

**DEED OF CONSERVATION EASEMENT**

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as of this 8<sup>th</sup> day of December, 1993, by Judith Hutchins of Heron, Montana, (hereinafter together with her heirs, personal representatives, successors, and assigns collectively referred to as "Grantor"), and THE MONTANA LAND RELIANCE, a non-profit Montana corporation with a principal office at 107 West Lawrence, Helena, Montana, 59601 (hereinafter referred to as "Grantee");

**W i t n e s e t h :**

WHEREAS, Judith Hutchins desires to protect the unique fish and wildlife habitat of her property, called The Elk Creek Refuge, with human activity being secondary; and,

WHEREAS, Grantor is the owner of certain real property in Sanders County, Montana, said real property being more particularly described in Exhibit "A" attached hereto and made a part hereof by reference (hereinafter described and hereinafter referred to as the "Premises"); and,

WHEREAS, portions of the Premises have significant ecological, scenic and aesthetic, and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Sec. 76-6-101, et seq.; and,

WHEREAS, the Premises constitute a valuable element of the natural habitat of the Elk Creek Valley and its scenic and aesthetic, open space, and ecological values including flora, fauna, soils, water resources, habitat for diverse species of wildlife such as black bear, elk, deer, trout, passerine birds, and waterfowl, which are of great importance to Grantor and to the people of the State of Montana, and are worthy of preservation; and,

WHEREAS, Grantor desires and intends that the natural elements and the ecological, scenic and aesthetic, and open space values of the Premises be preserved and maintained by the continuation of land uses on the Premises that will not interfere with or substantially disrupt the natural elements or the workings of the ecosystem (including such uses as limited grazing, fishing, hunting; other recreational uses; sustained yield timber management; and, an environmental education and/or research facility). In regard to land uses on the Premises, the Grantor shall follow all applicable state and federal regulations including, but not limited to, those governing the following.

endangered and threatened species and their habitat, hunting and fishing, water resource use alteration and development, pesticide use, predator and pest control, noxious weed control, and timber harvesting; and,

WHEREAS, Grantor, as owner in fee of the Premises, owns the rights to identify, to preserve and protect in perpetuity the natural resources of the Premises; and,

WHEREAS, Grantor desires and intends to transfer certain of such rights to Grantee, provided that Grantor's right to use the Premises for limited grazing, fishing, hunting; other recreational uses; sustained yield timber management; and/or an environmental education and/or research facility, is also protected and preserved in the manner more particularly set forth in this Deed of Conservation Easement; and,

WHEREAS, Grantee is organized to preserve and conserve natural areas and ecologically significant land for aesthetic, scientific, charitable and educational purposes; and,

WHEREAS, the State of Montana has recognized the importance of private efforts toward preservation of natural systems in the state by the enactment of MCA Sec. 76-6-201, et seq.; and,

WHEREAS, Grantee is a qualified private organization under the terms of MCA Sec. 76-6-104(5) and Sec. 76-6-204, and is an organization described in Section 170(h)(3) of the Internal Revenue Code qualified to receive and hold conservation easements;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and, further, pursuant to MCA Sec. 76-6-201, et seq., Grantor, does hereby convey to Grantee, this Easement consisting of the rights hereinafter enumerated, on, over, under, and across the Premises.

SECTION I  
Rights Conveyed

The rights conveyed by this Easement are the following:

A. Identification and protection. To identify, to preserve and protect in perpetuity and to enhance by mutual agreement, the natural habitat, open space, scenic and aesthetic, and the ecological values of the Premises, subject, however, to Grantor's reserved rights as herein provided.

B. Access. To enter upon the Premises to inspect the same and to enforce the rights herein granted, and to observe,

study and make scientific observations of the ecosystem, upon prior notice to Grantor, and in a manner that will not unreasonably interfere with the use of the Premises by Grantor, or other rights such as those held by the owners of mineral estates upon or under the Premises, if any. Aside from the rights of access granted in the preceding sentence of this paragraph B, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Premises.

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

**SECTION II**  
**General Effect of Easement**

A. Perpetual restrictions. This Easement shall run with and burden title to the Premises in perpetuity, and shall bind the Grantor and all future owners and tenants; provided, however, that Grantee may not assign its interest in this Easement except as provided in Section IX hereof.

B. Dedication of premises. Pursuant to the terms of MCA Sec. 76-6-107, the Premises preserved hereby are declared to be open space and natural land, and may not be converted or directed to any uses other than those provided herein.

