and approval by the Holder. Landowners may also take actions to plant, prune, trim, cut, or otherwise manage shrub vegetation and trees in Forested Area 4 as long as it does not negatively affect the Engelmann spruce/skunk cabbage habitat type.



Remainder of Property: The intent of the management of the vegetation and trees on the remainder of the Property that is non-agricultural fields or garden as described below is to maintain natural forest, open meadow, and wetland habitats. Landowners may take actions to plant, prune, trim, cut, or otherwise manage shrub vegetation and trees in the area that was not forested as of the date of the Easement (see map, Exhibit C) as long as it does not negatively affect the Conservation Values including wetlands and their buffers. However, the large, old Ponderosa pine located south of the driveway just before it approaches the existing residence (GPS location: 48.19201N, 114.10577W) can only be removed if necessary to control forest disease or to protect persons or property from falling trees or other hazards. Landowners may also take actions to plant, prune, trim, cut, or otherwise manage shrub vegetation and trees, in order to enhance fish and wildlife habitat, or improve access to portions of the Property as long as it does not negatively affect the Conservation Values including wetlands and their buffers. The management of vegetation must promote self-sustaining native vegetation along streams, ponds, and wetlands; plant and wildlife production and diversity; healthy natural wetlands, meadows and forests; reduce erosion and runoff; improve water quality; and consequently, enhance fish and wildlife habitat.

Gardens can be located anywhere within the remainder of the Property.

b. Commercial Timber Harvest with Prior Approval. In situations other than those outlined in subparagraph a. above, Landowners may selectively harvest trees for commercial purposes under the terms of a Forest Management Plan which has the goal of encouraging native, old-growth forest habitat, provided also that the Forest Management Plan is consistent with the general and specific intentions of Landowners and Holder, as those intentions are specifically expressed in this Exhibit B, Paragraph 17 and those intentions are more generally expressed in this Easement taken as a whole. Any forest management and timber harvest permitted under this subparagraph b. must protect and minimize adverse impacts to the Conservation Values of the Property. Commercial timber harvest, described below in subparagraph c., is to be conducted using Best Management Practices as promulgated by the State of Montana at the time of the harvest, including stringent protection of soil and watershed values, riparian areas, and wildlife habitat. The Forest Management Plan must be prepared or approved by a professional forester or specialist in the field of silviculture of the Landowners' choosing and will be subject to review and approval by the Holder. Holder's written consent shall not be unreasonably withheld.

c. Definitions. For the purposes of this Easement, the term "commercial timber harvest" is defined as any timber harvest in which the product of such harvest is sold, traded, exchanged, or used off the Property, excluding those activities outlined in subparagraph a. above.

18. Degradation of Wetland Habitat. Wetland vegetation (except noxious weeds) shall not be disturbed, unless such vegetation poses an imminent threat to the safety of persons or property, and shall remain as a buffer around ponds, water courses and wetlands. Landowners reserve the right to plant native vegetation in the wetland areas on the Property to encourage natural conditions, and to restore and reclaim damaged or degraded wetland habitat.



19. Weed Control. Landowners should use the most ecologically sensitive methods with the best prevailing technology to control noxious and invasive weeds to maintain healthy forests, wetland, and meadow vegetation. The most ecologically sensitive methods to control weeds may include: manual, mechanical, chemical, and/or biological techniques that follow current State and County recommendations and guidelines. Use of pesticides or fertilizers are limited to only those amounts and to only that frequency of application necessary and recommended by the manufacturer and within Federal and State guidelines.

20. Non-Native Species. Landowners are prohibited from intentionally introducing non-native plant or animal species that may compete with and result in the decline or elimination of native species except where such introduction is intended as biological control against introduced pest species and for other purposes and reasons which are approved by biological experts, and, in such event, only with the prior approval of the Holder, which approval shall not be unreasonably withheld. The parties recognize that most residential gardens, grazing animals, and agricultural crops are non-native species, and this paragraph does not apply to such uses as permitted by this Easement.

