

**DEED OF CONSERVATION EASEMENT**

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 10th day of April, 2002, by Clayton Berg of P.O. Box 4845, Helena, Montana 59604-4845 (hereinafter together with his heirs, personal representatives, successors, and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

**R E C I T A L S:**

WHEREAS, Grantor is the owner of certain real property in Cascade County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"); and,

WHEREAS, the Property has significant scenic and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

WHEREAS, the Property constitutes a valuable element of the Missouri River Valley and its scenic and open space lands (hereinafter the "Conservation Values") which are of great importance to Grantor and to the people of the State of Montana, and are worthy of preservation; and,

WHEREAS, it is the intent of this Easement to maintain the rural, agricultural and natural scenic qualities of the area by the retention of significant open space for a variety of uses including wildlife habitat, recreation and agricultural purposes; and,

WHEREAS, the Cascade County, Montana, Commissioners have expressly recognized in the 1979 County Development Plan, the importance of preserving open space and agricultural lands in Cascade County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

WHEREAS, Grantor and Grantee intend to preserve the Conservation Values of the Property in their largely undeveloped condition to protect and preserve the natural scenery enjoyed by the general public traveling Interstate 15 between Helena and Great Falls and recreating on and along the Missouri River; and,

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*Return to:*

**MAIN OFFICE**

324 Fuller Ave. • PO Box 355  
Helena, Montana 59624-0355



Cascade County, MT ES

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WHEREAS, Grantor desires and intends that the Conservation Values of the Property be preserved and maintained by a continuation of land uses that will not substantially impair those Values; and,

WHEREAS, the State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,

WHEREAS, Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for scenic open space purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the "Code") qualified to receive and hold conservation easements;

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

#### SECTION I Purpose and General Effect of Easement

A. Purpose. It is the purpose of this Easement to assure that the Conservation Values will be maintained forever and to prevent any use of, or activity on, the Property that will significantly impair those Values. Grantor intends that this Easement will limit the use of the Property to such activities as are consistent with that purpose (including farming, ranching and other agricultural uses; hunting, fishing and other recreational uses; and mineral exploitation activities consistent with the terms hereof). Grantor and Grantee recognize that changes in economic conditions, in technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Property provided that such uses and practices are consistent with the purpose of this Easement.

B. Perpetual restrictions. This Easement shall run with and burden title to the Property in perpetuity and shall bind Grantor and all future owners and tenants.

C. Dedication. The Property is hereby declared to be open space and may not, except as specifically provided herein, be converted from open space.

**SECTION II**  
**Rights Conveyed**

The rights conveyed by this Easement are the following:

A. Identification and protection. To identify, preserve and protect in perpetuity the Conservation Values, subject, however, to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

B. Access. Upon prior notice to Grantor, to enter upon the Property to inspect the same and to monitor Grantor's compliance with the terms of this Easement in a manner that will not unreasonably interfere with the use of the Property by Grantor. Aside from the rights of access granted in the preceding sentence of this paragraph B, this Easement does not grant to Grantee, nor to the public, any rights to enter upon the Property.

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

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

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

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

**SECTION IV**  
**Prior Notice by Grantor and Approval of Grantee**

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

A. Grantor's written notice. Prior to the commencement of any enterprise, use or activity requiring Grantee's approval, Grantor shall send Grantee written notice of the intention to commence or undertake such enterprise, use or activity. Said notice 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.

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

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

D. Grantor's address. Grantee's response to Grantor's notice shall be sent by registered or certified mail, return receipt requested, or by a private delivery service and shall be addressed to Grantor at P.O. Box 4845, Helena, MT 59604-4845, or to such other address as Grantee from time to time may be informed of in writing by Grantor.

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

F. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified.

## **SECTION V**

### **Breach and Restoration**

A. Grantee's remedies. If Grantee determines that Grantor, or a third party sanctioned by Grantor, is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, 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;

(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 of the date mutually agreed to between Grantor and Grantee as the date when efforts to cure such violation can reasonably begin; or,

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

Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its

remedies under this paragraph without waiting for the period provided for a cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and 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. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

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

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

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

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and

all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement herein granted. Any lawful tax or assessment on this Easement shall be paid by Grantee.

## **SECTION VII** **Indemnities**

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

B. Grantor's obligation to indemnify. Grantor agrees to hold harmless and indemnify Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Grantee's reasonable attorneys' fees and costs of defense, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except as set forth in paragraph C below; (ii) the obligations specified in Section VI; and (iii) the obligations arising from past, present or future presence of any hazardous substance on the Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, claims, penalties, costs, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, officers, employees,



and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state or local law, regulation or ordinance.