**SECTION III**  
**Permitted Uses and Practices**

This Easement shall confine the use of the Premises to activities such as limited grazing, fishing, hunting; other recreational uses; sustained yield timber management; an environmental education and/or research facility; and personal residences and outbuildings for the owner of the Premises.

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

A. Agricultural activities. To allow limited grazing and agricultural crop production on the Premises, and to institute and carry on the above activities provided such agricultural activities are consistent with the maintenance and enhancement of the soil, plant communities, water resources, fish and wildlife species and their natural habitat, and the natural ecosystem and its processes. There shall be no agricultural activities permitted which would potentially attract wildlife such as feed lots or pig farms; commercial poultry farms, egg production, or bee hives; or other similar uses.

Landscaping, consisting of native plants and such non-native plants as are consistent with the conservation purposes of this Easement and do not have the potential to expand, over take or harm the native communities on the Premises, shall be considered a permitted use. Gardening and orchards are allowed with the understanding such uses will attract wildlife.

B. Fishing and hunting. To use the Premises for fishing and hunting by Grantor, her family and invitees in accordance with state and federal regulations, and at levels of intensity not detrimental to the wildlife balance or the quality of fishing. This Easement shall prohibit any commercial hunting, fishing or trapping on the Premises. As well, there shall be no hunting for carnivores on the Premises, particularly for bears, mountain lions, bobcats, lynx, or wolves, except for the removal of predators that pose a safety threat to residents or property. Such removal shall follow all state and federal regulations.

C. Water resources management. To develop and maintain those water resources on the Premises necessary for limited grazing; farming, ranching and other activities; wildlife; domestic needs, and private recreation, pursuant to the terms hereof, and pursuant to Section V, paragraph E. Permitted uses include, but are not limited to the following: the right to restore and enhance water resources, including pond development for fisheries and wildlife improvement in accordance with Montana state law, and with prior approval of Grantee; to drill waterwell for domestic use on the Premises; and, to build stock watering facilities and ponds to improve the quality and quantity of water available for such purposes. With prior approval of Grantee, bank stabilization measures, such as stone rip rap or other suitable revetment, shall be permitted.

D. Maintenance and structures. To maintain and repair the existing residence and other improvements on the Premises, including: barn, garage, fences, and roads. In the event of removal or destruction of any or all of said structures, to replace them with similar structures of the same approximate size in the same general locations. To place upon the Premises additional structures and other improvements as may be necessary for limited agricultural purposes, with prior approval of Grantor as provided in Section IV hereof, and pursuant to the terms hereof. Additional structures will utilize natural building materials to the maximum extent practicable, which are of low color contrast and are harmonious with the surrounding countryside.

E. New residence, environmental education and/or research facility. It is the intent of this Easement to limit non-agricultural development and construction on the Premises to one (1) new residence with associated garage and other reasonable

outbuildings, or an environmental education and/or research facility, the location of which is to be confined to one (1) of three (3) areas along the county road designated in Exhibit "B" attached hereto and made a part hereof by reference: the area of the existing single family residence and outbuildings; and, the two (2) additional areas designated for the permitted construction. No development shall occur on the east side of Elk Creek.

Upon the prior approval of Grantee as provided in Section IV hereof, an environmental education and/or research facility could be constructed in lieu of the additional single family residence or by remodeling or removing either of the permitted single family residences. In no case, however, on the Premises shall there be more than two (2) single family residences with associated outbuildings, or one single family residence with associated outbuildings and the environmental education and/or research facility.

If the environmental education and/or research facility is to be constructed, its location, size and design requires the prior approval of Grantee and must be consistent with the terms of this Easement and maintain and preserve the significant ecological and aesthetic values of the Premises. Grantor's written notice notifying Grantee of the intent to construct such a facility shall include the following: a detailed development plan including a description of the purpose and function of the facility toward environmental education and for research; discussion of potential impacts and mitigation efforts the construction and operation of the facility may have on the Premises including fish and wildlife populations and habitat and water quality and quantity; designation of the construction site, as delineated in Exhibit "B;" and a construction plan and blueprints detailing all potential development and structures. Further, the Grantee solely will determine the completeness and ability of said development plan to adhere to the general and specific intentions of this Easement prior to the potential approval of the plan and the initiation of any construction.

In the event that the environmental education and/or research facility were to suspend or cease operation, only one of the buildings associated with the operation may be occupied or converted to a single family residence. However, the other associated outbuildings may be utilized by the occupants in the furtherance of a home occupation provided that the owners or occupants obtain the prior approval of Grantee and provided further that said home occupation may not consist of a retail business involving dealing with the general public on the

Premises on a regular basis. Moreover, in the event of the division of the Grantor's property after the development of the environmental education and/or research facility, such facility shall only be a permitted use on that parcel on which it was built.

