

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (“Easement”) is made this ____ day of _____, 20__, by MELVIN J. VISSER and MARJORIE K. VISSER, husband and wife, with a mailing address of 17909 Norris Rd, Manhattan, MT 59741 (hereinafter together with their heirs, personal representatives, successors, and assigns collectively referred to in this Easement as the “Grantor”), and GALLATIN VALLEY LAND TRUST, a non-profit Montana corporation with a mailing address of P.O. Box 7021, Bozeman, MT 59771 and a principal office at 212 S. Wallace Ave., Suite 101, Bozeman, Montana 59715, and its successors and assigns (hereinafter referred to as “Grantee”); and with a right of enforcement to the UNITED STATES OF AMERICA (“United States”), acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”).

This Easement has been acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 *et seq.* and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Property that negatively affect the conservation values of the Property (see Section 2 below, defining the “Purposes of the Easement”). Baseline conditions of the Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of Grantee and in the office of the Montana NRCS.

RECITALS

The parties recite and agree as follows:

1. Grantor is the sole owner of certain real property in Gallatin County, Montana, more particularly described in Exhibit A attached hereto and made a part hereof by reference (hereinafter the “Property”); and

2. The Property provides significant benefit to the people of Gallatin County, Montana, the State of Montana, and the United States by protecting, preserving, and providing for the following resources pursuant to MCA Section 76-6-101, *et seq.* and Section 170(h) of the Internal Revenue Code (the “Code”):
 - a. Open-space lands, 75% of which are designated as agriculturally significant by the NRCS, and which provide opportunities to continue traditional agricultural practices and livestock production, as encouraged and supported by federal land conservation policies, the State of Montana, and clearly delineated local land conservation policies adopted in Gallatin County, Montana;
 - b. Scenic views of a historic Montana agricultural landscape for members of the public traveling on Montana State Highway 84, which is a public roadway managed by the State of Montana; and
 - c. Historic working landscapes that are important to the cultural and historic fabric of western Montana;

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

3. The Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity, the open-space character, scenic values, agricultural viability, and significant relatively natural features and values of the Property all of which are recognized as significant public values in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, *et seq.*; and
4. The Property is located in close proximity to other private lands that are protected under permanent conservation easement held by Grantee in the Amsterdam-Churchill area of the Gallatin Valley, which is one of the Grantee’s major focal areas for private land conservation, and therefore this Easement is consistent with existing private conservation programs in the area; and
5. By granting this Easement, Grantor and Grantee desire and intend that the Conservation Values and agricultural viability of the Property be preserved and maintained by a continuation of land uses that will not substantially impair those Values and by ensuring that the Property remains available for agriculture and livestock production; and
6. This Conservation Easement is created pursuant to the Code, as amended at 26 U.S.C. Sections 170(h), 2055 and 2522; and
7. The State of Montana has recognized the importance of private voluntary conservation of private lands in the state by enacting the Montana Open-Space Land and Voluntary Conservation Easement Act, MCA Sections 76-6-101, *et seq.*; and
8. The Gallatin County, Montana Commissioners have expressly recognized in the Gallatin County Plan, adopted June 1, 1993 and amended October 20, 1998 and in the Gallatin County Growth Policy, adopted April 15, 2003, the importance of preserving open space and

agricultural lands in Gallatin County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and

9. The citizens of Gallatin County have expressly endorsed permanent protection of open-space land and natural resources by passing a mill levy in the year 2018 to authorize collection of approximately \$15,000,000 in funds to be dedicated by the County government to fund open-space land protection, including conservation easements, and in furtherance of such public conservation policies, Gallatin County has specifically committed funds as noted in Section 10(A) for the purchase of a portion of this Easement; and
10. In line with such clearly articulated local policies, this Easement will preserve, in perpetuity, agricultural open space in a vicinity subject to the increasing pressure of urban and suburban land development and growth, both existing and foreseeable; and
11. Gallatin County, Montana, is under exceptional and rapid residential and commercial development pressures, as evidenced by the last two United States Censuses, wherein the population of Gallatin County increased 34.4%, compared to 6.8% across the rest of Montana, and preservation of the Property will therefore provide a significant public benefit in perpetuity; and
12. Grantee is a qualified organization, under MCA Sections 76-6-104(5) and 76-6-204, that is organized to conserve land for natural habitat, scenic, and open-space purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 as amended, and is qualified to receive and hold conservation easements.

NOW, THEREFORE, for Ten Dollars and No/100 (\$10.00) and other good and valuable consideration, including Grantor's express intention and agreement to make an absolute, unconditional, unqualified and voluntary gift of part of the value of this Easement, and in further consideration of the mutual promises and covenants contained in this Easement, the Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, and to the United States as its interests appear herein, with warranties of title, this perpetual Easement on, over, and across the Property, in accordance with the terms and conditions set forth below.

SECTION 1 **Rights Conveyed**

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

A. Identification and protection. To identify, and to preserve and protect in perpetuity the Conservation Values, subject to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement. Even if the Property consists of more than one parcel for real estate tax or any other purpose, or if it was acquired previously as separate parcels, it will be considered as no more than one (1) parcel for purposes of real-estate

conveyances, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

B. Access. Upon reasonable prior notice to the Grantor, to enter upon and inspect the Property in a manner that will not unreasonably interfere with the use of the Property by the Grantor to assure that Grantee's rights in the Property are maintained and to enforce the rights granted in this Easement. Grantee shall also have the express right to enter the Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Property if, in Grantee's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. The Property is accessible, for monitoring and enforcement purposes, by Montana Highway 84, which is a public roadway. Aside from the rights of access granted in this Paragraph B, and in Paragraphs E and G of this Section 1, this Easement does not grant to Grantee, to the United States, nor to the public, any rights to enter upon the Property.

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

D. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Easement against the Grantor up to the amount of the United States' contribution to the purchase of the Easement.

E. The United States' Right of Inspection. For purposes of inspection and enforcement of the Easement, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Property. Prior to its inspection of the Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection. The Grantee will annually monitor compliance with the terms and condition of this Easement and will provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed

violation, as determined by the Secretary, the United States may exercise its right of inspection. In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor at the earliest practicable time.

F. Markers. To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Property. Grantor shall not remove such markers without notice to Grantee and without Grantee's consent, which will not be unreasonably denied, as provided in Section 4 below.

G. Gallatin County's Third-Party Right of Enforcement. If Grantee is unable or unwilling to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, Grantor and Grantee expressly agree that Gallatin County shall have the right to enforce all of the terms and conditions of this Easement to ensure that public benefits continue to be provided, pursuant to Section 8 below.

