



120 Hickory Street, Suite B
Missoula, MT 59801
406.549.0755
fvlt.org

April 18, 2022

Granite County Planning Board
Attention: Linda Bouck
PO Box 925
Philipsburg, MT 59858

Re: Review of Five Valleys Land Trust conservation easement

Dear Planning Board members:

Five Valleys Land Trust is working with Granite County landowners Rocking Chair Ranch, Inc. to place a conservation easement on approximately 1,800 acres of their lands near Philipsburg. The Rocking Chair Ranch family plans to permanently protect the agricultural and open space values of these lands through granting a conservation easement to Five Valleys Land Trust later this year. Five Valleys Land Trust is a qualified, tax-exempt private land trust based in Missoula, Montana.

The Rocking Chair Ranch lands in the Philipsburg Valley are comprised of productive agricultural lands including irrigated hay ground and upland grasslands and forest lands. Over the past few years, the family has worked with Five Valleys Land Trust to craft a conservation easement that would protect in perpetuity much of their ranchland; keep the property intact and undivided, the land open and available for agriculture; and restrict any future development and alteration of the land. The conservation easement allows for continued and new agricultural uses, and allows for the land to be sold, transferred or gifted, but only as one united property.

Enclosed are copies of the draft Deed of Conservation Easement as well as a project map.

Montana law (76-6-101) requires that the county planning authority review the conservation easements prior to recording. Five Valleys respectfully requests the Granite County Planning Board's review of this easement and will attend the next planning board meeting to discuss this conservation project.

Thank you for your consideration of this request.

Sincerely,

Sarah Richey
Conservation Project Manager



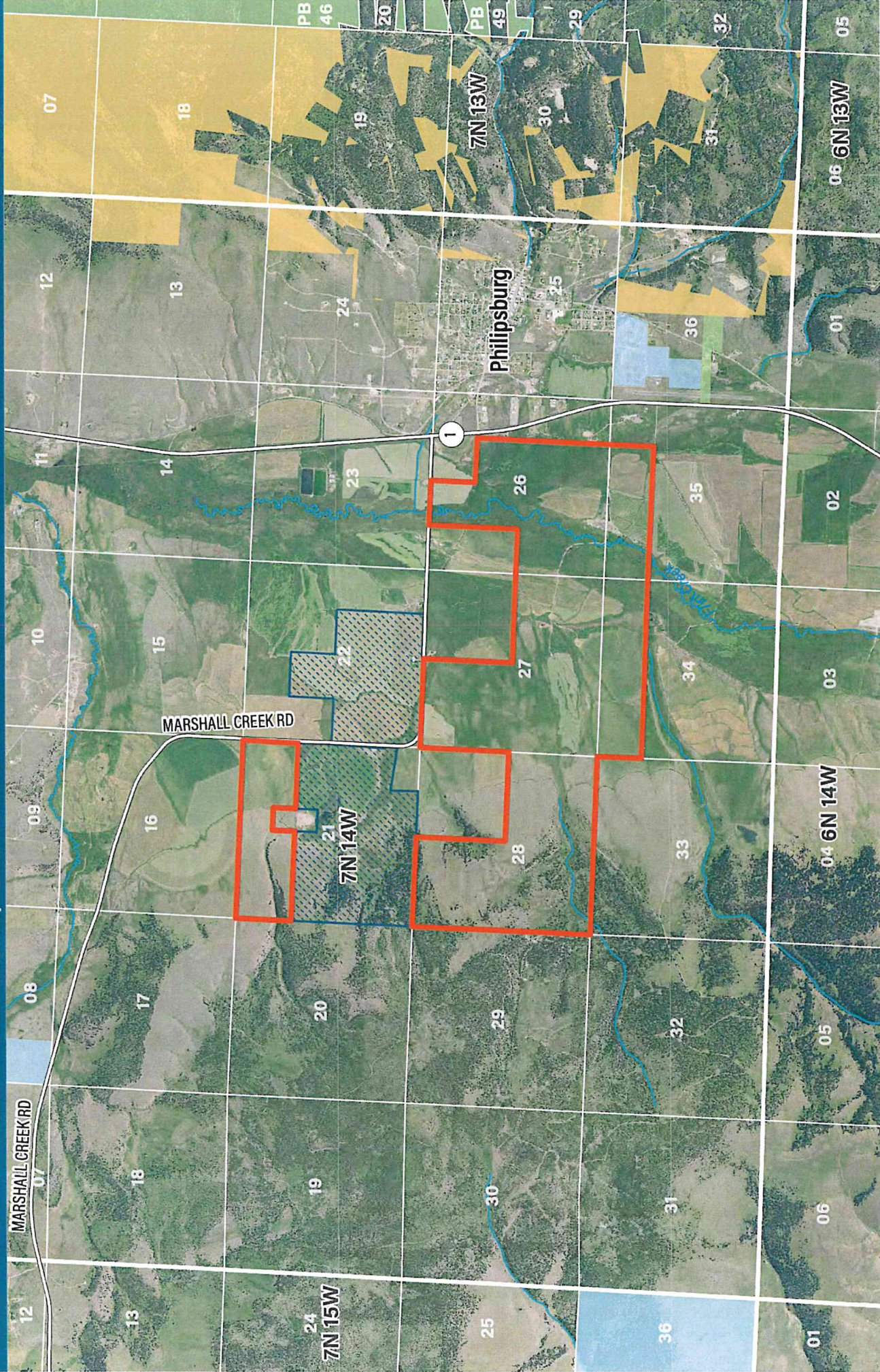
Board of Directors:

David Banks • Jen Boyer • Jim Cusker • Julie Fogarty • Mike Foote • Allan Frankl • Elizabeth Fricke • Denny Iverson
Addrien Marx • Rachel McDonough • Dan Pletscher • Shaun Radley • John Rimel • Jeff Roth • Stanley Senner • Rick Wishcamper



Rocking Chair Ranch

Aerial Photo Location Map



- Proposed ALE Conservation Easement (1,801 acres)
- FVLT Conservation Easement
- US Bureau of Land Management
- US Forest Service
- Montana State Trust Lands

Aerial Imagery: National Agricultural Imagery Program (NAIP), 2019
Date Created: 12/17/2021

Return original to:
Five Valleys Land Trust
120 Hickory Street, Suite B
Missoula, MT 59801

Date of Draft: 4/14/2022

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement (referred to as the “Easement” or the “Conservation Easement”) is entered into on this _____ day of _____, 2022, by Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc., a corporation formed under the laws of the State of Montana, with an address of 72 Rocking Chair Ranch Road, Philipsburg, Montana 59858 (referred to in this Easement together with its successors and assigns as the “Landowner”), and Five Valleys Land Trust, Inc., a non-profit corporation formed under the laws of the State of Montana, with an address of 120 Hickory Street, Suite B, Missoula, Montana 59801 (referred to in this Easement together with its successors and assigns as “Five Valleys”). Landowner and Five Valleys are sometimes collectively referred to in this Easement as the “Parties.” This Easement is granted together with a right of enforcement to the United States of America (the “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). [MDT Intro].

RECITALS

1. The Landowner owns certain real property located in Granite County, Montana, which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (referred to in this Easement as the “Protected Property”).
2. Baseline conditions of the Protected Property are set forth in a Baseline Report, a copy of which is maintained in the files of Five Valleys. [MDT Intro.]
3. The Protected Property consists of significant open-space land, as defined in Montana’s Open-Space Land and Voluntary Conservation Easement Act, Section 76-6-104(3), M.C.A. (2021).