The additional residence or environmental education and/or research facility and associated structures will utilize natural building materials to the maximum extent practicable, which are of low color contrast and harmonious with the surrounding countryside. In the event of damage or destruction of the residence(s) or environmental education and/or research facility described in this paragraph E, Grantor may repair or replace the same with a similar structure in the same general location.

No trailers, mobile homes or other similar movable living conveniences (including those placed on permanent foundations) shall be lived in upon the Premises. Nothing herein is intended to prohibit the use by the Grantor or her guests from parking or using a recreational vehicle on the Premises on a temporary basis.

F. Small business. With Grantee's prior approval, in lieu of the environmental education and/or research facility, a small business may be established. Either the small business or the environmental education and/or research facility can be developed and operated on the Premises, but under no event may both occur simultaneously. The development of one precludes in perpetuity the development or operation of the other.

If a small business is established, a structure and associated parking facility may be built within fifty (50) yards of the existing residence. The exterior of such a facility shall utilize natural building materials to the maximum extent practicable, which are of low color contrast and harmonious with the surrounding countryside. In the event that the small business were to suspend or cease operation, the building associated with the operation may not be occupied as a residence. However, the building may be utilized by the occupants in the furtherance of a home occupation provided that the owners or occupants obtain the prior approval of Grantee and provided further that said home occupation may not consist of a retail business involving dealing with the general public on the Premises on a regular basis. Moreover, in the event of the division of the Grantor's original ranch property, the small business shall only be permissible on that parcel.

G. Residence-based business. Persons living on the Premises may conduct businesses within their residence or associated outbuilding so long as such businesses are not retail businesses involving dealing with the general public on the Premises on a regular basis.

H. Agrichemicals. Grantor is encouraged to use integrated pest management techniques. Use of agrichemicals is permitted and may include fertilizers, pesticides, herbicides, insecticides, and rodenticides, but only in those amounts and with that frequency of application constituting the minimum necessary to accomplish limited grazing and residential objectives. The use of such agents shall be conducted in such a manner as to minimize any adverse effect upon the natural values of the Premises and to avoid any impairment of the natural ecosystem and its processes.

I. Timber. Upon the prior approval of Grantee as provided in Section IV hereof, to manage timber, in a sustained yield manner, in accordance with forestry practices which are consistent with the general and specific intentions of Grantor as expressed in this Easement, which conform to state guidelines and regulations, and which minimize impacts on the integrity of the water shed, water quality and quantity, wildlife habitat, and the natural scenic and aesthetic qualities of the Premises. Prior approval of Grantee is required for the removal of timber to abate disease or infestation. The taking of firewood or cutting of posts and poles for noncommercial use do not require Grantee approval.

Any commercial timber harvest or pre-commercial thinning shall require preparation of a timber harvest plan by a qualified forester versed in stewardship management, describing all aspects of the management activity, including potential impacts to the associated resources and proposed mitigating efforts. Such plan shall be furnished to Grantee in connection with Grantor's request for approval of any proposed timber management, and any commercial timber harvest shall be conducted in accordance with said plan. Prior to road and bridge development to access the east side of Elk Creek, all other access possibilities should be pursued from adjacent landowners.

Except as provided herein, permissible forestry practices shall not include the taking of any trees within one hundred fifty (150) feet on either side of the centerline of any stream or creek, unless it can be demonstrated to Grantee's satisfaction that so doing will not impact the integrity of the water shed, water quality and quantity, wildlife habitat or natural scenic and aesthetic qualities.

In connection with the upkeep, maintenance and repair of structures and residences, the Grantor reserves the right to clear brush, and prune, trim and remove trees.

J. Transfer of land. The sale, exchange, devise or gift of the Premises into two (2) parcels only solely for the purposes which are consistent with this Easement shall not be considered a subdivision or de facto subdivision, provided that such transfer is effected with an express provision reflecting that said portion is subject to the terms and conditions of the Easement, without modification or expansion of the terms of this Easement. If the Premises are transferred, one of the two parcels shall be no larger than ten (10) acres and is to be confined to the area around either the existing residence or the permitted residential construction sites in the northwest or southwest corners along the county road of the Premises (refer to Exhibit "B"). Nothing in this paragraph H shall be construed as expanding the number of residences permitted by this Easement. Grantee shall be furnished with a copy of any document or conveyance utilized to effect such transfer within thirty (30) days of the execution of the same.