SECTION 2

Purposes and General Effect of Easement

A. Purposes. The purposes of this Easement are to preserve, protect, enhance, and restore in perpetuity the Conservation Values described in the Recitals, including but not limited to the agricultural, open-space, scenic, and significant relatively natural features and values of the Property. An additional specific purpose of this Easement is to protect agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Property that negatively affect the conservation values, in accordance with the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468. The purposes set forth in this Section 2, paragraph 1 are hereafter collectively referred to as the "purposes" or the "Purposes of the Easement".

In achieving these purposes, Grantor and Grantee mutually intend to permit the continuation of such uses of the Property as may be conducted consistent with the purposes and terms of this Easement. If one or more of the Purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Grantor may result in an evolution of agricultural and other uses of the Property, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.

B. Perpetual restrictions. This Easement shall run with the land and burden title to the Property in perpetuity, and shall bind Grantor and all future owners and tenants and Grantee, and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this Easement.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, any activities that are inconsistent with the purposes and terms of the Easement are prohibited. Notwithstanding any other provision of this Easement, Grantor, Grantee, and NRCS agree that all present and future use of the Property is and will remain subject to all of the terms and conditions identified in this Easement, including Exhibits B and C. If any of the terms and conditions in this Easement is inconsistent with one another, the more restrictive terms and conditions will control.

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

SECTION 3

Prohibited Uses and Reserved Rights

A. Prohibited uses. Any activity on or use of the Property that is inconsistent with the terms and Purposes of this Easement is prohibited. Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit B, attached hereto and incorporated by this reference, are expressly prohibited.

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

SECTION 4

Prior Notice and Approval

Any enterprise, use, or activity proposed to be done or undertaken by Grantor which requires the prior notice to and/or approval of Grantee pursuant to an express provision of this Easement (including any provision of Exhibit B or Exhibit C) shall be commenced only after satisfaction of the notice and approval conditions of this Section 4.

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

B. Grantee's address. Any notice and 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 sent by reputable courier or delivery service, provided that the sender obtains a signed proof of delivery. Said notice shall be addressed to Grantee at P.O. Box 7021, Bozeman, Montana 59771, or if by courier or other delivery service to 212 South Wallace Avenue, Suite 101, Bozeman, Montana 59715, or to such other address as Grantor from time-to-time may be informed of in writing by Grantee.

Notification of the United States and/or NRCS (including the Chief of NRCS) is required when the United States has exercised its enforcement rights under this Easement or where specifically required under the provisions of this Easement. Grantor shall address the United States' notice to the State Office of NRCS at Federal Building, Room 443, 10 E. Babcock St., Bozeman, MT 59715, or to such other address as Grantor from time to time may be informed of in writing by NRCS.

C. Grantee's response. Grantee's written response to a request for approval shall either be 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 sent by Federal Express or other reputable courier or delivery service, provided that the sender obtains a signed proof of delivery. Grantee shall have thirty (30) days from the receipt of any request for approval, as indicated by the proof of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the 30-day period shall not begin until such time as the Grantee has received adequate information from the Grantor to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from the Grantor as soon as practicable, and, in any case, not later than 20 days after receiving the request for approval. Grantee's objections, if any, shall be based upon Grantee's sole determination that the proposed enterprise, use, or activity is inconsistent with the terms or Purposes of this Easement. If, in Grantee's judgment, conformity with the terms or Purposes of this Easement is possible, said Grantee's response shall inform Grantor of the manner in which the proposed enterprise, use or activity can be modified to be consistent with the terms or Purposes of this Easement. Only upon Grantee's express written approval may the proposed enterprise, use, or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee.

Notwithstanding any provision of this Easement that may be construed to the contrary, if Grantor is required to obtain the prior approval of the United States, the time limits for United States' response, as set forth above in Paragraph C, shall not be binding upon the United States.

D. Grantee's failure to respond. Grantor may not proceed with any action for which Grantor seeks approval from Grantee without Grantee's express written consent. Grantee's failure to respond with the time period specified in Paragraph C above, therefore, shall be deemed Grantee's constructive denial of approval.

E. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under

emergency conditions or threat of emergency to prevent, abate, or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified.

F. Rejection or Refusal. Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

SECTION 5

Breach and Restoration

A. Grantee's remedies. If Grantee determines that Grantor or a third party acting with Grantor's knowledge or consent is in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation. In said notice of violation, Grantee shall demand corrective action 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 terms and Purposes of this Easement, Grantee shall demand corrective action to restore the portion of the Property so injured. If Grantor:

- i. fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or
- ii. under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within thirty (30) days after receipt of notice thereof from Grantee (or, within 30 days of Grantor's receipt of notice from Grantee, fails to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin), or
- iii. fails to continue diligently to cure such violation until finally cured,

Grantee may bring an action, without bond or surety required, to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to require the restoration of the Property to the condition that existed prior to any such injury, and to recover any damages to which it may be entitled for violation of the terms of this Easement.

If Grantee, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to any Conservation Value, Grantee may pursue its remedies under this Paragraph without giving the notice required or without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph A apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate Grantee and the public for the loss and damage to Grantee's rights,

Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, shall apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

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

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

D. Waiver of Certain Defenses. Grantor hereby expressly waives any defense of laches, estoppel, or prescription.

E. Acts beyond Grantor's control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions or threat of emergency to prevent, abate, or mitigate significant injury to the Property or to any person resulting from such causes.

F. Mediation. Grantor and Grantee 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 when circumstances do not require Grantor or Grantee to seek immediate injunctive relief from the courts and if Grantor agrees in writing not to proceed with the use or activity pending resolution of the dispute. In the event of any dispute between Grantor and Grantee over the meaning, requirements, interpretation, or implementation of the Easement, Grantor or Grantee 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.

(a) Procedure. Within ten (10) days after Grantor and Grantee 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 expenses of mediation shall be divided equally between Grantor and Grantee, excluding each party's legal fees.

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

The parties intend that each conflict and dispute submitted to mediation shall be unique, 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.

G. Enforcement rights of the United States - NRCS. The United States is granted contingent rights of enforcement of this Easement, as set forth in Section 1, Paragraphs D and E.

SECTION 6

Costs and Taxes

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any lawful tax or assessment on this Easement herein granted, which shall be paid by Grantee.

SECTION 7

Indemnities

A. Control of Risks Associated with Property Ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Property and therefore Grantor controls day-to-day activities on, and access to, the Property, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Except as specifically provided in Paragraph C below, Grantor therefore agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's continued ownership, use, and control of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership.

B. Grantor's Obligation to Indemnify. Grantor must indemnify and hold harmless the Grantee and the United States, and/or Gallatin County and their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or 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 Grantee and the United States and/or Gallatin County may be subject or incur relating to the Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws, as further defined in Section 11.