#### SECTION VIII Assignment of Easement

The benefits of this Easement shall be assignable, but Grantee may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization," within the meaning of Section 170(h)(3) of the Code. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantor. Any such qualified organization shall agree to enforce in perpetuity the conservation purpose of this Easement. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of scenic open space as a substantial organizational purpose, and Grantee further represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

#### SECTION IX Documentation

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Conservation Values of the Property. The parties acknowledge that this information shall be compiled and developed into a final resource documentation report as soon as is practically feasible after the grant of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information compiled prior to the time of the grant of this Easement, which shall be incorporated into the final resource documentation report, accurately represents the condition of the Conservation Values of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The parties intend that the documentation shall be used by Grantee to monitor Grantor's compliance with the terms and conditions of this Easement. The documentation shall be on file with Grantee.



## SECTION X

### Extinguishment: Grantee's Entitlement to Proceeds

A. Extinguishment. If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement may only be terminated or extinguished (as provided for in Treasury Regulations Section 1.170A-14(g)(6)(i)), whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with paragraph B of this Section X. Grantee shall use any such proceeds in a manner consistent with the purpose of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee, which, for purposes of paragraph A of this Section X, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Grantor's qualified appraisal (pursuant to Treasury Regulation §1.170A-13) for federal income, gift or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement, as established at the time of this grant, shall remain constant. Within one (1) year of completion of the qualified appraisal, Grantor, Grantee and Grantor's appraiser shall sign a written acknowledgment of the values thus established on a form similar to the sample attached hereto as Exhibit E. The original of said acknowledgment shall be held on file with Grantee at Grantee's normal place of business.

C. Eminent domain. If all or a portion of the Property is taken in exercise of eminent domain by public, corporate or other authority, so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee may join in appropriate actions to recover the full value of the Property (or portion thereof) taken and all incidental or direct damages resulting from such taking. Any expense incurred by Grantor or Grantee in any such action shall be first reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between Grantor and Grantee in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X.



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**SECTION XI**  
**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 his heirs, personal representatives, executors, successors in interest, and assigns, and The Montana Land Reliance and its successors and assigns, respectively.

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

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the Public Records of Cascade County will be made in any subsequent deed or other legal instrument by which they convey any interest in the Property, including any leasehold interest. Grantor further agrees to attach a copy of this Easement to any deed by which Grantor conveys title to the Property.

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

F. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including MCA Section 76-6-101, et seq., and the Code. Any amendment must be consistent with the conservation purpose 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. Furthermore, the provisions concerning valuation of this Easement, which are set forth in Section X above and in Exhibit E, may not be amended. Any Easement amendment must be in writing, signed by both parties, and recorded in the Public Records of Cascade County.



G. Conservation intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates its Conservation Values.

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

GRANTOR:

Clayton V Berg  
CLAYTON BERG

GRANTEE:

THE MONTANA LAND RELIANCE,  
a corporation

By: George K. Sec-Treas  
[Name and title]

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**EXHIBIT A  
LEGAL DESCRIPTION**

Township 17 North, Range 1 West, M.P.M., Cascade County, Montana

Section 30: All that part of Lots 2, 3, 4, and 9 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 30, lying within the following boundaries, to-wit:

The Great Northern Railway Company right-of-way line on the northwesterly, the Missouri River on the southerly, and the following described line on the northeasterly, to-wit: Beginning at the intersection of the easterly Great Northern Railway Company right-of-way line and the section line between Section 19 and Section 30, Township 17 North, Range 1 West, thence southwesterly 1,298.47 feet along said railway right-of-way line to an iron pin, which is the place of beginning, thence southeasterly making an angle of 85°10' with a southwesterly continuation of said Great Northern Railway Company right-of-way line along a straight line for a distance of 1,818.17 feet to an iron pipe at the intersection of said line with said Missouri River, subject to Great Northern Railway Company easements.



**EXHIBIT B**  
**PERMITTED USES AND PRACTICES**

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

1. Agricultural activities. To conduct farming, ranching and other agricultural activities, including raising and managing livestock and planting, raising and harvesting agricultural crops. Grantor retains the right to construct, maintain and repair one (1) building for the purpose of a commercial nursery on the Property. This structure shall be located near the existing structures on the Property at the time of the grant of this Easement.

2. Hunting and fishing. To use the Property for hunting game animals and for commercial fishing. The Property shall be used for non-commercial hunting only. Notwithstanding any provision in this Easement to the contrary, Grantor may enroll in federal or state programs that are specifically designed to provide public access for hunting and fishing, and Grantor may accept financial incentive payments associated with such public hunting and fishing access programs. Grantor has the express right to control access for hunting and fishing on the Property.