4. This Easement provides significant public benefit to the people of Philipsburg, Montana, the State of Montana, and the United States by preserving and providing the following resources in perpetuity, all in accordance with 26 U.S.C. Section 170(h)(4)(A)(iii) and Sections 76-6-101, *et seq.*, M.C.A. (2021):
 - a. Open-space lands that provide opportunities to continue and conduct ranching, farming, and other agricultural practices, as encouraged and supported by the private land protection policies of the State of Montana and by local land conservation policies adopted in Granite County, Montana, as set forth in Recital 11, below; and
 - b. Scenic views of open-space and agricultural land from the town of Philipsburg, Montana, and for members of the public traveling on Montana Secondary Highway 348 and Montana Highway 1, which is also referred to as the Pintler Veterans' Memorial Scenic Highway and runs for 64 miles between Drummond, Montana, and Anaconda, Montana, through the Flint Creek Valley

(collectively referred to in this Easement as the "Conservation Values").

5. These open-space, agricultural, and scenic resources are of great importance to the Landowner and to the people of Philipsburg, Montana, the State of Montana, and the United States and are worthy of preservation in perpetuity.
6. The Landowner, as the owner of the Protected Property, owns the rights to identify, preserve, and protect in perpetuity the Conservation Values of the Protected Property.
7. The State of Montana has recognized the importance of voluntary conservation of private lands by the enactment of the Open-Space Land and Voluntary Conservation Easement Act, Sections 76-6-101, *et seq.*, M.C.A. (2021).
8. This Easement is 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 that negatively affect the agricultural uses and Conservation Values of the Protected Property (referred to in this Easement as the "Agricultural Purpose of the Easement"). [MDT Intro.]
9. This Easement is created pursuant to the Internal Revenue Code of 1986, as amended, (referred to in this Easement as the "Internal Revenue Code") at 26 U.S.C. Sections 170(h), 2055, and 2522.
10. The Protected Property is immediately adjacent to another property protected by a

conservation easement that Five Valleys holds for the benefit of the public that also restricts development and preserves important agricultural and scenic resources, and accordingly, this Easement provides significant public benefit pursuant to Treasury Regulation Section 1.170A-14(d)(4)(iv)(A)(4).

11. Granite County Planning Board and the Board of Commissioners expressly recognized the importance of conserving agricultural lands and water resources in the Granite County Growth Policy Plan, adopted by the Board of Commissioners on December 17, 2012, as Resolution #2012-33, which Plan states that the County's goals include preserving "irrigated and other productive agricultural lands that are critical to the vitality of Granite County" and protecting "the rivers and streams, flood areas, riparian areas and wetlands in the County." This Easement furthers the Growth Policy Plan's goals by protecting agricultural valley bottom land in perpetuity and by protecting open-space land surrounding a reach of Flint Creek, which is a major tributary of the Clark Fork River that runs north-south through the entire Flint Creek Valley, and accordingly, this Easement is consistent with a local governmental policy pursuant to Treasury Regulation Section 1.170A-14(d)(4)(iii)(A)
12. The State of Montana, acting through the Montana Department of Justice's Natural Resource Damages Program (NRDP), recognized Flint Creek as a Priority 2 tributary to the Clark Fork River in the Final Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans (December 2012) and also recognized in these plans the importance of "maintaining or improving wildlife species diversity, natural ecological functions, and habitat connectivity in grassland, forest, and riparian ecological systems." This Easement is consistent with the State's Restoration Plans by perpetually conserving large, contiguous tracts of open-space land in the Flint Creek Valley in a relatively natural state and prohibiting subdivision and development, thereby preserving the Protected Property's wildlife habitat resources.
13. The Montana Department of Fish, Wildlife & Parks' State Wildlife Action Plan (2015) identifies the Georgetown Lake-Philipsburg Terrestrial Focal Area as a Tier II Focal Area which has fish and wildlife communities with moderate conservation need, and this Easement is consistent with the State's Plan by perpetually conserving large, contiguous tracts of open-space land in a relatively natural state and prohibiting subdivision and development, thereby preserving the Protected Property's wildlife habitat resources.
14. Five Valleys is organized to preserve and conserve land for natural habitat, scenic, recreational, and other open-space purposes for public benefit and is a qualified private organization that is authorized to hold perpetual conservation easements and other land-use restrictions under Section 76-6-104(5), M.C.A. (2021), and Section 170(h)(3) of the Internal Revenue Code and applicable Treasury Regulations.
15. The Protected Property meets Five Valleys' criteria for acceptance of conservation

easements, and Five Valleys' Board of Directors has adopted a resolution approving Five Valleys' execution of this Easement and the organization's acceptance of the responsibility to steward and uphold this Easement for the benefit of the public.

16. Landowner intends by fully, freely, and voluntarily executing this instrument to grant to Five Valleys this Easement, and its associated rights, in order to preserve and protect the Conservation Values of the Protected Property in perpetuity.

NOW THEREFORE, for Ten Dollars and No/00s (\$10.00) and other good and valuable consideration, including Landowner's express intention and agreement to make an absolute, unconditional, unrestricted, 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 Landowner hereby gives, grants, bargains, sells, transfers, and conveys to Five Valleys, and the successors and assigns of Five Valleys, with warranties of title, this perpetual Easement on, over, and across the Protected Property in accordance with Sections 76-6-101, *et seq.*, M.C.A. (2021), and the terms and conditions set forth below. Five Valleys acknowledges that Landowner received no goods or services in exchange for the grant of this Easement, which Five Valleys received on the date noted on page one, above, other than the bargain sale consideration referred to in Section XI, Paragraph C, below.

SECTION I

Rights Conveyed

This Easement conveys the following rights to Five Valleys in perpetuity:

- A. Identification and Protection.** Five Valleys shall have the rights to identify, preserve, and protect in perpetuity the Conservation Values. Five Valleys' rights in this Easement are subject to third-party rights of record in and to the Protected Property existing at the time of the grant of this Easement that are not subordinated to the terms and conditions of this Easement. In addition, Landowner has reserved in the grant of this Easement certain rights, which are set forth in Sections III and IV. In agreeing to Landowner's reservation of these rights, Five Valleys has determined that Landowner's exercise its reserved rights is compatible with the purposes of this Easement, as defined in Recital 8, above, and Section II, Paragraph A, below.
- B. Access.** Five Valleys shall have the right, upon giving notice to the Landowner as provided in Section V, Paragraph B, to enter the Protected Property in a reasonable manner and at reasonable times to assure compliance with the purposes and terms of this Easement, including inspecting the condition of the Protected Property and enforcing the terms and conditions of this Easement. In addition, Landowner expressly conveys to Five Valleys a right of immediate entry onto the Protected Property if, in Five Valleys' judgment, such entry is necessary to

prevent damage to or destruction of the Conservation Values that this Easement protects. Aside from these rights of access that Landowner grants to Five Valleys, this Easement does not convey to Five Valleys, or to the public, any rights to enter the Protected Property. Landowner's grant of access to the United States in conjunction with the United States' rights of inspection and enforcement is set forth in Section XIV, Paragraph D.