C. Grantee's Obligation to Indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, provided however that such acts or omissions must be related to the duties and obligations of Grantee under the terms of this Easement.

SECTION 8

Assignment of Easement

This Easement and its benefits shall be assignable by Grantee subject to the prior approval of the United States by and through the NRCS. Grantee may not transfer or assign its interest in the Property created by 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. Any such qualified organization must agree to enforce in perpetuity the terms and Purposes of this Easement as a condition of such transfer or assignment.

In addition, if Grantee is unable or unwilling to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, Grantor and Grantee expressly agree that Gallatin County shall have the right to require assignment of this Easement to Gallatin County to ensure that public benefits continue to be provided. Notwithstanding any provision that may be construed to the contrary, however, the right of assignment granted to Gallatin County in this Paragraph may not be exercised, except under the following circumstances:

(i) Grantee invites Gallatin County to assume its responsibilities for enforcement in the event of a violation or threatened violation; or

(ii) Grantee does not have the financial capacity or resources to enforce the terms of the Easement; or

(iii) The Attorney General of the State of Montana, after consultation with Gallatin County, NRCS, and Grantee, determines that:

(a) Grantee is not fulfilling the purposes and policies of the Montana Open Space Land and Voluntary Conservation Easement Act, §76-6-101 *et seq.*, M.C.A., pursuant to which this Easement has been granted, or

(b) Grantee has abused its discretion to enforce the terms and conditions of this Easement under Section 5, Paragraph C.

Grantee represents to Grantors that its present intention is to assign its interest in this Easement only in connection with dissolution of Grantee and with approval by the NRCS, representing the U.S. Secretary of Agriculture, and Gallatin County. Nothing in this Section 8 shall be deemed to diminish or be inconsistent with the rights of the United States as set forth in Section 1, Paragraphs D and E, and Section 5, Paragraph G of this Easement.

Pursuant to Section 70-17-111(2), MCA, Grantor, Grantee, and the United States expressly acknowledge and agree that merger of ownership of this Easement and the fee interests in the Property shall not extinguish or terminate any of the terms, conditions, rights, and restrictions in this Easement.

SECTION 9

Baseline Documentation Report

Grantor has made available to Grantee prior to the execution of this Easement information sufficient to document the condition of the Conservation Values of the Property at the time of the grant of this Easement. The parties acknowledge that this information has been developed into a Baseline Documentation Report, dated [REDACTED], that includes maps, aerial and on-site photography of the Property, and documentation of existing man-made improvements or incursions, vegetation and identification of flora and fauna, land use history, and distinct natural features. The parties hereby agree that the information compiled within the Baseline Documentation Report accurately represents the condition of the Property as of the date of the grant of this Easement. Grantor acknowledges receipt of a copy of the Baseline Documentation Report. The original Baseline Documentation Report is, and shall remain, on file with Grantee and in the office of the Montana NRCS.

The parties intend that the Baseline Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Property and practices thereon. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Baseline Documentation Report contains any summaries of, or representations about, the terms or the 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 contained herein and not in the Baseline Documentation Report.

SECTION 10

Extinguishment, Termination and Condemnation: Grantee's Entitlement to Proceeds

The interests and rights under this Conservation Easement may only be extinguished with written approval of the Grantee, Gallatin County, and the United States. Due to the federal interest in this Easement, any proposed extinguishment, termination or condemnation action that

may affect the United States's interest in the Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, Grantee, the United States and Gallatin County stipulate that the fair market value of the Easement is thirty eight percent (38%), hereinafter the "Proportionate Share," of the fair market value of the Property unencumbered by this Easement. This Proportionate Share shall remain constant over time.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then Grantor shall reimburse Grantee, the United States and Gallatin County in an amount equal to the Proportionate Share of the fair market value of the Property unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned, by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards for Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by Grantee and the United States.

The allocation of the Proportionate Share between Grantee, the United States, and Gallatin County will be as follows: (a) to Grantee thirty five percent (35%) of the Proportionate Share; (b) to the United States fifty percent (50%) of the Proportionate Share; and to Gallatin County fifteen percent (15%) of the Proportionate Share. Until such time as Grantee, the United States and Gallatin County have received the Proportionate Share from Grantor or Grantor's successors or assigns, Grantee, the United States, and Gallatin County shall each have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, Grantee must reimburse the United States and Gallatin County for the amount of the Proportionate Share due to the United States and Gallatin County.

Grantee shall use any portion of the Proportionate Share that it receives in a manner that is consistent with the conservation purposes of this Conservation Easement.

SECTION 11

Representations, Warranties and Disclaimers

- A. General representations and warranties. Grantor represents and warrants that:
1. Grantor has clear title to the Property; Grantor has the right to convey this Easement; and the Property is free and clear of any encumbrances, except those encumbrances that have been expressly approved by Grantee, Gallatin County, and the United States.
 2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local

law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.

3. No underground storage tanks are located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

B. Grantor's Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has 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.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States 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 Grantor or any other prior owner of the Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

As used herein, "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.

As used herein, "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 that may pose a present or potential hazard to human health or the environment.

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, Gallatin County, or the United States to exercise physical or managerial control over activities on the Property or to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*, ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, *et seq.*, and 75-10-601 *et seq.*, M.C.A., and similar state and federal statutes.

C. United States' General Disclaimer. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or 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 the United States may be subject or incur relating to the Property.

SECTION 12

Amendment

This Easement may be amended only if, in the sole and exclusive judgment of the Grantee, Gallatin County, and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of this Easement and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, Gallatin County, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

No amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including MCA Section 76-6-101, *et seq.* Any amendment must be consistent with the terms and Purposes of this Easement, may 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 or inurement on Grantor or other third parties. Any amendment must be in writing, signed by Grantor, Grantee, the United States, and Gallatin County, and recorded in the official records of Gallatin County, Montana.

SECTION 13 **Subordination of Existing Mortgages**

At the time of conveyance of this Easement, the Property is subject to two mortgages. Both of the mortgages are held by First Security Bank, 642 Cottonwood Rd, Bozeman, MT 59718 ("Lienholder"). The two mortgages are more particularly described as (the "Mortgages"):

- a) Mortgage recorded on July 17th, 2014, as Document No. 2486198, Records of Gallatin County, Montana; and
- b) Mortgage recorded on August 22nd, 2014, as Document No. 2490299, Records of Gallatin County, Montana.