K. Buffer zone. If and when the area bordering Elk Creek is used for livestock grazing, a fenced buffer zone using either temporary or permanent fencing, shall be used to encompass the riparian plant community of the stream and shall be established at Grantor's expense. The purposes of the buffer zone are: to maximize livestock management to appropriate seasons and duration of grazing; to promote plant and animal production and diversity; to improve stream bank stability; to reduce erosion and runoff; to improve water quality; and consequently, to enhance fish and water fowl habitat. Limited stock watering on the stream is permitted using water gaps or other appropriate means of limiting livestock access to the riparian area. No agricultural crops shall be cultivated within this buffer zone without Grantee's prior approval.

L. Residual rights. Except as expressly limited herein, to use the Premises for any purpose not inconsistent with this Easement.

#### SECTION IV

##### Prior Notice by Grantor and Approval of Grantee

Grantor agrees to notify Grantee, in writing, before exercising any reserved right the exercise of which may have an adverse impact on the conservation interests associated with the Premises. Further, any act, enterprise, or activity proposed to be done or undertaken by Grantor which requires the prior approval of Grantee pursuant to an express provision within this



Easement shall be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. Grantor's written notice. Prior to the commencement of any activity, use, or enterprise requiring Grantee's approval, Grantor shall send Grantee written notice of the intention to commence or undertake such activity, use or enterprise. Said notice shall inform Grantee of all aspects of such proposed activity, including, but not limited to, the nature, siting, size, capacity and number of similar and dissimilar structures, improvements, facilities or uses.

B. Grantee's address. Said notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to Grantee at P. O. Box 355, Helena, Montana 59624, or to such other address as Grantor from time to time may be informed of in writing by Grantee.

C. Grantee's response. Grantee shall have thirty (30) days from the mailing of such notice, as indicated by the registered or certified return receipt, to review the proposed activity, use or enterprise and to notify Grantor of any objection thereto. Such objection, if any, shall be based upon Grantee's opinion that the proposed activity is inconsistent with this Easement. If, in Grantee's judgment, conformity with the purposes of this Easement is possible, said notice shall inform Grantor of the manner in which the proposed activity can be modified to be consistent with this Easement. Except as provided in paragraph E of this Section IV, only upon Grantee's express written approval may the proposed activity, use, or enterprise be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee.

D. Grantor's address. Grantee's response to Grantor's notice shall be sent by registered or certified mail, return receipt requested, to Grantor at P.O. Box 104, Heron, Montana, 59844, or to such other address as Grantee from time to time may be informed of in writing by Grantor.

E. Grantee's failure to respond. Should Grantee fail to post its response to Grantor's notice within thirty (30) days of the posting of said notice, the proposed activity shall automatically be deemed consistent with the terms of this Easement, Grantee having no further right to object to the activity identified by such notice.

F. Acts of God. Grantor shall be under no liability or obligation for any failure in the giving of notice as required above with regard to any activity undertaken by Grantor which is necessitated on account of fire, flood, or other act of God, or

any other cause beyond the control of Grantor similar to those occurrences specified.

**SECTION V**  
**Inconsistent Uses**

Grantor states and agrees that 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 shall be prohibited:

A. Subdivision. The division, subdivision or de facto subdivision of the Premises, except as provided in Section III, paragraph J.

B. Mineral activities. The exploration for or extraction of oil, gas or minerals, including gravel.

C. Commercial facilities. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Premises expressly permitted by this Easement) including, but not limited to, commercial hunting, any restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Premises in connection with purposes expressly permitted under Section III hereof).

D. Dumping. The dumping or other disposal of refuse or garbage on the Premises. Personal household garbage should be kept indoors or in an animal proof container so as not to attract wildlife.

E. Impacts to watercourses and wetlands. The change, disturbance, alteration or impairment of any watercourse or wetland within and upon the Premises except those activities developed in accordance with Section III, paragraph C, provided they are done in a manner consistent with the maintenance of watercourses and wetlands, and other terms hereof.

F. Construction. The construction of any structures except as otherwise provided in Section III, paragraphs D, E, or F.

G. Roads. The construction of roads except in connection with sustained yield timber management, and residential and the environmental education and/or research facility access, expressly provided for in Section III hereof. Any road constructed for one or more of such purposes must be consistent with the terms of this Easement and maintain and

preserve the significant ecological and aesthetic values of the Premises. All road construction shall be subject to the prior written approval of Grantee, as provided in Section IV hereof.