3. Water resources. To maintain, enhance and develop water resources on the Property in accordance with applicable state and federal regulations, for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds, provided no more than four (4) ponds encompassing a total of 20 acres may be constructed on the Property; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities. Prior to commencing any restoration, enhancement or development of ponds on the Property, Grantor shall submit a detailed plan for the disposal of all extracted materials for Grantee's approval pursuant to Section IV.

4. Maintenance and structures. To maintain, repair, remodel, and make limited additions to any existing or subsequently constructed structures and improvements expressly permitted by this Easement. In the event of removal or destruction of any or all of said structures and improvements, to replace them with structures and improvements of a similar function and use and in the same general locations. Specifically, Grantor retains the right to replace and enlarge the existing residence with a prefabricated or mobile home, or a



constructed home. To place upon the Property additional non-residential structures and other improvements as may be necessary for agricultural purposes, pursuant to the terms hereof. All new non-residential structures shall be located near the existing structures on the Property at the time of the grant of this Easement.

Further, Grantor retains the right to construct, maintain and repair one (1) garage to be associated with and located near the existing residence on the Property.

5. New residence or visitor center. To construct or place, maintain and repair one (1) additional single family residence (including any prefabricated home, mobile home, trailer, or other movable living unit) on the Property. The residence shall be limited in size to no more than 3,000 square feet and be located near the structures existing on the Property at the time of the grant of this Easement.

In lieu of the one (1) additional residence, Grantor may construct, maintain and repair a visitor center on the Property. If constructed, the visitor center shall also be limited to not more than 1,000 square feet and be located near the existing structures on the Property at the time of the grant of this Easement. If the visitor center ceases operation, such structure could be remodeled into a residence, limited to 3,000 square feet in size.

In the event of removal or destruction of either the residence or visitor center described in this paragraph 5, Grantor may replace the same with a similar structure in the same general location.

6. Mineral exploitation. There shall be no exploration for, extraction or removal of any minerals (including oil, gas, hydrocarbons, and hard-rock minerals) by any surface or subsurface mining method; there shall be no exploration for, or exploitation of, hydrothermal resources; and there shall be no extraction or removal of any nonmineral substance (including peat) resulting in significant disturbance to, or degradation of, topsoil, vegetation, or water quality. Notwithstanding the foregoing sentence, subject to the prior approval of Grantee, as provided in Section IV hereof, Grantor may extract minerals or nonmineral substances, for non-commercial use on the Property, by a method that has limited, localized impact on the Property but that is not irretrievably destructive of any Conservation Value, within the meaning of Treasury Regulation Section 1.170A-14(g)(4)(i) or its successor provision, provided the surface alteration is restored to its original state and approximate contour.



7. Transfer of land. To grant, sell, exchange, devise, gift, or otherwise convey or dispose of all or any portion of Grantor's right, title, estate, and interest in the Property as one (1) parcel only. Grantor shall furnish Grantee with a copy of any document or conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

8. Timber removal. To remove select trees that present a hazard to persons or property, or the cutting of firewood, posts and poles for non-commercial use. All timber removed by Grantor pursuant to this paragraph 8, must be used or disposed of on the Property, and such timber removed must protect and minimize impact on the Conservation Values. In connection with the upkeep, maintenance and repair of structures and residences, Grantor specifically reserves the right to clear brush, and prune, trim and remove trees, or to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes.

9. Residence-based business. Persons living on the Property may also conduct businesses within their residence so long as any such business is not a sales or service business involving dealing with the general public on the Property on a regular basis.

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



**EXHIBIT C**  
**PROHIBITED USES AND PRACTICES**

The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purpose of this Easement and are expressly prohibited:

1. Subdivision. The division, subdivision or de facto subdivision of the Property.

2. Mineral exploitation. Exploration for, or the removal or extraction of any mineral or nonmineral substance by any surface or subsurface mining or extraction method, except as provided in Exhibit B, paragraph 6.

3. Commercial facilities. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, guest ranching, outfitting, commercial feed lot, any retail sales or service business, except as provided in Exhibit B, paragraph 1, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).

4. Dumping. The dumping or other disposal of noncompostable refuse on the Property, except nonhazardous wastes generated by normal agricultural and ranching operations.

5. Construction. The construction of any structures except as provided in Exhibit B.

6. Billboards. The construction, maintenance or erection of any billboards. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.

7. Roads. The construction of roads except in connection with farming, ranching and other agricultural uses; and residential access. Any road constructed shall be sited and maintained so as to minimize adverse impact to the Conservation Values.

8. Utilities. The granting of major utility corridor right-of-way easements. However, such right-of-way easements may be granted by mutual agreement of Grantor and Grantee in cases where eminent domain statutes apply and clear public necessity



has been demonstrated to Grantor and Grantee. Nothing in this paragraph is intended to preclude Grantor from installing utility structures, lines, conduits, cables, wires, or pipelines upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements expressly permitted by this Easement. Further, Grantor retains the right to construct one (1) windmill for on-property use only upon the Property.