The Lienholder has agreed by separate "Mortgage Subordination Agreement" which will be recorded contemporaneously with this Easement, that in the event of foreclosure of either or both Mortgages, under judicial or non-judicial proceedings, or in the event of other sale, transfer, exchange, or conveyance of title to the Property, the Property shall be foreclosed, sold, transferred, exchanged, or otherwise conveyed subject to this Easement and the Grantee's, Gallatin County's and the United States' rights to enforce the conservation purposes of this Easement in perpetuity, and further subject to Grantee's, Gallatin County's and the United States' rights to proceeds in the event of termination or extinguishment of this Easement, in whole or in part, in accordance with Section 10. All provisions contained in this Section 13 shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

SECTION 14 **Miscellaneous Provisions**

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

B. “Grantor” and “Grantee”. The terms “Grantor” and “Grantee,” as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and their heirs, personal representatives, executors, beneficiaries, successors and assigns, and the Gallatin Valley Land Trust and its successors and assigns, respectively.

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

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the Public Records of Gallatin 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. Nevertheless, Grantor’s failure to make such reference in conveyance documents shall not affect the validity of this Easement or its applicability to the Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantor to use the Property as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms 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 C, Paragraph 1 hereof.

F. Notice of Suit. Grantor must immediately provide Grantee with notice of any lawsuit or administrative action involving the Property or which threatens Grantee’s rights in this Easement. Notice must be sent to Grantee’s address in Section 4, Paragraph B, and must include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to Grantee’s intervention in any such lawsuit or action. Such lawsuit or action can include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental clean-up or enforcement, or any other lawsuit or action affecting the Property and/or potentially affecting the Conservation Values protected by this 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 and the United States of America shall govern resolution of such dispute.

H. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purposes of this Easement and the policy and purposes of MCA Section 76-6-101, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the terms and Purposes of this 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, Grantee 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 Recitals, Paragraph 2. Grantee 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 Grantee also reserves the right to revise this hierarchy, in its discretion and after consultation with Grantor, the United States and Gallatin County, by filing a Notice in the public records of Gallatin County, Montana. The hierarchy set forth in this Section 14, Paragraph H is intended to apply only to resolve actual or potential conflicts between protected Conservation Values, and therefore, this Section 14, Paragraph H may not be interpreted or construed by Grantor, Grantee, or any other party to justify a disregard of, or to discount, Grantee's and Grantor's obligations hereunder to protect and preserve all Conservation Values if such actual or potential conflict between protected Conservation Values does not exist.

I. Entire Agreement. This instrument, including all Exhibits attached hereto, 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.

J. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

SECTION 15

Definitions

“Agriculture” is defined as the production of plant and animal products for domestic or commercial purposes, including animal husbandry, floriculture, horticulture, orchardry, the processing and sale of farm products predominantly grown, produced, or raised on the Property, but shall not be deemed to include commercial feedlot activities, equestrian facilities, and the raising of (i) “alternative livestock” and “game animals” as defined in MCA Section 87-4-406 (2019), or its successor statute, (ii) native or exotic fish, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other “wild animals” as defined in MCA Section 87-4-801 (2019), or its successor statute, and “nongame wildlife” as defined in MCA Section 87-5-102(6) (2019), or its successor statute, or (vi) dogs, cats, or other domestic animals.

“Associated Residential Structure” is defined as any “structure” not for human habitation, and used in association with the existing and permitted residences, including, but not limited to,

garages, greenhouses, gazebos, pools, hot tubs, workshops, sheds, satellite dishes, and utility poles.

“Footprint” is defined as the total area of the land occupied by a structure, calculated on the basis of the exterior dimensions of the outermost perimeter walls or bounds of the structure whether at ground level or above, and does not include the land area occupied by any associated or attached patios, garages, carports, subsurface waste disposal systems, wells, underground utilities, or roadways.

“Height” is defined as a measurement from the original average grade of the structure’s locus to the structure’s ridgeline, chimneys excluded.

“Non-Residential Agricultural Structure” is defined as any “structure” not for human habitation and necessary to support the agricultural activities on the Property, including, but not limited to, barns, shelters, sheds, corrals, and silos. For the purposes of this Easement, the term “Non-Residential Agricultural Structure” does not include indoor riding arenas.

“Residence” is a “Structure” or portion thereof equipped with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. Such Residences include, but are not limited to, Residences, apartments, suites, guest houses, employee houses, cabins, mobile homes, trailers, and prefabricated homes and other moveable living units.

“Structure” is defined as all objects, constructions, assemblages, buildings, or erections, temporary or permanent, with or without anchors or foundations, placed assembled, or constructed on, over, or under the surface of the earth by human efforts. Structures include but are not limited to Residences, Associated Residential Structures, Non-Residential Agricultural Structures, garages, greenhouses, gazebos, pools, hot tubs, workshops, barns, sheds, corrals, outbuildings, silos, satellite dishes, utility poles, septic systems, and drain fields.

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

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

GRANTOR:

BY: _____
Melvin J. Visser

State of: _____

County of: _____

This instrument was acknowledged before me on this _____ day of _____,
20_____ by Melvin J. Visser.

(Signature)

(seal)

(Name)

GRANTOR:

BY: _____
Marjorie K. Visser

State of: _____

County of: _____

This instrument was acknowledged before me on this _____ day of _____,
20____ by Marjorie K. Visser.

(Signature)

(seal)

(Name)

GRANTEE:

GALLATIN VALLEY LAND TRUST, A CORPORATION

BY: _____
_____, Chair
Board of Directors

State of: _____
County of: _____

This instrument was acknowledged before me on this ____ day of _____, 20____ by _____ in his capacity as Chair of the Board of Directors of the Gallatin Valley Land Trust.

(Signature)

(seal)

(Name)

EXHIBIT A
LEGAL DESCRIPTION

The East Half (E1/2) and the East Half of the West Half (E1/2W1/2) of Section Eighteen (18); the Northeast Quarter (NE1/4) and the East Half of the Northwest Quarter (E1/2NW1/4) and Lots One (1) And Two (2) (being the West Half of the Northwest Quarter) of Section Nineteen (19), in Township Two (2) South, Range Three (3) East of the M.P.M., Gallatin County, Montana.

Excepting therefrom all that portion as conveyed to the State of Montana in document recorded April 9, 1954, in Book 114 of Deeds, Page 255 and being more particularly described as follows: a tract of land in SW1/4SW1/4NW1/4 of Section 19, Township 2 South, Range 3 East, M.P.M., Gallatin County, Montana, more particularly described as follows:

All that land in said SW1/4SW1/4NW1/4 lying on the southwesterly side of a line which is parallel to and 140 feet distant northerly when measured at right angles from the following described center line: Beginning at a point of the center line of the new State Highway Project No. S 63 (5), which said point is south 2579.1 feet, and east 5168.4 feet, more or less, from the northwest corner of Section 24, Township 2 South, Range 2 East, thence from the said point of beginning South 56° 37' East, 523.5 feet, more or less, to a point on the center line of said new State Highway Project No. S 63 (5), which said point is south 2867.2 Feet, and east 5605.5 Feet, more or less, from the northwest corner of said Section 24, Township 2 South, Range 2 East.