21. Game, Fur, or Fish Farms. Game, fur and fish farms are expressly prohibited. Such prohibited activities include but are not limited to 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) furbearers, including mink and fox, or (iv) 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.

22. Agricultural Activities (not including grazing). Landowners reserve the right to continue ongoing and begin new farming, ranching, and other agricultural activities, including planting, raising, and harvesting agricultural crops in the areas indicated in Exhibit C where such activities are existing or have been historically practiced, but may not be expanded into riparian or wetland areas. All such agricultural activities are subject to the restrictions contained in this Easement, and can not result in degradation of any of the Conservation Values.

23. Grazing. Landowners may graze cattle, horses, or other grazing animals under the terms of a Grazing Management Plan and in accordance with those grazing practices which are consistent with the general and specific intentions of Landowners and Holder, as those intentions are specifically expressed in this Exhibit B, Paragraph 23 and those intentions are more generally expressed in this Easement taken as a whole. Grazing shall be conducted in a reasonable and husband-like manner so as not to impair range condition, damage any riparian zone, impair water quality, cause accelerated soil erosion, or otherwise impair the Conservation Values protected by this Easement. The Grazing Management Plan must be prepared or approved by a professional or specialist in the field of agriculture of the Landowners' choosing and will be subject to review and approval by the Holder.



Grazing activities on the Property shall be limited to the area indicated in Exhibit C as the Permitted Grazing Area, and may not be expanded into riparian or wetland areas or the Engelmann spruce/skunk cabbage habitat type in the southwestern portion of the property, listed as an "Imperiled" community by the Montana Heritage Program (Forested Area 4 in Exhibit C). Prior to initiating grazing, fences or other barriers using updated technology must be constructed to confine animals to the Permitted Grazing Area.

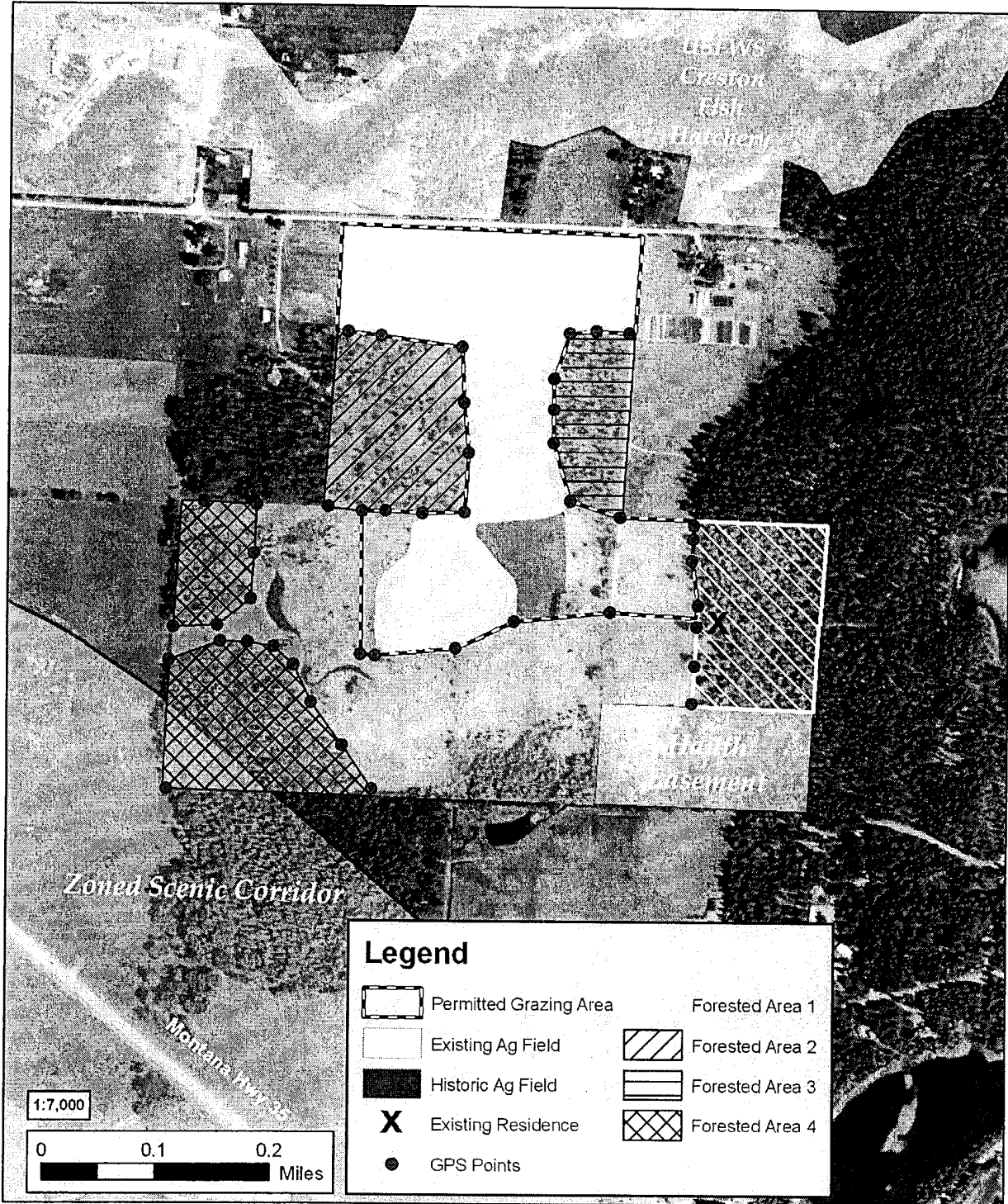
24. Commercial Feed Lot. Landowners are prohibited from establishing or maintaining any commercial feedlot, defined for purposes of this Easement as a facility used for the purpose of receiving, confining and feeding livestock for hire. Nothing in this Easement shall be construed to prevent Landowners from seasonally confining livestock in the Permitted Grazing Area for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowners from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