- C. Enforcement, Injunction, and Restoration.** Five Valleys shall have the rights to enforce the terms and conditions of this Easement and to enjoin and prevent any activity on the Protected Property or use of the Protected Property that is inconsistent with the purposes or terms of this Easement. If Landowner's activities on or uses of the Protected Property, or a third party's activities on or uses of the Protected Property that occur with Landowner's knowledge or consent, injure, damage, or diminish either or both of the Conservation Values, then Five Valleys shall have the right to require Landowner to restore the Conservation Values at least to their condition at the time of the grant of this Easement, as documented in the Baseline Report referred in Section X. If the condition of Conservation Values at the time of their injury was better than the condition documented in the Baseline Report, then Five Valleys shall have the right to require Landowner to restore the Conservation Values to their condition prior to the injury.
- D. Transfer of Development Rights.** By granting this Easement, Landowner conveys to Five Valleys, and Five Valleys hereby extinguishes, all development rights which are now appurtenant to the Protected Property, or which may later become appurtenant, except for those development rights that Landowner specifically reserves in this Easement. Landowner further agrees, on behalf of itself and its successors and assigns, that any additional development rights that may be transferred to, allocated to, implied to, reserved for, or considered inherent in the Protected Property after the date of the grant of this Easement will be transferred to, and deemed the rights of, Five Valleys upon their attachment to the Protected Property. Landowner and Five Valleys agree to execute and record any additional instruments that may be necessary or appropriate to effect the transfer of these development rights from Landowner to Five Valleys. Landowner specifically agrees that such extinguished or transferred development rights may not be: (i) used on or transferred to any portion of the Protected Property, (ii) used on or transferred to any other land, whether adjacent to or distant from the Protected Property, or (iii) used for the purpose of calculating permissible lot yield or density of the Protected Property or any other land with regard to any land use or zoning that affects or may affect the Protected Property. If extinguishment of development rights is not permitted under the laws or ordinances that authorize them, Five Valleys shall not transfer such rights for any reason to third parties and shall refrain from exercising such rights for the perpetual term of this Easement.
- E. Markers.** Five Valleys shall have the right to temporarily place on the Protected Property small markers to identify boundaries, corners, and other reference points. Five Valleys' placement of markers on the Protected Property shall not unreasonably interfere with the Landowner's use of the Protected Property. Landowner shall not remove such markers without

notice to Five Valleys and without Five Valleys' consent, as provided in Section V, which consent Five Valleys shall not unreasonably deny.

SECTION II

General Effect of Easement

- A. Purposes.** The general purposes of this Easement are to preserve, protect, enhance, and restore in perpetuity the Conservation Values of the Protected Property as defined in Recital 4 and documented in the Baseline Report referred to in Section X. In achieving these purposes, it is the intent of Landowner and Five Valleys to permit the continuation of uses of the Protected Property that are consistent with the general purposes of this Easement, as defined in this Paragraph A, and with the Agricultural Purpose of the Easement, as defined in Recital 8. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Parties recognize that, due to the perpetual term of this Easement, they are unable to foresee at the time of the grant of this Easement all potential future uses of the Protected Property. The Parties also recognize that changes in future types and patterns of land use, technologies, climate, and the presence, character, and availability of natural features and resources may affect the uses of and activities on the Protected Property and result in new or unforeseen uses and activities. This Easement permits such new and unforeseen uses and activities, provided they are and remain consistent with the purposes and terms of this Easement, in Five Valleys' judgment.
- B. Dedication of the Protected Property.** The Protected Property is declared to be, and is hereby dedicated as, open-space land. Pursuant to Section 76-6-107, M.C.A. (2021), the Protected Property may not be converted or diverted from use as open-space land, except under the limited circumstances set forth in this statute and except as provided in Section XI of this Easement.
- C. Perpetual Restrictions.** This Easement burdens title to the Protected Property in perpetuity. The terms and conditions of the Easement run with the land and are binding upon the Landowner and Five Valleys 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. [MDT I.Intro].
- D. Unification of Parcels.** The Protected Property consists of various parcels or tracts, as described in Exhibit A. Even though the Protected Property consists of more than one parcel for real estate tax or any other purpose, and even though it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole. [MDT I.Intro].

SECTION III

Permitted Land Uses and Activities

Allowed uses of the Protected Property include the specific uses allowed in this Section III, subject to the qualifications stated below. The following land uses and activities, although not an exhaustive list of consistent land uses and activities, are consistent with the purposes and terms of this Easement and are therefore permitted. Some of these consistent land uses and activities are subject to specified conditions or to the requirement of, and procedures for, obtaining Five Valleys' prior approval, as described in Section V. This Easement shall not preclude, prevent, or limit these consistent uses and activities, as long as they are consistent with the general and specific purposes and terms of this Easement. [MDT I.3.Intro]

- A. Agricultural Activities.** The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the purposes and terms of this Easement. Accordingly, Landowner may continue current farming, ranching, and other agricultural activities and institute and carry out new farming, ranching, and other agricultural activities, including but not limited to planting, growing, and harvesting agricultural crops; processing agricultural products on the Protected Property; and raising, grazing, pasturing, and managing livestock. Landowner's agricultural activities on the Protected Property, both individually and collectively, shall not adversely affect the Protected Property's scenic values or the overall quality of the Protected Property's agricultural resources, as documented in the Baseline Report referred to in Section X. [MDT I.3.A]
- B. Water Resources.** Subject to the restrictions set forth in Section IV, Paragraph D, below, Landowner may maintain, develop, and enhance water resources on the Protected Property for ranching and agriculture, domestic or residential uses, maintenance or enhancement of fish and wildlife habitat, or in conjunction with activities expressly permitted in this Easement. Permitted uses of the Protected Property's water resources include, but are not limited to, constructing and maintaining irrigation systems, stock watering facilities, domestic wells, and structures or infrastructure related to development of water resources, as provided in this Section III, Paragraph E. In addition, with Five Valleys' prior approval in accordance with Section V, Landowner may restore the Protected Property's water resources, including but not limited to creeks, streams, surface water sources, and wetland or riparian areas, and such restoration measures may include planting native riparian vegetation species; stream channel or bank reconstruction; placement of in-stream habitat structures; grazing management; and other measures that promote the health and protection of the Protected Property's water resources.
- C. Forest Management and Timber Harvest.** Forest management and timber harvesting are allowed for the purposes stated below, provided these activities are carried out in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property and provided that these activities do not adversely affect the Conservation Values, in Five Valleys' judgment. Forest management and timber harvests are permitted for the following purposes: (i) for the protection of persons, personal property, or real

property, (ii) for controlling forest disease or improving forest health, (iii) for wildfire risk management or mitigation, (iv) for managing conifer encroachment, (v) for enhancing plant and wildlife habitat, (vi) for firewood, construction materials, posts, poles, and similar products for permitted activities on or maintenance of the Protected Property; and (vii) to accommodate construction or maintenance of structures permitted within the Building Envelope described in this Section III, Paragraph E. Landowner may undertake forest management or timber harvest activities for purposes other than those listed above if Landowner obtains Five Valleys' prior approval, in accordance with Section V, of such management activities or harvest. Timber harvests that are purely commercial in nature are prohibited; however, if a timber harvest conducted for one or more of the permitted purposes set forth in this Paragraph C generates merchantable timber, Landowner may sell the timber to recover the costs of the timber harvest and may retain any incidental profits that exceed the costs of the harvest. Forest management and timber harvest activities are subject to the following additional conditions set forth in subparagraphs 1-3: [MDT I.3.B]

1. Without Prior Approval. Forest management and timber harvest are permitted on the Protected Property without Five Valleys' prior approval for one or more of the purposes listed above, provided that Landowner uses the product of such management activities or harvest on the Protected Property and does not remove timber or timber products from the Protected Property.
2. With Prior Approval. Five Valleys' prior approval, in accordance with Section V, of a written Timber Management Plan is required for timber harvests that involve removing timber or timber products from the Protected Property and for any timber harvests that Landowner conducts for purposes not expressly permitted in this Paragraph C. The purpose of the Timber Management Plan is to ensure that the timber harvest and removal of timber from the Protected Property are conducted in a manner that is consistent with the protection of the Conservation Values, and Five Valleys shall have the right to require Landowner to identify and describe actions or measures to mitigate adverse impacts to the Conservation Values in the Timber Management Plan. A Timber Management Plan may describe Landowner's forest management activities and timber harvests over multiple years and may include several forest treatments, such as harvests, seedings, and plantings. Five Valleys must approve the Timber Management Plan and affirm that the timber management or harvest activities adhere to the general and specific purposes and terms of this Easement before Landowner begins any timber management or harvest activities or removes timber from the Protected Property.
3. Protection of Persons or Property. Notwithstanding any provision in this Easement that may be construed to contrary, Landowner may harvest and remove timber from the Protected Property without Five Valleys' prior approval if such harvest is necessary for the immediate protection of persons or property from falling trees or other hazards.