Also excepting therefrom all that portion as conveyed to the State of Montana in document recorded April 9, 1954, in Book 114 of Deeds, Page 261, being more particularly described as follows: A tract of land in S1/2N1/2 Section 19, Township 2 South, Range 3 East, M.P.M. Gallatin County, Montana, more particularly described as follows:

All that land in said S1/2N1/2 lying on the southerly side of a line which is parallel to and 50 feet distant northerly when measured at right angles from the following described center line: Beginning at a point on the center line of the new State Highway Project No. S 63 (5), which said point is south 2823.8 Feet, and east 6806.8 feet, more or less, from the northwest corner of Section 24, Township 2 South, Range 2 East; thence from the said point of beginning northeasterly along a curve to the right of 2865.0 feet radius, 270.0 feet to a point; also all that land in said S1/2N1/2 lying on the southerly side of a line which is parallel to and 80 feet distant northerly when measured at right angles from the following described center line; thence continuing from the last described point northeasterly along the same curve to the right of 2865.0 feet radius, 217.0 feet; thence South 89° 12' East, 183.0 feet to a point; also all that land in said S1/2N1/2 lying on the southerly side of a line which is parallel to and 50 feet distant northerly when measured at right angles from the following described center line; thence continuing from the last described point South 89° 12' East, 2911.0 feet, more or less, to a point on the east line of Section 19, which said point bears northerly along said east Line a distance of 23.2 feet, more or less, from the east quarter corner of said Section 19.

Also excepting therefrom all that portion as conveyed to the State Of Montana, in document recorded September 10, 2002, As Document No. 2080692, being more particularly described as follows: Parcel No. 13 on Montana Department Of Transportation Project STTP 84-2(2)12, as shown on the Right-Of-Way plan for said project recorded in the office of the County Clerk and Recorder of Gallatin County, Montana. Said parcel is also described as a tract of land in U.S. Government Lot 2, SE1/4NW1/4 and S1/2NE1/4 of Section 19, Township 2 South, Range 3 East, P.M.M., Gallatin County, Montana.

Also excepting therefrom all that portion as conveyed to the State of Montana, in document recorded September 10, 2002, As Document No. 2080693, being more particularly described as follows: Parcel No. 42 on Montana Department Of Transportation Project STTP 84-2(2)12, as shown on the Right-Of-Way plan for said project recorded in the office of the County Clerk and Recorder of Gallatin County, Montana. Said parcel is also described as a tract of land in U.S. Government Lot 2 of Section 19, Township 2 South, Range 3 East, P.M.M., Gallatin County, Montana.

Subject to all third party rights of record in the Property existing at the time of conveyance of the Conservation Easement and not subordinated to the Conservation Easement.

The total area of the Property is 779 acres, more or less.

EXHIBIT B PROHIBITED USES AND PRACTICES

Any activities that are inconsistent with the terms and Purposes of the Easement are prohibited. The following uses and practices are hereby deemed to be inconsistent with the terms and Purposes of this Easement and are expressly prohibited:

1. Division or Subdivision of Property. Grantor and Grantee mutually intend that the entire Property described in Exhibit A shall be granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as a single parcel. Therefore, the following activities are expressly prohibited: the legal or “de facto” division or subdivision of the Property, which shall include, but shall not be limited to, any separate conveyance of a portion of the Property, subdivision, short subdivision into remainder tracts, platting, testamentary division, or other process by which the Property is divided into lots or in which legal or equitable title to different portions of the Property are held by different owners. The Grantor shall also not indirectly subdivide all or any part of the Property through the allocation of property rights among partners, shareholders, or members of any legal entity, the creation of a horizontal property regime, interval or time-share ownership arrangement, partitioning in kind among tenants-in-common or joint tenants, judicial partitions in kind, partitions in kind in bankruptcy, or partitions in kind by any other means. Partitions by sale in which title to the whole Property remains in unified, undivided ownership are not prohibited.

Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for permitted agricultural purposes provided any such leases are subordinated to the terms and Purposes of this Easement.

2. Transferable Development Rights. By executing this Easement, Grantor hereby transfers and conveys to Grantee all of the residential development rights in the Property that are not specifically reserved to Grantor in Paragraph 1 above and in Exhibit C. Grantee agrees to hold all such development rights in perpetuity without exercising them, and without transferring them off of the Property if a transferable development right program is adopted or sanctioned at any time in Gallatin County. Grantor and Grantee hereby agree to execute and record any additional instruments as may be necessary or appropriate to effectuate the transfer of said development right from Grantor to Grantee.

3. Construction on the Property. Except as specifically permitted in Exhibit C, construction or placement of any buildings, camping accommodations, temporary living quarters of any sort, mobile homes, antennas, cell phone towers, windmills, water towers, utility poles or towers, signs, billboards or other advertising materials, or other structures is prohibited, except that vehicular campers owned by the Grantor or the Grantor’s guests may be parked on the Property on a temporary basis.

4. Industrial or Commercial Uses. Except as specifically permitted in Exhibit C, Paragraphs 11 and 19, industrial or commercial activities on the Property are prohibited. Prohibited uses specifically include, but are not limited to, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail

store or outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Property.

5. Rights of way, easements, and utilities. The granting or modification of easements for utilities when the utility will adversely impact the Purposes of the Easement, including but not limited to the agricultural use and future viability and related conservation values of the Property as determined by the Grantee in consultation with the Chief of NRCS. The installation of utility structures, lines, conduits, cables, wires or pipelines upon, over, under, within, or beneath the Property is prohibited except in connection with the construction of permitted structures, or the improvement or upgrading of existing electrical distribution lines, as set forth in Exhibit C, Paragraph 6. Notwithstanding any provision of this Easement that may be construed to the contrary, the granting of utility transmission line easements and utility transmission corridor rights-of-way is expressly prohibited.

6. Roads. The granting or modification of easements for roads is prohibited when the road will adversely impact the Purposes of the Easement, including but not limited to the agricultural use and future viability and related conservation values of the Property as determined by the Grantee in consultation with the Chief of NRCS. The construction of any new roads or vehicle trails on the Property, or the use of vehicles off of the existing roads in a manner which damages vegetation, or which creates permanent tracks or trails, except as permitted in Exhibit C, Paragraph 5. Subject to the provisions of Section 10, road easements and rights-of-way may be granted by mutual agreement of Grantor and Grantee only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to 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.