25. Trails. Landowners may construct and maintain recreational foot and mountain-bike trails including the construction of footbridges over creeks, ponds, ditches, or other drainage systems on the Property. Any trails constructed shall be sited and maintained so as to minimize adverse impact to the Conservation Values. Landowners may use and permit others to use any recreational trail systems on the Property.

26. Educational, Scientific, and Research activities. The Property and structures may be used for the purpose of conducting educational activities and/or environmental research activities, but only insofar as such uses are consistent with the protection and maintenance of the Conservation Values. Such activities may include, but shall not necessarily be limited to, day-use by teachers and students, retreat programs, field studies, and similar activities that do not result in materially adverse impacts to the Conservation Values.

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

**EXHIBIT C**  
**MAP OF PROPERTY**  
**Moses Family Trust**





**Moses Property Forested Area and Permitted Grazing Area  
Boundary GPS Coordinates**

Forested Area 1	48.19113	114.10580	SW corner
	48.19160	114.10580	
	48.19209	114.10580	
	48.19236	114.10580	
	48.19292	114.10597	
	48.19319	114.10597	
	48.19337	114.10597	NW corner
Forested Area 2	48.19341	114.10738	SE corner
	48.19357	114.10834	SW corner
	48.19428	114.10872	
	48.19470	114.10876	
	48.19508	114.10880	
	48.19566	114.10856	NW corner
	48.19571	114.10806	
Forested Area 3	48.19571	114.10744	NE corner
	48.19550	114.11275	NW corner
	48.19548	114.11213	
	48.19540	114.11059	NE corner
	48.19471	114.11047	
	48.19409	114.11033	
	48.19335	114.11033	SE corner
Forested Area 4	48.19330	114.11113	
	48.19330	114.11183	
	48.19331	114.11290	SW corner
	48.19327	114.11524	NW corner
	48.19327	114.11424	NE corner
	48.19266	114.11424	
	48.19208	114.11424	
	48.19173	114.11484	
	48.19167	114.11566	SW corner
	48.19126	114.11569	NW corner
	48.19153	114.11476	
	48.19154	114.11424	
	48.19151	114.11375	
	48.19130	114.11336	
48.19084	114.11299		
48.19033	114.11235		
48.18981	114.11174	SE corner	
48.18965	114.11559	SW corner	