D. Fences. Landowner may maintain and replace existing fences and install new fences if they are necessary for agricultural operations or other allowed uses on the Protected Property, or to

mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Agricultural Purpose of the Easement and the protection of the Conservation Values. Except as provided in this Paragraph D, all fences that Landowner installs, improves, or replaces after the date of the grant of this Easement must permit the reasonable passage of wildlife, including but not limited to small game, deer, elk, bear, and non-game wildlife. Landowner reserves the rights to construct and maintain fences that are impassable to wildlife around haystacks, harvested crops, residential gardens, bear attractants, recently restored areas or areas in need of restoration, and kennels or enclosures for domestic animals (other than pastured livestock), such as livestock corrals, loading chutes, holding pens, and other enclosed fencing for temporary livestock management and transport. [MDT I.2.C]

E. Structures. Landowner reserves the rights to construct, maintain, repair, remodel, and, in the event of their removal or destruction, to replace the following structures on the Protected Property, subject to the restrictions set forth below. Except as otherwise permitted in this Section III, Paragraph E, all structures and improvements must be located within the Building Envelope described in subparagraph 3, below, containing approximately eleven (11) total acres and described or shown in Exhibit B, which is appended to and made a part of this Easement. All structures and improvements that this Easement permits, including the structures described in this Paragraph E, are subject to the Impervious Surface Limitation set forth in Section XIV, Paragraph A. [MDT I.2.C]

1. Residential Dwelling Units. No more than a total of two (2) “Residential Dwelling Units” are permitted on the Protected Property. The Residential Dwelling Units consist of one (1) “Existing Residential Dwelling Unit” that is located within the Building Envelope at the time of the grant of this Easement, as described in the Baseline Report referred to in Section X and as depicted on Exhibit B, and one (1) “Additional Residential Dwelling Unit” that Landowner reserves the right to construct in accordance with this Paragraph E. The Residential Dwelling Units must be located within the Building Envelope depicted on Exhibit B. Landowner shall obtain Five Valleys’ prior approval, in accordance with Section V, for any new construction or replacement of either of the Residential Dwelling Units in order to ensure that they are located completely within the Building Envelope. When Landowner exercises the right reserved under this subparagraph 1 to construct the Additional Residential Dwelling Unit, Five Valleys may, but is not required to, record in the public records of Granite County a “Notice of Exercise of Reserved Development Right Under Deed of Conservation Easement” to document the exercise of such right for the benefit and information of the Landowner, Five Valleys, and the public.

For purposes of this Easement, the term “Residential Dwelling Unit” means a structure, or a portion thereof, 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 persons. Such Residential Dwelling Units include, but are not limited to, houses, residences, apartments, suites or suites that are part of Associated

Outbuildings or Agricultural Structures, guesthouses, employee houses, cabins, mobile homes, trailers, and prefabricated homes and other moveable living units. Landowner may park and store vehicular campers within the Building Envelope described in subparagraph 3, and doing so shall not be considered a violation of this subparagraph 1 as long as such campers are not used as long-term living accommodations or shelters.

2. Associated Outbuildings. Landowner may construct non-residential outbuildings that are associated with the Residential Dwelling Units, including, but not limited to, garages, workshops, studios, sheds, and other structures (referred to in this Easement as “Associated Outbuildings”), provided that such Associated Outbuildings are located within the Building Envelope described in subparagraph 3 and shown on Exhibit B.
3. Building Envelope. The Existing Residential Dwelling Unit on the Protected Property at the time of the grant of this Easement and its Associated Outbuildings are located within the Building Envelope, which is approximately ten (10) acres in size and is depicted on Exhibit B. The Additional Residential Dwelling Unit that Landowner reserves the right to construct under this Paragraph E, subparagraph 1, and its Associated Outbuildings must also be located within the Building Envelope. If either of the Residential Dwelling Units or any of their Associated Outbuildings are removed or destroyed and Landowner elects to rebuild them, these structures must be located completely within the Building Envelope. The purposes of the Building Envelope are to allow Landowner flexibility in the use of the Residential Dwelling Units and Associated Outbuildings and to cluster structures and concentrate associated uses on the Protected Property to protect the Conservation Values. Domestic wells, drain fields, septic tanks, and other underground infrastructure that serves the Residential Dwelling Units, Associated Outbuildings, or other structures permitted within the Building Envelope may be located outside of the Building Envelope only if it is not feasible to situate such infrastructure within the Building Envelope.
4. Agricultural Structures. Agricultural structures, including but not limited to barns, shelters, storage sheds, loafing sheds, garages, and similar structures used for ranching, farming, and other agricultural purposes (collectively referred to in this Easement as “Agricultural Structures”) may be located within the Building Envelope described in subparagraph 3, above, and depicted on Exhibit B. In addition, Agricultural Structures that neither individually nor collectively have an adverse impact on the Agricultural Purpose of the Easement or on the Conservation Values may be located outside of the Building Envelope with prior written approval of Five Valleys in accordance with Section V. In order to protect the Conservation Values, no single Agricultural Structure located outside of the Building Envelope may exceed ten thousand (10,000) square feet in footprint. The square footage of an Agricultural Structure’s footprint shall be determined by measuring the overall exterior footprint of the foundation of the structure, including any overhangs, decks, porches, or similar extensions of the structure. For purposes of this Easement, corrals, chutes, mineral feeders, and back rubbers for livestock are not considered Agricultural Structures and are therefore permitted outside of the Building Envelope without Five

Valleys' prior approval. [MDT I.2.C]

5. Temporary Structures. Landowner may place simple, portable structures without concrete or otherwise permanent foundations (referred to in this Easement as "Temporary Structures") on the Protected Property for agricultural activities or other activities that this Easement expressly permits in this Section III. If a Temporary Structure is situated outside of the Building Envelope described in subparagraph 3, above, and depicted on Exhibit B, the structure may remain on the Protected Property only on a temporary basis that shall not exceed one (1) year. Regardless of the one (1) year time limit, Five Valleys shall have the right to require Landowner to immediately remove any Temporary Structure, and to prohibit Landowner from rebuilding or replacing the Temporary Structure in the same location, if Five Valleys determines, in its judgment, that the Temporary Structure adversely affects the Conservation Values that this Easement protects.
6. Water Development Structures. Landowner may place on the Protected Property structures, infrastructure, or facilities associated with development of water resources that this Easement permits, including but not limited to headgates, wells, pumps, pump houses, pipes, fish screens, and spring boxes (collectively referred to in this Easement as "Water Development Structures"). Water Development Structures must be consistent with the provisions of this Section III, Paragraph B and Section IV, Paragraph D.

F. Landscaping and Gardening. Landowner may clear brush and vegetation and plant either native or non-native trees, shrubs, flowers, grasses, and other plants for landscaping or gardening purposes within the Building Envelope described in this Section III, Paragraph E and depicted on Exhibit B.