7. Dumping. Dumping of any hazardous or toxic materials or substances, as defined in Section 11, Paragraph B of this Easement and including sewage sludge or septic leach, in, on, or under the Property. Notwithstanding any other provision of this Paragraph to the contrary, however, Grantor may compost nonhazardous biodegradable wastes generated by permitted agricultural or residential operations on the Property and Grantor may store fuel, lubricants, pesticides and similar chemicals used for permitted agricultural or residential purposes on the Property.

8. Motorized recreational use. Motorized recreational use, except that Grantor may use the Property on a limited basis for personal, noncommercial motorized recreational purposes, provided that all such uses are consistent with the terms and Purposes of this Easement and do not adversely affect the Conservation Values. Off-road vehicle use that results in significant soil erosion is expressly prohibited.

9. Commercial feed lots. The location or operation of any commercial feed lots on the Property. A commercial feed lot is defined as a facility used for the purpose of receiving, confining and feeding livestock, including pigs or hogs, for hire. Nothing in this Easement shall be construed to prevent Grantor from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Grantor from leasing

pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

10. Alternative livestock. The raising or confinement for commercial purposes of (i) “alternative livestock” and “game animals” as defined in MCA Section 87-4-406 (2019), or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603 (2019), or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other “wild animals” as defined in MCA Section 87-4-801 (2019), or its successor statute, and “nongame wildlife” as defined in MCA Section 87-5-102(6) (2019), or its successor statute, or (vi) dogs, cats or other domestic animals.

11. Water. Manipulation or alteration of the natural water courses and/or ponds on the Property, or the creation of new water impoundments or water courses, except as permitted in Exhibit C.

12. Timber harvest. Logging, timber harvest, or gathering firewood for commercial purposes is prohibited, except as provided in Exhibit C, Paragraph 16 of this Easement.

13. Non-native species. The introduction of any non-native plant or animal species, except where such introduction is associated with permitted residential gardening and permitted agricultural uses of the Property or is intended as a biological control against non-native pest species or used for erosion control, restoration or other habitat improvements. For such purposes, the Grantor may not use non-native species that will compete with and result in the decline or elimination of native species on the Property. Under no circumstances is Grantor allowed to introduce to the Property any plant on the Montana Statewide Noxious Weed list.

14. Limitation on impervious surfaces. Impervious surfaces will not exceed two percent (2%) of the Property, excluding NRCS-approved conservation practices. Thus, if the total area of the Property is 779 acres, as currently estimated, then the total combined area of all impervious surfaces may not exceed 15.58 acres. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property, including but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to Grantee by this Easement.

15. Surface Alteration. Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:

(i) dam construction (pursuant to a plan approved by the Grantee) to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with the terms of this Easement;

(ii) erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) soil disturbance activities as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee pursuant to Section 4 as being consistent with the Purposes of this Easement; or

(iv) agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this Easement.

16. Surface and Subsurface Mineral Exploration and Extraction. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method is prohibited. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and the third party interests have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph. Any mineral leases or other conveyances of minerals entered into or renewed by Grantor after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement. Grantor specifically agrees that Grantor shall not extract or remove any minerals and non-mineral substance (including but not limited to soil, sand and peat) by any surface mining method, within the meaning of Section 170(h)(5)(B) of the Code and the regulations promulgated thereunder.

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

EXHIBIT C
PERMITTED USES AND PRACTICES

The following uses and practices are hereby deemed to be consistent with the terms and Purposes of this Easement, and are expressly permitted:

1. Transfer of land. To grant, sell, exchange, devise, gift, or otherwise convey or dispose of all or any portion of Grantor's right, title, estate, and interest in the Property in unified title as one (1) parcel only, as provided in Section I, Paragraph A and Exhibit B, Paragraph 1. Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance. The Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement.

Nothing in this Easement shall be construed to prevent Grantor, from owning the Property in cotenancy, wherein each cotenant shall have undivided interests in the whole of the Property however, Grantor, Grantee, Gallatin County and the United States specifically intend that the Property shall not be partitioned by judicial proceedings or otherwise. Grantor also retains the right to enter into leases, licenses or other transfers of 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. Grantor expressly conveys to Grantee 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 Grantor's knowledge or consent. Grantor and Grantee specifically intend that the Property shall not be partitioned in kind by judicial proceedings or otherwise.

2. Structures and Building Envelopes. There are three existing Residences on the Property at the time that this Easement is granted. Grantor retains the right to build one additional Residence in Building Envelope A. No more than four (4) Residences are permitted on the Property by this Easement. All new structures and improvements (except as provided in this Paragraph 2 and Paragraph 3 below), including Residences and Associated Residential Structures must be located in the two (2) Building Envelopes designated in this Paragraph 2, subparagraph B below.

A. Residences. Grantor retains the right to repair, remodel, and replace the three (3) existing Residences on the Property, and build one additional Residence within Building Envelope A. Two (2) of the existing Residences are located in Building Envelope A, and one (1) of the existing Residences is located in Building Envelope B. In Building Envelope A, the footprint of one Residence may not exceed four thousand five hundred (4,500) square feet, and the footprints of the other two Residences may not exceed two thousand five hundred (2,500) square feet. In Building Envelope B, the footprint of the Residence may not exceed one thousand five hundred (1,500) square feet. The height of each Residence may not exceed thirty-five (35) feet.

- B. Building Envelope. The two Building Envelopes on the Property are described and depicted in locations depicted in Exhibit D attached hereto and incorporated by this reference, and as further documented in the Baseline Documentation Report. Building Envelope A is 10 acres and Building Envelope B is 2 acres. Wells and drain fields that serve permitted uses on the Property may be located outside the Building Envelopes if necessary, provided that they do not adversely affect agricultural use and future viability and related conservation values of the Property.
- C. Associated Residential Structures. Associated Residential Structures, as defined in Section 15, must be located within the Building Envelopes. The height of Associated Residential Structures may not exceed thirty-five (35) feet. Grantor reserves the right to repair, remodel, and make additions to all Associated Residential Structures on the Property, within the impervious surface limitations of Exhibit B, Paragraph 14 and the prior approval provisions in Paragraph D below and Section 4 of this Easement.
- D. Prior Approval. Construction of any new structure permitted by this Paragraph 2, and changes to the footprint of existing structures, requires prior written prior approval by Grantee, as set forth in Section 4 of this Easement. Grantor must comply with all federal, state and local laws, ordinances, zoning regulations and any other applicable laws and regulations concerning building on the Property.