Permitted Grazing  
Area Additional  
Coordinates

48.19328	114.11226	
48.19148	114.11212	
48.19148	114.11184	SW corner
48.19163	114.11034	
48.19201	114.10925	
		driveway
48.19220	114.10745	corner

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



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Fees: \$238.00  
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**EXHIBIT D**  
**ACKNOWLEDGMENT OF BASELINE DOCUMENTATION REPORT**

This acknowledgment is made by Jackson Moses and Judy Moses whose address is 38 North Portola, Laguna Beach, CA 92651 (referred to in this acknowledgment as the "Landowners"), and the Flathead Land Trust Inc., a nonprofit corporation organized under the laws of the State of Montana, with the address of 33 Second Street E., Suite 5, P.O. Box 1913, Kalispell, MT 59903 (referred to as the "Holder").

1. Landowners are the owners of approximately 121 acres of real property located in Flathead County, Montana (referred to in this acknowledgment as the "Property"), and intend to grant Holder a conservation easement on that Property.

2. Landowners have made the Property available to Holder for the purpose of gathering information and data about the condition of the Conservation Values identified in the Conservation Easement as of the date of the grant. This information and data has been compiled into a Baseline Report dated December, 2011 (the "Baseline Report").

3. In accordance with Treasury Regulation Section 1.170A-14(g)(5)(i), Landowners and Holder hereby acknowledge, declare, and agree that they have reviewed the information contained in the Baseline Report and that the Baseline Report provides an accurate representation of the condition of the Conservation Values to be protected by this Conservation Easement at the time of the transfer .

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Fees: \$238.00  
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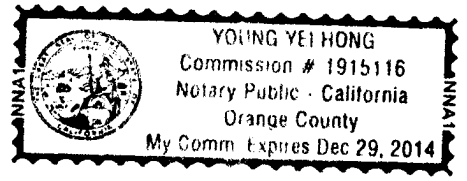
LANDOWNERS: THE MOSES FAMILY TRUST, DATED NOVEMBER 10, 1982

LANDOWNERS:

*Jackson Moses*  
Jackson Moses, Trustee  
*Judy Moses*  
Judy Moses, Trustee

State of ~~Montana~~ CA  
Flathead County  
~~ORANGE~~

Subscribed and affirmed before me this 13 day of DEC, 2011, by Jackson Moses, TRUSTEE and Judy Moses, TRUSTEE of The Moses Family Trust dated November 10, 1982.



*Ykin*  
\_\_\_\_\_  
(Notary Signature)  
YOUNG YEI HONG  
\_\_\_\_\_  
(Name)

(seal)

Title/Rank: NOTARY PUBLIC  
Residing at: LAGUNA NIGUEL  
My commission expires: DEC 29, 2014

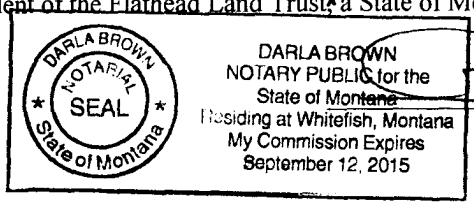
HOLDER:

THE FLATHEAD LAND TRUST, INC.  
A Montana nonprofit corporation

By: *James M. Regnier*  
\_\_\_\_\_  
James M. Regnier, Board President

State of Montana  
Flathead County

Subscribed and affirmed before me this 9<sup>th</sup> day of December, 2011, by James M. Regnier, as President of the Flathead Land Trust, a State of Montana non-profit corporation.



*[Signature]*  
\_\_\_\_\_  
(Notary Signature)  
\_\_\_\_\_  
(Name)

(seal)

Title/Rank: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

----- END EXHIBIT D -----