G. Renting or Leasing Activities. Subject to the restrictions set forth in this Easement, including in Section IV, Paragraph A, Landowner may rent or lease the Protected Property for agricultural uses or for other activities expressly permitted in this Easement and may rent or lease the Residential Dwelling Units for residential uses or permitted commercial uses. Any rental or lease agreement that Landowner enters into must be made expressly subject to the terms and conditions of this Easement. Five Valleys shall have the right to enforce this Easement against, and to seek and recover all remedies for violation of the purposes or terms of this Easement from, all renters, tenants, lessees, or other occupants using or residing on the Protected Property. Such renting and leasing activities shall not be considered a prohibited commercial use under the terms of this Easement.

H. Commercial Activities. As provided in Section II, Paragraph B, this Easement dedicates the Protected Property as open-space and natural land. Businesses, trades, professions, arts, crafts, and other commercial activities that are consistent with the purposes and terms of this Easement are permitted within the Building Envelope described in this Section III, Paragraph E, including within the Residential Dwelling Units. In addition, commercial activities that are

small-scale, low-impact, and consistent with the purposes and terms of this Easement are permitted outside of the Building Envelope with Five Valleys' prior approval, in accordance with Section V. Landowner's request for prior approval to conduct commercial activities outside of the Building Envelope shall inform Five Valleys of the duration, location, and scale of the proposed activities; impacts that Landowner expects the proposed activities to have on the Protected Property; and any other information that Five Valleys may require so that Five Valleys can determine whether the proposed activities are consistent with the purposes and terms of this Easement.

The following commercial activities are specifically permitted, subject to the following limitations: (i) agricultural production and related uses in accordance with the terms and conditions of this Easement, in particular Section III, Paragraph A; (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures through Landowner's participation in net metering programs, provided that Five Valleys approves in writing such renewable energy sales as being consistent with the Agricultural Purpose of the Easement and in accordance with the terms and conditions of this Easement, as provided in Section III, Paragraph L; (iii) temporary or seasonal outdoor activities or events that do not harm the Agricultural Purpose of the Easement or the Conservation Values, provided that Landowner obtain Five Valleys' prior approval if such commercial activities occur outside of the Building Envelope; and (iv) commercial enterprises related to agriculture, including but not limited to agritourism; processing, packaging, and marketing of farm products; farm machinery repair; and small-scale retail enterprises compatible with agriculture, provided that Landowner obtain Five Valleys' prior approval if such commercial activities occur outside of the Building Envelope. [MDT I.2.B]

I. Recreational Activities. Landowner and Landowner's guests and invitees may use the Protected Property for hunting of game animals and birds, fishing, camping, hiking, horseback riding, bird watching, nature photography, and similar types of undeveloped outdoor recreational activities that are consistent with the protection of the Conservation Values on a non-commercial basis. In addition, Landowner may use the Protected Property for certain commercial outdoor recreational activities, as provided in subparagraph 1, below, and Landowner may construct and maintain recreational trails for non-commercial or commercial purposes, as provided in subparagraph 2, below.

1. Commercial Recreational Activities. Landowner may use the Protected Property for commercial recreational activities, including but not limited to guest ranching, outfitting, and guiding (referred to in this Paragraph I as "Commercial Recreational Activities"). With Five Valleys' prior approval in accordance with Section V, Landowner may rent or lease the Protected Property for Commercial Recreational Activities, provided that such renting or leasing activities and agreements are consistent with the provisions of this Section III, Paragraph G. Landowner or Landowner's renters or lessees may use all structures and improvements expressly permitted in Section III, Paragraph E for Commercial Recreational Activities, provided that the Residential

Dwelling Units are used primarily as private residences or for bed and breakfast businesses within private residences and not as commercial guest lodges, hotels, motels, or other commercial lodging facilities, which are prohibited in Section IV, Paragraph F. Commercial Recreational Activities must be consistent with the purposes and terms of this Easement, in Five Valleys' judgment.

2. Recreational Trails. In connection with non-commercial or with commercial recreational activities, Landowner may construct and maintain recreational trails on the Protected Property, provided that such trails are made of dirt, gravel, crushed granite, or other permeable surfaces. In order to protect the Conservation Values, recreational trails shall be for non-motorized use only, except for motorized wheelchairs or other power-driven mobility devices, in accordance with applicable federal, state, and local laws, rules, and regulations. Trails must be used, sited, and maintained so as to minimize adverse impact to the Conservation Values. With Five Valleys' prior approval as provided in Section V, Landowner may enter into agreements with third parties to permit others to use recreational trails on the Protected Property, provided that such use does not negatively impact the Conservation Values. Any such agreements to use recreational trails on the Protected Property must be in writing and must be made expressly subject to the terms and conditions of this Easement.

J. Educational, Scientific, and Research Activities. The Protected Property and structures on the Protected Property may be used for the purpose of conducting educational, scientific, and/or research activities, provided that such activities are consistent with the purposes and terms of this Easement. Permitted educational activities include, but are not limited to, use by teachers and students, field studies, wildlife monitoring, and establishment of research sites. If, in Five Valleys' judgment, educational, scientific, or research activities will adversely affect the Conservation Values, Five Valleys shall have the right to require the Landowner, or third parties conducting educational activities on the Protected Property, to immediately cease or modify such activities. Five Valleys shall also have the right pursue any or all of its remedies under Section VI for violations of this Easement.

K. Transfer of Land. Landowner may grant, sell, exchange, devise, gift, convey, dispose of, or otherwise transfer (collectively "transfer") of all or any portion of Landowner's right, title, estate, and interest in the Protected Property, as described in Exhibit A, as not more than one (1) parcel. The Protected Property must be transferred in unified title and expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Landowner shall provide to Five Valleys a copy of any instrument or conveyance document utilized to transfer of the Protected Property to a successor owner within thirty (30) calendar days of the execution of said instrument or document. Nothing in this Easement shall be construed to prevent Landowner from owning the Protected Property in co-tenancy or joint tenancy, as long as each cotenant or joint tenant has an undivided interest in the whole of the Protected Property, as described in Exhibit A. Landowner shall retain the right to enter into leases, licenses, or other transfers of a right to use the Protected Property, or to occupy the

Residential Dwelling Units, provided that such agreements are made expressly subject to the terms and conditions of this Easement. Landowner expressly conveys to Five Valleys the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from, all renters, lessees, tenants, or other third parties using the Protected Property.

L. Renewable Energy Equipment. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within the Impervious Surface Limitation described in Section XIV, Paragraph A and must be consistent with the Agricultural Purpose of the Easement and the protection of the Conservation Values. Landowner may install, maintain, repair, and replace renewable energy generation equipment within the Building Envelope described in Section III, Paragraph E and depicted on Exhibit B. In addition, with Five Valleys' prior approval in accordance with Section V, Landowner may install, maintain, repair, and replace renewable energy generation equipment outside of the Building Envelope, provided that the equipment is directly related to Landowner's agricultural activities on the Protected Property, in Five Valleys' judgment. Notwithstanding the foregoing requirement to obtain Five Valleys' prior approval, Landowner may place and use anywhere on the Protected Property small, portable renewable energy units or apparatuses, such as solar-powered electric fencing, for Landowner's agricultural activities or for activities that this Easement expressly permits. In order to protect the Protected Property's scenic values, freestanding renewable energy equipment shall not exceed a height of twenty-five (25) feet, and photovoltaic panels mounted on roofs must be as close to the roof surface as reasonably possible. Landowner may participate in net metering programs, which permit Landowner's electrical meters to credit the Landowner's utility service provider with excess energy that Landowner's renewable energy equipment produces, provided that Landowner obtain Five Valleys' prior approval, in accordance with Section V, if the renewable energy equipment that generates the excess energy is located outside of the Building Envelope. Other than Landowner's participation in net metering programs, the Protected Property may not be used as a commercial wind farm, commercial solar energy collection facility, or for other commercial energy generation or collection purposes. This paragraph shall not be interpreted to prohibit the incidental use of renewable energy that is generated for Landowner's agricultural or residential needs for other activities that this Section III expressly permits. [MDT I.3.C]