3. Non-Residential Agricultural Structures. Subject to the impervious surface limitations set forth in Exhibit B, Paragraph 14, Grantor retains the right to maintain, repair, remodel, make limited additions, and in the event of their removal or destruction to replace, the existing Non-Residential Agricultural Structures and improvements on the Property that are in place as of the date of this Easement, as described in the Baseline Documentation Report, including:

_____. Additional Non-Residential Agricultural Structures and other improvements the Grantor may deem appropriate for agricultural purposes are permitted, provided that they are consistent with protection of the Conservation Values, and they neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Property, including the scenic resources protected by this Easement as set forth in Recital 2, and provided that the agricultural structures and other improvements are consistent with the terms of this Easement. The construction of any new Non-Residential Agricultural Structures must receive prior written approval from the Grantee as set forth in Section 4 of this Easement.

4. Agricultural Use. The provisions of this Easement and associated exhibits may not be interpreted to restrict the types of agricultural operations that can function on the Property (except commercial feedlots which are expressly prohibited), so long as the agricultural operations are consistent with the long-term viability of the Property and Purposes of this Easement. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the Easement's protection of the Purposes of this Easement. Agricultural uses that are allowed include but are not limited to:

- a. To use the Property for farming, ranching, and other agricultural and livestock production, processing and marketing activities, including to plant, raise and harvest agricultural crops, and to produce, raise, and manage livestock, subject to the restrictions contained in this Easement and provided that such activities are consistent with protection of the Conservation Values and provided further that agricultural leases, if any, must be expressly consistent with the provisions of this Easement.
- b. On protected grasslands on the Property, Grantor is allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and Purposes of this Easement. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property. Grantor must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. As of the date of this Easement, Grantor, Grantee and the United States have determined that there are no bird populations in significant decline on the Property.
 - i. For the purposes of this Easement, the term "grassland" is defined as any contiguous portion of the Property which exceeds 20% of the total acreage described in Exhibit A and (i) that is non-forested, (ii) that is dominated by native grass and forb species, (iii) that contains few or no noxious or invasive species as of the date of this Easement, (iv) that is not irrigated, tilled, seeded, or farmed on a regular basis or long-term cycle, and (v) that is not managed for crop cultivation or as pastureland. As of the date of this Easement, there are no portions of the Property that qualify as grasslands. Changes to that determination must be approved in writing by the Grantor, Grantee and NRCS.

5. Roads. Existing roads documented on the Baseline Documentation Report may be maintained at their existing width and in their historic condition provided that such construction and maintenance are necessary for permitted farming and ranching activities, and for permitted residential uses. All permitted road maintenance must be within impervious surface limits described in Exhibit B, Paragraph 14 and only with the prior approval of Grantee pursuant to Section 4.

New roads may be constructed only (a) with the prior written approval of Grantee, as set forth in Section 4 of this Easement, (b) if they are necessary to carry out the agricultural operations or other allowed uses of the Property, (c) if such new roads are sited and maintained so as to minimize adverse impact on the Conservation Values, especially the unobstructed scenic views from Montana Highway 84, and (d) if such roads comply with the impervious surface limits described in Exhibit B, Paragraph 14. The Grantor's written request for prior approval for road maintenance and construction activities shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by Grantee, 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 and control of noxious weeds on exposed cuts, fills and banks is required.

6. Utilities. To install utility structures, lines, conduits, cables, wires, or pipelines (hereafter “utilities” and “utility services”) upon, over, under, within, or beneath the Property to serve approved buildings or structures, including on-farm energy structures allowed under Paragraph 22 of this Exhibit C, with prior written approval of the Grantee, so long as they neither individually nor collectively have an adverse impact on the Purposes of the Easement, including the agricultural use and future viability of the Property.

With the prior written approval of the Grantee pursuant to Section 4, Grantor may also permit the expansion of existing utility services, including the construction of new electrical utility distribution lines (but not electrical transmission lines, which are prohibited by Exhibit B, Paragraph 5) if Grantor’s exercise of these reserved rights does not impair the Purposes of this Easement. The Grantee’s prior approval of new or upgraded utility services will require submission by Grantor of a construction and installation plan. Grantor shall contact the Grantee prior to the preparation of the construction and installation plan to obtain the required information to be included in any such plan that the Grantee deems relevant to its ability to protect the Purposes of this Easement. Grantor and Grantee will mutually determine the completeness of the utility construction and installation plan and its adherence to the general and specific intentions of this Easement prior to the Grantee’s approval of such plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Gallatin County, signed by Grantor, the Grantee, and the utility service provider prior to construction.

7. Fences. Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Property or to mark boundaries of the Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purposes of the Easement. When practicable, such fences shall not prevent or materially hinder the movement of wildlife. Grantor reserves the right to construct wildlife exclosures to protect habitat, agricultural crops, agricultural improvements, and landscaping. Grantor reserves the right to build wildlife proof storage areas and domestic livestock pens outside the Building Envelopes to protect livestock forage, hay, and grain supplies, and to secure domestic livestock. Notwithstanding any other provision to the contrary in this Easement, fences necessary for the containment of livestock are permitted.

8. Temporary shelters. To place tents, tarps, yurts, tepees, campers, or other shelters without permanent foundations upon the Property on a temporary basis from time to time, provided that such non-permanent structures do not adversely affect the Purposes of this Easement, including the scenic and open-space values of the Property or any other Conservation Values protected by this Easement. Temporary structures may not impair views from public roads.

9. Removal of structures. To remove buildings and other structures no longer desired.

10. Non-commercial recreational uses. Grantor reserves the right to use the Property for non-commercial recreational activities, including, but not limited to, hunting of game animals and birds, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantor and invitees, provided that those activities are consistent with the Purposes of this Easement and all applicable governmental regulations.

11. Residence-based business. Persons living on the Property may conduct businesses, trades, or professions within their Residences so long as customers or clients do not visit the Property for business purposes on a regular basis.

12. Water resources. Grantor reserves the right to maintain, restore, develop, and enhance those water resources on the Property which are necessary or desirable for farming, ranching and other agricultural uses, wildlife, domestic needs, and private recreation on the Property in a manner which is consistent with protection and preservation of the Conservation Values.

13. Weed control. To control noxious and invasive weeds by integrated control measures which include: manual, mechanical, chemical, and/or biological techniques. The control and management of weeds shall follow then 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.

14. Vegetation Management. Grantor reserves the right to plant, prune, trim, cut, mow, or otherwise manage grass, trees and shrub vegetation to enhance wildlife habitat, recreational opportunities, or improve safety or access to portions of the Property in a manner which is consistent with protection and preservation of the Conservation Values.

15. Prescribed fire. To use prescribed fire as an ecological management tool in compliance with state and other applicable laws.