Grantor's written notice should include a construction plan describing the purpose of the road, its location on a topographic map, and discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation on exposed cuts and banks is desired.

H. Commercial feed lot. The establishment or maintenance of any commercial feed lot, defined for purposes of this Easement as a facility used for the purpose of the reception, confinement and feeding of livestock for hire and slaughter.

I. Utilities. The installation of utility structures, lines, conduits, cables, wires or pipelines upon, over, under, within or beneath the Premises, except in connection with the construction of permitted residence and associated structures as provided in Section III hereof. No mercury vapor lights are allowed on the Premises.

J. Billboards. The construction, maintenance, or erection of any billboards on the Premises. Roadside signs are permitted only for the purposes of posting the name of the ranch (property), advertising any business occurring on the Premises or advertising the property for sale.

K. Disturbance of species of special concern. To impact or disturb threatened, endangered or sensitive species and their habitat on the Premises is prohibited. The protection and habitat management of any species of special concern occurring on the Premises shall conform to state and federal regulations and guidelines, and should be coordinated with appropriate agencies.

#### SECTION VI Breach and Restoration

In the event a violation of any restriction contained within this Easement, whether by Grantor or a third party, comes to the attention of Grantee, Grantee shall notify Grantor in writing of such violation. Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Premises, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Grantor fails to take such corrective action, Grantee may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such

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corrections, and the cost of such corrections, including Grantee's expenses, court costs, and legal fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the violation.

Grantor and Grantee further intend that should Grantor undertake or cause to be undertaken any activity requiring approval of Grantee without, or in advance of, securing such approval, or undertake or cause to be undertaken any activity in violation of the terms of this Easement, Grantee shall have the right to force the restoration of that portion of the Premises affected by such activity to a condition similar or equivalent to the condition that existed prior to the undertaking of such unauthorized activity, by restoring soils, replanting suitable native vegetation, or taking such other action as Grantee deems necessary to achieve restoration. In such case, the costs of such restoration and Grantee's costs of suit, including attorneys's fees, shall be borne by Grantor or those of its successors or assigns against whom a judgment is entered, or in the event that Grantee secures redress without a completed judicial proceeding, by Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity. Nothing herein contained shall be construed to preclude Grantor from exhausting its legal remedies in determining whether the proposed activity to which Grantee has objected is inconsistent with this Easement. The parties hereto covenant and agree that the obligation to restore the Premises to its prior condition, as provided in this Section VI, may be enforced only against that party or parties who shall have caused such damage, including, but not limited to, Grantor, her heirs, personal representatives, successors or assigns.

**SECTION VII**  
**Real Estate Taxes**

Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Premises, except any tax or assessment on this Easement herein granted.

**SECTION VIII**  
**Indemnity**

Grantor agrees to bear all costs of operation, upkeep and maintenance of the Premises, including the control of noxious weeds in accordance with Montana state law, and does hereby indemnify Grantee against obligations arising from such operation, upkeep, and maintenance activities. Grantor does also hereby indemnify Grantee against obligations arising from past, present or future dumping of hazardous materials on the Premises, and any obligations associated with their cleanup or containment of their impacts.

**SECTION IX  
Assignment of Easement**

The benefits of this Easement shall be assignable, but Grantee may not transfer or assign the interest in the Premises created by this Easement except to a "qualified organization" (within the meaning of Section 170(h)(3) of the Internal Revenue Code) which is 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" shall agree to enforce the conservation purposes protected hereby. Grantee agrees that it will make a reasonable effort in the event of any assignment to choose 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 natural resources as a substantial organizational purpose; and provided further, that Grantee represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

**SECTION X  
Baseline Data**

Grantor has made available to a representative of the Grantee prior to the donation of this Conservation Easement, documentation sufficient to establish the condition of the natural resources and conservation interests associated with the Premises subject to this Easement. The parties acknowledge that this documentation is an accurate representation of the Premises as of the date of the creation of this Easement. Grantee acknowledges that a baseline inventory report shall be completed from the available documentation by a competent naturalist familiar with the Premises. This baseline inventory report shall be on file with the Grantee and by this reference made a part hereof.

**SECTION XI  
Subsequent Sale, Exchange or Involuntary Conversion**

Grantor and Grantee agree that the donation of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of this Section XI, shall be deemed to have a fair market value at least equal to the proportionate value that this Easement bears to the entire value of the Premises as a whole at the time of its creation. That proportionate value of Grantee's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Easement (as provided in Treasury Regulation Section 1.170A-14(g)(6)(i)), Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time

of its creation, unless under the laws of Montana Grantor shall be entitled to the full proceeds from the sale, exchange, or conversion without regard to the terms of this Easement.