M. Roads and Road Easements. Landowner may construct new roads if Five Valleys approves them in advance in accordance with Section V, if they are within the Impervious Surface Limitation referred to in Section XIV, Paragraph A, and if they are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Landowner may maintain existing roads documented on the Baseline Report referred to in Section X; however, Landowner may not widen or improve existing roads unless such widening and improving is within the Impervious Surface Limitation, is approved in advance by Five Valleys in accordance with Section V, and is necessary to carry out the agricultural operations or other

allowed uses on the Protected Property. Landowner reserves the rights to construct, maintain, widen, and improve driveways located entirely within the Building Envelope referred to in this Section III, Paragraph E in order to access Residential Dwelling Units and Associated Outbuildings, and doing so shall not require Five Valleys' prior approval. [MDT I.2.C]

1. Prior Approval for Roads. Landowner's written request for Five Valleys' prior approval to construct, widen, or improve roads shall include a construction plan describing the purpose of the road, the road's location on a topographic map, and, to the extent that Five Valleys deems necessary, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, 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.
2. Right-of-Way Easements. Landowner may grant right-of-way easements to neighbors or neighboring properties over existing or permitted roads on the Protected Property. However, the granting or modification of right-of-way easements for roads is prohibited when the road or the use of the road will adversely impact the Agricultural Purpose of the Easement or the Conservation Values as determined by Five Valleys in consultation with the Chief of NRCS. The terms "consultation" and "Chief of NRCS" are defined for purposes of this Easement in Section XIV, Paragraphs C and D. [MDT I.2.D]

In addition, Landowner may grant right-of-way easements to appropriate governmental entities for the improvement and/or expansion of public roads bordering or crossing the Protected Property, provided the governmental entity seeking the right-of-way easement has demonstrated to Landowner and Five Valleys the public necessity for the easement pursuant to the standards set forth in Section 70-30-111, M.C.A. (2021), and other applicable laws pertaining to condemnation of real property interests for public uses. General provisions related to condemnation of this Easement are set forth in Section XI, Paragraph E.

- N. Utilities and Utility Easements.** Landowner may install, maintain, repair, and remove utility structures, lines, conduits, cables, wires, or pipelines (referred to in this Paragraph N as "utilities" and "utility services") upon, over, or under the Protected Property and may grant utility easements upon, over, or under the Protected Property in accordance with the provisions and restrictions set forth in this Paragraph N and in Section IV, Paragraph G. The granting or modification of easements for utilities is prohibited when the utility will adversely impact the Agricultural Purpose of the Easement or the Conservation Values as determined by Five Valleys in consultation with the Chief of NRCS. The terms "consultation" and "Chief of NRCS" are defined for purposes of this Easement in Section XIV, Paragraphs C and D. [MDT I.2.D]

1. Utilities Servicing the Protected Property. Landowner may install utilities to serve

permitted structures and improvements on the Protected Property, and such installation shall not require Five Valleys' prior approval as long as the utilities and the area impacted by the installation are located entirely within the Building Envelope described in Section III, Paragraph E. Utilities to serve permitted buildings or structures, including renewable energy structures allowed under Section III, Paragraph L, and structures allowed under Section III, Paragraph E, that neither individually nor collectively have an adverse impact on the Agricultural Purpose of the Easement or the Conservation Values, may be located outside of the Building Envelope with prior written approval of Five Valleys in accordance with Section V. [MDT I.2.C]

2. Utilities Servicing Neighboring Properties. With Five Valleys' prior approval in accordance with Section V, Landowner may grant utility easements to neighbors, to neighboring properties, or to their utility service providers, as long as such utility easements are consistent with the provisions of this Paragraph N and do not impair the Conservation Values in Five Valleys' judgment.
3. Utility Distribution Services. With Five Valleys' prior approval in accordance with Section V, Landowner may permit the expansion of existing utility distribution services on the Protected Property and may permit the installation of new utility distribution services on the Protected Property (including but not limited electrical distribution lines, but not electrical transmission lines, which are prohibited in Section IV, Paragraph G), and Landowner may grant associated utility easements, provided that any such utility easements are consistent with the provisions of this Paragraph N and do not impair the Conservation Values in Five Valleys' judgment. Landowner's request for prior approval to expand or install utility distribution services and grant associated utility easements shall include a written Utility Installation Plan. Landowner shall contact Five Valleys prior to the preparation of the Utility Installation Plan to obtain the information that Five Valleys requires Landowner to include in the plan. Five Valleys shall assess the consistency of Landowner's Utility Installation Plan with the purposes and terms of this Easement before approving any utility construction or expansion and any associated utility easements. Any construction or installation of utility distribution services, if approved by Five Valleys as provided in this Paragraph N and in Section V, shall be conducted in accordance with the approved Utility Installation Plan.

SECTION IV

Inconsistent Land Uses and Activities

Any activities that are inconsistent with the Agricultural Purpose of the Easement or the protection of the Conservation Values are prohibited. No uses will be allowed that violate federal laws, including federal drug laws, or that decrease the Easement's protection for the Agricultural Purpose of the Easement. The Landowner acknowledges and agrees on behalf of itself and its successors and assigns that it will not conduct, engage in, or permit any inconsistent land uses or

activities. Without limiting the generality of the foregoing, the following activities are inconsistent with the Agricultural Purpose of the Easement and the protection of the Conservation Values and are specifically prohibited, subject to the qualifications stated below. The following uses and activities are not an exhaustive list of inconsistent uses and activities, and there may be other uses or activities on the Protected Property that are inconsistent with the purposes or terms of this Easement. As provided in Section I, Paragraphs A and C, by granting this Easement, Landowner has conveyed to Five Valleys the rights to identify the Conservation Values and prevent any uses or activities that are inconsistent with their protection. [MDT I.2.Intro] [MDT I.3.Intro]

- A. Subdivision.** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. This Easement also prohibits the “de facto” subdivision of the Protected Property, or any portion of the Protected Property, and the division of the Protected Property through the conveyance or transfer of any portion of the Protected Property or any parcel or parcels which make up the Protected Property, including but not limited to tax parcels, survey parcels, government lots, or tracts of record, separately from other portions, parcels, or tracts of the Protected Property. For purposes of this paragraph, the term “subdivision” includes, but is not limited to, any subdivision, short subdivision into remainder tracts, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots or in which legal or equitable title to different portions of the Protected Property is held by different owners. Landowner may not indirectly subdivide all or any part of the Protected Property through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners’ association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning in kind among tenants-in-common, judicial partition in kind, bankruptcy partitions in kind, tax sales, or by any other means. This paragraph does not prohibit partitions by sale in which title to the entire Protected Property remains in unified, undivided ownership. Consistent with the provisions of this Paragraph A, Landowner may lease the Protected Property as provided in Section III, Paragraph G. [MDT I.2.A]
- B. Alteration of Land and Water Resources.** 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 Protected Property is prohibited, except for the following: (i) dam construction pursuant to a plan approved by Five Valleys in accordance with Section V to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation; (ii) erosion and sediment control pursuant to a plan approved by Five Valleys in accordance with Section V; (iii) soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing Five Valleys as being consistent with the Agricultural Purpose of the Easement; and (iv) agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this Easement. For purposes of this Paragraph B(iii), Five Valleys’ acceptance of the grant of this Easement from Landowner, as indicated by its signature below, constitutes approval in writing of those soil disturbance activities that

are inherent in, or necessary for, the construction of those buildings, structures, roads, and utilities that are expressly permitted in Section III without Five Valleys' prior approval in accordance with Section V. [MDT I.2.E]