16. Forest Management and Timber Harvest. Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Property.

17. Renewable energy. To install, maintain, repair and replace renewable energy generation equipment, such as photovoltaic panels, solar water heaters, and windmills, for the purpose of generating energy for the agricultural and residential needs of the Property, provided that placement of all such equipment must: (a) be located to minimize impact on the Conservation Values and be consistent with the Purposes of this Easement; (b) be built and maintained within the impervious surface limits as defined in Exhibit B, paragraph 14; (c) consistent with the Purposes of this Easement, and (d) receive prior written approval from Grantee pursuant to Section 4 of this Easement. Photovoltaic panels mounted on roofs must be flush with the roof surface. All free-standing renewable energy equipment permitted by this Paragraph shall not exceed a height of twenty (20) feet. The sale of excess power generated in the operation of

renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purposes of this Easement. Notwithstanding any other provision of this Paragraph that may be construed to the contrary and excluding net metering credits, the Property may not be used as a commercial wind farm, commercial solar energy collection facility, or for other commercial or non-commercial energy collection or generation purposes not expressly permitted under this Easement.

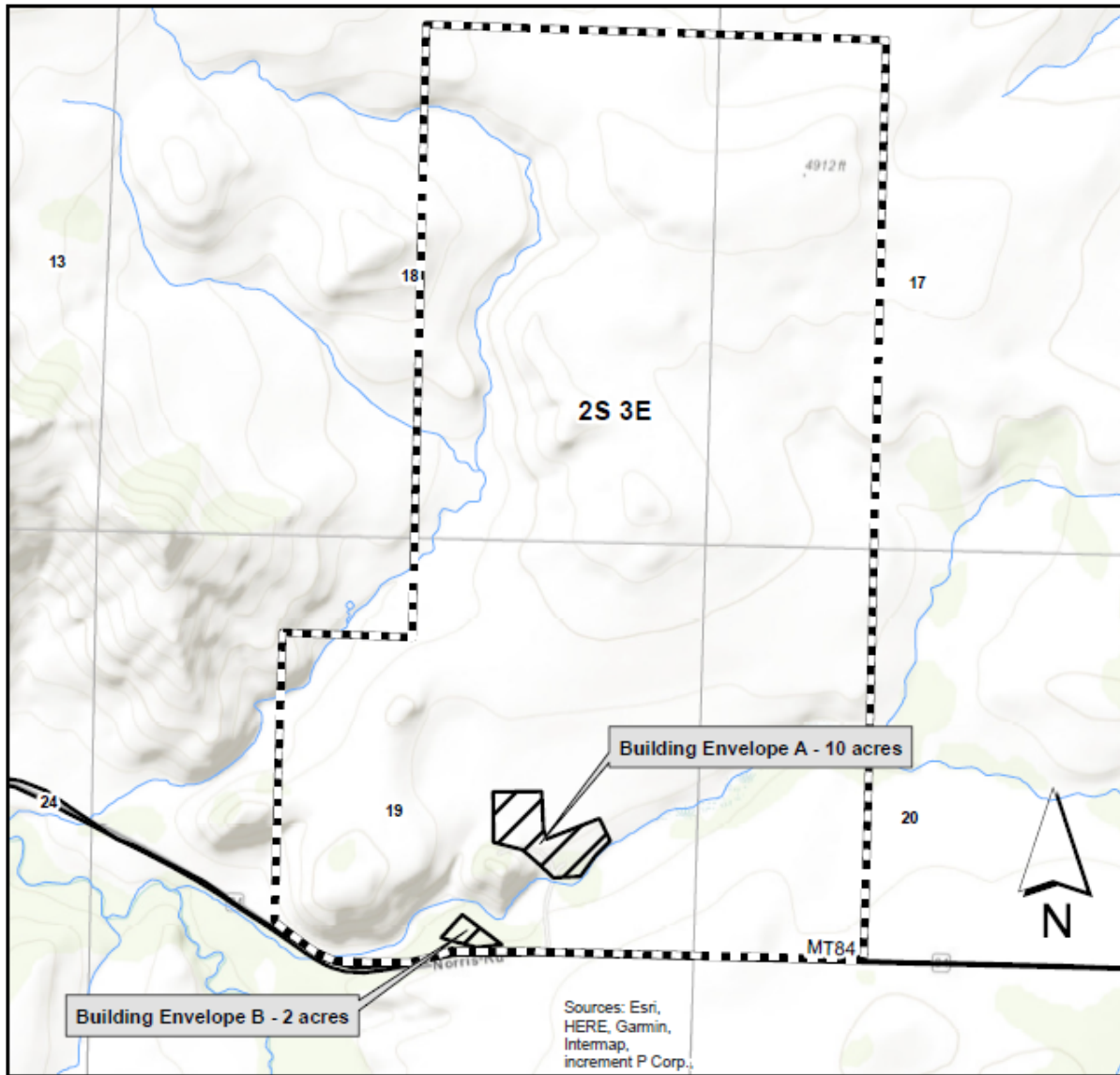
18. Signs. At Grantor's discretion, to place several small signs on the borders of the Property stating that Grantor's property is protected by a conservation easement held by the Gallatin Valley Land Trust. Signs that do not exceed twenty (20) square feet identifying permitted agricultural and/or recreational activities that are conducted on the Property are permitted.

19. Allowed commercial uses. Consistent with the restriction on industrial and commercial uses set forth in Exhibit B, Paragraph 4, the following uses shall be considered allowed commercial uses, as long as they are conducted in a manner that does not have an adverse impact on the agricultural use and future viability and related or other Conservation Values of the Property, including scenic and open-space values:





- a. the production, processing, and marketing of agricultural products and livestock (except commercial feedlots) if conducted in accordance with the terms and Purposes of this Easement;
- b. the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures, permitted for the purpose of generating energy for the agricultural and residential needs of the Property in accordance with the terms and Purposes of this Easement, including but not limited to Exhibit C, Paragraph 17, the restrictions in Exhibit B, Paragraph 14, and only with Grantee's prior approval under Section 4;
- c. temporary or seasonal outdoor activities or events in accordance with the terms and Purposes of this Easement, including recreational activities, as permitted under Exhibit C, Paragraphs 8 and 10;
- d. commercial enterprises compatible with agriculture, including, but not limited to, agritourism, processing, packaging, and marketing of farm products, farm machinery repair, small-scale farm stands, and residence-based businesses, in accordance with the terms and Purposes of this Easement and as permitted under Exhibit C, Paragraph 11.

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

EXHIBIT D MAP OF EASEMENT PROPERTY



Legend

 CE Boundary	 Rivers & Streams
 Building Envelope	 Section Lines

0 0.15 0.3 0.6
 Miles

1:14,500



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