Whenever all or part of the Premises is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall join in appropriate actions to recover the full value of the property taken and all incidental or direct damages resulting from such taking. All expenses 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 interests in the Premises, as provided in the first paragraph of this Section XI.

**SECTION XII**  
**Miscellaneous Provisions**

A. Partial invalidity. If any provision of this Deed of Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Conservation 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. Enforcement. Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of Grantee, and that any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor shall not be deemed or construed to be a waiver of Grantee's rights hereunder in the event of any subsequent breach.

C. "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 Grantors and their heirs, personal representatives, executors, successors in interest and assigns, and Montana Land Reliance and its successors and assigns, respectively.

D. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

E. Subsequent deeds. Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which they convey any interest in the Premises (including any leasehold interest). Grantor further agrees that a copy of this Easement will be attached to any deed by which Grantor conveys title to all or part of the subject property.

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F. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including Section 76-6-101, et seq., M.C.A, and the Internal Revenue Code. Any amendment must be consistent with the conservation purposes of this Easement, and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the official records of Sanders County, Montana.

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.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands this 5th day of December, 1913.

GRANTOR:

Judith Hutchins  
Judith Hutchins

GRANTEE:

THE MONTANA LAND RELIANCE  
a corporation

By: George Allen Sec-Treas  
Board of Directors

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STATE OF Montana )  
County of Sanders ) ss

On this 8th day of December, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Judith Hutchins, known to me to be the person whose name is subscribed to the within and foregoing instrument and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Barbara F. Ross  
Notary Public for State of Montana  
Residing at: Noxon  
My Commission Expires: 8/30/94

STATE OF MONTANA )  
County of Lewis & Clark ) ss

On this 10th day of December, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared George S. Olsen known to me to be the Secretary - Treasurer of The Montana Land Reliance, whose name is subscribed to the within and foregoing instrument and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Barbara S. Davidson  
Notary Public for State of MT  
Residing at: Bellevue  
My Commission Expires: 1-10-94



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EXHIBIT A  
LEGAL DESCRIPTION

Sanders County, Montana

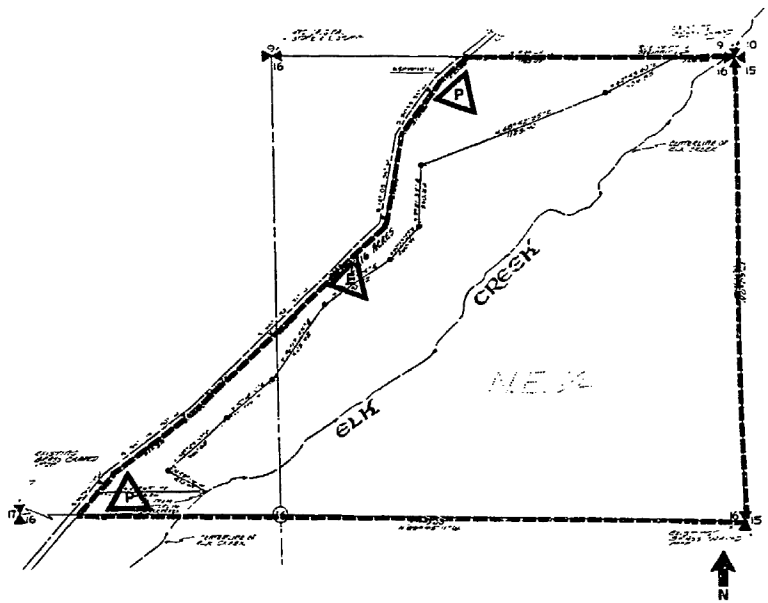
Township 26 North, Range 34 West, MPM

Section 16: All that portion of the N $\frac{1}{2}$  lying East of the  
Sanders County Road right-of-way.

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EXIBHIT B

THE ELK CREEK REFUGE CONSERVATION EASEMENT  
DESIGNATED DEVELOPMENT AREAS



- Property Boundary
- △ P Potential Development Areas
- △ E Existing Structures

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Filed for record 13<sup>th</sup> day of December 1993 at 10:35  
 O'Clock A.M. Proceeded in micro #8890  
 Dixie Knight County Recorder  
 Fee \$108 By Brenda Franck Deputy

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