C. **Mining.** Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, decorative rock, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited, except as otherwise provided in subparagraphs 1-2 of this Paragraph C, below. Except as specifically provided in this Paragraph C, nothing in this Easement may be interpreted to permit any extraction or removal of surface or subsurface materials or minerals by any surface mining method, as provided in Section 170(h)(5)(B) of the Internal Revenue Code and applicable Treasury Regulations. [MDT I.3.F]

1. Limited Extraction for Agricultural Operations. Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials: (i) is limited, localized, and small, as provided in Treasury Regulation Section 1.170A-14(g)(4)(i); (ii) is within the defined area and acreage identified in Exhibit B as the "Gravel Resource Area"; (iii) and does not harm the Agricultural Purpose of the Easement or the Conservation Values, pursuant to Treasury Regulation Section 1.170A-14(g)(4)(i). Five Valleys and Landowner acknowledge and agree that right to extract certain materials, in particular gravel, is important to Landowner's ability to maintain its agricultural operations and engage in agricultural practices on the Protected Property. As provided in the Baseline Report referred to in Section X, Five Valleys has evaluated the size, location, and use of the Gravel Resource Area with respect to its impacts on the Protected Property's open-space, agricultural, and scenic values and has determined that the location of the Gravel Resource Area and limited extraction of certain materials from this area for agricultural purposes are consistent with the protection of the Conservation Values. When Landowner permanently ceases extracting gravel or other materials from the Gravel Resource Area, Landowner shall provide notice of the conclusion of such extraction activities to Five Valleys consistent with the provisions of Section V. Landowner agrees to restore the surface of the land within the Gravel Resource Area to a relatively natural state within two (2) years of the date on Landowner's notice to Five Valleys. [MDT I.3.F]

2. Third Party Interests. If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this Easement is executed, and the third party's interests have not been subordinated to this Easement, the Landowner 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 C. Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are

subordinate to the terms of this Easement and must incorporate by reference this Easement. [MDT I.3.F]

- D. Impairment of Water Resources.** The impairment of the Protected Property's surface or subsurface water resources is prohibited. Except as expressly permitted in this Easement or as approved by Five Valleys pursuant to Section V to maintain or enhance the Conservation Values, the following activities are prohibited in order to protect the Protected Property's surface and subsurface water resources: rip-rapping and any other manipulation, diversion, or alteration of natural water courses, wetlands, or other bodies of water; any activity which may destabilize the banks of any course or body of water; and any uses or activities which would pollute, degrade, or drain the Protected Property's surface or subsurface waters.
- E. Structures.** The construction or placement on the Protected Property of any temporary or permanent buildings, residences, facilities, billboards or other commercial advertising materials, or any other structures is prohibited, except for those structures expressly permitted in this Easement.
- F. Commercial Activities.** Industrial or commercial activities, including but not limited to businesses, trades, professions, manufacturing, product distribution, and associated factories, warehouses, or other facilities, on the Protected Property are prohibited, except for those commercial activities that are permitted in Section III, Paragraph H or other provisions of Section III. Without limiting the generality of the foregoing, the following industrial or commercial activities and associated facilities are expressly prohibited: gas stations, bars, night clubs, restaurants, cafes, grocery stores, trailer or mobile home parks, motels, hotels, commercial feed lots, commercial storage units, warehouses, and other large-scale, high-impact commercial activities. [MDT I.2.B]
- G. Utility Transmission Lines.** The granting of utility transmission line and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements, if any, is expressly prohibited.
- H. Roads.** Except as expressly permitted in Section III, Paragraph M, the construction of any new paved or unpaved roads on the Protected Property, or the use of vehicles off of roads in a manner that that wears long-lasting vehicle tracks into the surface of the land, is prohibited. Except as expressly permitted in Section III, Paragraph M, the granting of road right-of-way easements upon, over, or across the Protected Property is prohibited.
- I. Waste.** The placement, collection, dumping, or storage of trash, organic wastes, human waste, or any toxic or hazardous wastes, substances, or materials in, on, or under the Protected Property is prohibited, except for non-hazardous wastes generated by activities expressly permitted in this Easement. The storage and spreading of manure and other fertilizer and the temporary storage of trash in receptacles for periodic off-site disposal is permitted.

- J. Alternative Livestock.** The raising or confinement for commercial purposes of the following is prohibited: (i) “alternative livestock” and “game animals” as defined in Section 87-4-406, M.C.A. (2021), (ii) native or exotic fish, (iii) game birds, (iv) furbearers, including mink and fox, (v) other “wild animals” as defined in Section 87-4-801, M.C.A. (2021), and “nongame wildlife” as defined in Section 87-5-102(6), M.C.A. (2021), and (vi) dogs, cats, or other domestic animals bred regularly for commercial sale.
- K. Commercial Feed Lot.** Outside of the Building Envelope described in Section III, Paragraph E and depicted on Exhibit B, the establishment or maintenance of commercial feedlots is prohibited. A “commercial feedlot” is defined for purposes of this Easement as a confined area or facility, within which the land is not grazed or cropped annually, that is used for the purpose of engaging in the business of receiving, confining, and feeding of livestock for hire. The provisions of this Paragraph K shall not be interpreted to prevent Landowner from confining farm animals, domestic animals, or livestock on the Protected Property for feeding, lambing, calving, or similar activities related to the Landowner’s agricultural operations, or from leasing pasture, corrals, or agricultural improvements to third parties, subject to the terms of this Easement.

SECTION V

Prior Approvals Process and Notice Requirements

- A. Requirements for Notice.** Except as otherwise provided in this Easement, any notice, demand, request, consent, permission, or approval that this Easement requires either party to give to the other shall be in writing and conveyed by one of the following communication methods: (i) delivered in person with a signed and dated proof of delivery; (ii) sent by United States certified mail and with return receipt requested; (iii) sent by Federal Express, United Postal Service (UPS), or other reputable commercial courier service, provided that the sender requests and obtains a signed and dated proof of delivery; or (iv) sent by email to the email addresses listed below. If notice is conveyed by email, it shall be considered effective notice in accordance with this Section V only if the sender receives a non-automated email response from the recipient confirming receipt of the sender’s email within ten (10) calendar days of the date that the sender’s email notice was sent. If the sender does not receive a non-automated email response from the recipient confirming receipt of the sender’s email notice within ten (10) calendar days, the sender shall re-send the notice using one of the other notice methods provided for in this Paragraph A, above.

Communications between the Parties shall utilize the physical and electronic addresses that appear in this Section V, Paragraph A, or other such addresses as either party from time to time shall designate by written notice to the other.