9. Mobile homes, etc. Except as provided in Exhibit B, paragraphs 4 and 5, the placing, use or maintenance of any trailer, mobile home or other moveable living unit (including any such unit placed on a permanent foundation); provided, however, that Grantor or Grantor's guests may park or use a recreational vehicle on the Property on a temporary basis.

10. Game, fur or fish farms. The raising or confinement for commercial purposes of (i) "alternative livestock" and "game animals" as defined in MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "nongame wildlife" as defined in MCA Section 87-5-103(5), or its successor statute.

11. Commercial timber harvest. The harvest of timber on the Property for commercial purposes. For the purposes of this Easement, the term "commercial timber harvest or thinning" is defined as any timber harvest in which the product of such harvest is sold, traded, exchanged, or used off of the Property.

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



**EXHIBIT D  
ACKNOWLEDGMENT OF DOCUMENTATION SITE VISIT**

KNOW ALL MEN BY THESE PRESENTS, that Clayton Berg of Helena, Montana, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and THE MONTANA LAND RELIANCE of Helena, Montana, as Grantee of said Easement, hereby mutually acknowledge, declare and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Conservation Values associated with the Property which shall be subject to this Easement.

2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Conservation Values of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.

3. The documentation was compiled by a representative of Grantee on a site visit to the Property on March 27 2002, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.

4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of the Conservation Values of the Property to be subject to this Easement at the time of its grant.

5. Additional information and documentation will be gathered as historical, government and archival documents and aerial photographs are made available to Grantor and Grantee.

6. Grantor and Grantee further agree that a final resource documentation report shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final resource documentation report shall be reviewed and approved in final form

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

DATED this 20 day of April, 2002.

GRANTOR:

Clayton V Berg  
CLAYTON BERG

GRANTEE:

THE MONTANA LAND RELIANCE,  
a corporation

By: George K Oe Sec-Treas  
[Name and title]



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

Clayton Berg of Helena, Montana, Grantor of a Deed of Conservation Easement dated \_\_\_\_\_, 20\_\_, and recorded on \_\_\_\_\_, 20\_\_, at Book \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana; THE MONTANA LAND RELIANCE, of Helena, Montana, Grantee of said Conservation Easement; and, \_\_\_\_\_, appraiser of the property subject to the Conservation Easement, (hereinafter the "Property"), hereby acknowledge, declare and agree as follows:

1. That the value of the Property immediately prior to encumbrance by the grant of the Conservation Easement was \_\_\_\_\_, and the value of the Property immediately after the conveyance of the Conservation Easement to the Montana Land Reliance was \_\_\_\_\_.

2. Thus, the parties hereto agree that the grant of the Conservation Easement reduced the value of Grantor's interest in the Property by \_\_\_\_\_ percent (\_\_\_\_%).

The original of this Acknowledgment is to be retained in the files of The Montana Land Reliance, or its successors and assigns, at its normal place of business.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLAYTON BERG

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

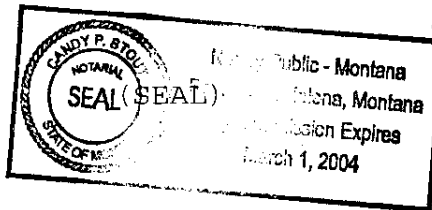
\_\_\_\_\_  
APPRAISER

- 20 -



STATE OF Montana )  
County of Lewis & Clark ) : ss.

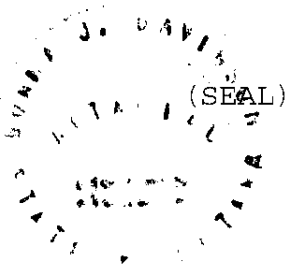
This instrument was acknowledged before me on this 22<sup>nd</sup> day of February, 2002, by Clayton Berg.



Candy P. Stout  
(Notary's Signature)  
Candy P. Stout  
(Notary's Name, please print/type)  
Notary Public for the State of Montana  
Residing at Helena MT  
My commission expires 03/01/2004

STATE OF MONTANA )  
County of Lewis and Clark ) : ss.

This instrument was acknowledged before me on this 10<sup>th</sup> day of April, 2002, by George Solser as Self of The Montana Land Reliance.



Donna J. Davidson  
(Notary's Signature)  
Donna J. Davidson  
(Notary's Name, please print/type)  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_/\_\_\_\_/20\_\_\_\_  
DONNA J. DAVIDSON  
NOTARY PUBLIC for the State of Montana  
Residing at Helena, Montana  
My Commission Expires January 10, 2004