To Five Valleys: Five Valleys Land Trust
120 Hickory Street, Suite B

Missoula, MT 59801
For Email Notice: stewardship@fvlt.org

To Landowner: Rocking Chair Ranch
Attn: Jody Cutler
P.O. Box 669
Philipsburg, MT 59858
For Email Notice: Cutler0697@gmail.com

- B. Requirements for Notice of Access to Protected Property.** Section I, Paragraph B sets forth Five Valleys' rights of access to the Protected Property. Except as otherwise provided in this Paragraph B, Five Valleys shall provide reasonable prior notice to Landowner of Five Valleys' entry onto the Protected Property at least twenty-four (24) hours prior to such entry. Five Valleys shall provide such notice to Landowner or any agent of Landowner by telephone, in person, or in writing, including written electronic communications, and the notice shall be considered effective upon receipt. If circumstances require Five Valleys to exercise its right of immediate entry onto the Protected Property, Five Valleys shall make reasonable efforts to provide prior notice of such entry to Landowner or Landowner's agent.
- C. Landowner's Request for Prior Approval.** Landowner may not undertake or permit others to undertake any activity requiring Five Valleys' prior approval without first notifying Five Valleys of the proposed activity in accordance with Paragraph A, above, and without receiving written approval from Five Valleys. Landowner's request must inform Five Valleys of all material aspects of the proposed activity, including but not limited to the location, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity, as appropriate. The request shall provide Five Valleys with an address to which Five Valleys' response should be sent, if different from the address noted in Paragraph A, above, and the names and contact information of persons to contact about the request.
- D. Time for Response.** Five Valleys shall have thirty (30) calendar days from the date of receipt of Landowner's request for prior approval, as indicated by the registered or certified return receipt, the date of the non-automated email response, or other proof of delivery, to review the proposed activity and to notify the Landowner of any objection to that activity. If Five Valleys concludes that Landowner's initial request for prior approval lacks adequate information or detail for Five Valleys to evaluate the proposed activity, then Five Valleys shall have thirty (30) calendar days from the date of receipt of a request for prior approval to request from Landowner additional information necessary to make an informed decision about the consistency of the proposed activity with the purposes and terms of this Easement. Once the Landowner provides and Five Valleys receives the additional information, Five Valleys shall have thirty (30) calendar days to review the proposed activity and to notify the Landowner of any objection to that activity.
- E. Five Valleys' Response to a Prior Approval Request and Scope of Review.** Five Valleys

shall review the proposed activity that is the subject of the prior approval request to determine whether, in Five Valleys' sole discretion, the activity is consistent with the purposes and terms of this Easement. Five Valleys' decision to disapprove a proposed activity shall be based upon Five Valleys' determination that the activity that the Landowner proposed is inconsistent with the purposes or terms of this Easement. If, in Five Valleys' judgment, it is possible to modify the proposed activity so that it is consistent with the purposes and terms of this Easement, then Five Valleys' response shall inform the Landowner of the manner in which the proposed activity should be modified to be consistent. Landowner may commence or conduct the proposed activity only after the Landowner has received Five Valleys' express written approval and only in the manner that Five Valleys has approved, including any modifications to the activity so that it is consistent with the purposes and terms of this Easement. Five Valleys' decision to approve or disapprove an activity for which Landowner requests prior approval shall be sent by one of the communication methods identified in Paragraph A, above, to the Landowner at the address provided to Five Valleys in the request.

- F. Five Valleys' Failure to Respond.** Landowner may not proceed with any activity for which this Easement requires Five Valleys' prior approval without Five Valleys' express written consent in accordance with Paragraph E. Five Valleys' failure to respond within the time specified in Paragraph D, above, shall be deemed a constructive denial of Landowner's approval request. Constructive denial is not a deliberate decision by Five Valleys on the substance of Landowner's approval request, and therefore, Landowner may resubmit the same or a similar request for approval. Five Valleys' failure to respond to any individual request for prior approval shall not be deemed to be a waiver of any of Landowner's other duties or obligations to seek prior approval for other specific activities for which Five Valleys' prior approval is required.
- G. Acts Beyond the Landowner's Control.** Landowner will not be liable for failure to request prior approval for any prudent actions that Landowner takes under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, and earth movement, or from any similar cause that is beyond Landowner's control.
- H. Constructive Receipt of Notices.** Rejection or other refusal to accept notices, objections, or approvals by any party hereto shall be deemed receipt thereof.

SECTION VI

Breach and Restoration

- A. Notice of Violation.** If a violation of the purposes or terms of this Easement, whether by Landowner or by a third party acting under Landowner's authority and control or with Landowner's knowledge or consent, comes to the attention of Five Valleys, Five Valleys shall notify Landowner in writing of the violation in accordance with Section V, Paragraph A, and

demand corrective action sufficient to cure the violation.

B. Five Valleys' Remedies. When a violation of this Easement involves injury to the Protected Property resulting from any use or activity that is inconsistent with the purposes or terms of this Easement, Landowner shall restore the portion of the Protected Property so injured at least to its condition documented in the Baseline Report referred in Section X. If the condition of the Protected Property at the time of the injury was better than the condition documented in the Baseline Report, then Five Valleys shall have the right to require the restoration of the Protected Property to its condition prior to the injury. If Landowner:

1. fails to cure the violation within thirty (30) calendar days after receiving a notice of violation from Five Valleys in accordance with this Section VI, Paragraph A, above; or
2. under circumstances in which the violation cannot reasonably be cured within thirty (30) calendar days, fails to begin curing the violation within thirty (30) calendar days of the date that Landowner received the notice of violation; or
3. within thirty (30) calendar days of the date that Landowner received the notice of violation, fails to agree with Five Valleys in writing on a date by which efforts to cure the violation will begin; or
4. fails to diligently pursue efforts to cure the violation until it is finally cured,

then Five Valleys may bring an action in a court of competent jurisdiction to enforce the purposes or terms of this Easement, to enjoin the violation by temporary or permanent injunction, and/or to require the restoration of the Protected Property to the condition of the Protected Property documented in the Baseline Report referred to in Section X or to the condition that existed prior to the injury, if it was better than baseline condition. If it is not possible to fully compensate Five Valleys for injury to the Protected Property by restoring the portion of the Protected Property so injured, then Five Valleys may bring an action in a court of competent jurisdiction to recover monetary damages for violation of the purposes or terms of this Easement. Without limiting Landowner's liability, Five Valleys, in its sole discretion, shall apply any damages recovered to the cost of undertaking any restoration or other corrective action on the Protected Property.

C. Availability of Remedies. Five Valleys' rights to remedies under Paragraph B, above, apply equally in the event of either actual or threatened violations of the purposes or terms of this Easement. If Five Valleys, in its sole discretion, determines that a violation is threatened or imminent, or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, then Five Valleys may pursue its remedies under Paragraph B without waiting for the period for notice and cure to expire.

D. Nature of Remedies. Landowner agrees that Five Valleys' remedies at law for any violation

of the purposes or terms of this Easement are inadequate to restore the Conservation Values that this Easement protects. Landowner further agrees that Five Valleys shall be entitled to the injunctive relief described in Paragraph B, above, both prohibitive and mandatory, and to other such relief that Five Valleys may be entitled to, 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. However, if injunctive relief is insufficient to restore the Conservation Values or any feature or aspect of the Protected Property harmed by a violation of this Easement, and to compensate Five Valleys and the public for the loss or harm, Five Valleys shall be entitled to recover damages for violation of the purposes or terms of this Easement, including, without limitation, damages for the loss of open-space, scenic, aesthetic, or natural resource values. Five Valleys' remedies described in this paragraph and in Paragraph B, above, shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. Costs of Enforcement.** If Five Valleys prevails in any action to enforce the purposes or terms of this Easement against Landowner, or in any other action pursuant to Paragraph B, above, Landowner shall bear any costs that Five Valleys incurs in such action against Landowner, including reasonable costs of suit and reasonable attorneys' fees and any costs of restoration necessitated by Landowner's violation of the purposes or terms of this Easement. If Landowner prevails in any action that Five Valleys brings pursuant to Paragraph B to enforce the purposes or terms of this Easement, Five Valleys shall bear any costs that Landowner incurs in such action, including reasonable costs of suit and reasonable attorneys' fees.
- F. Waiver of Certain Defenses.** Landowner hereby expressly waives any defense of laches, estoppel, or prescription.
- G. Five Valleys' Discretion.** Enforcement of the purposes or terms of this Easement shall be at the discretion of Five Valleys. Any forbearance by Five Valleys to exercise its rights under this Easement in the event of any breach of any provision of this Easement shall not be deemed or construed to be a waiver by Five Valleys of such provision, or of any of Five Valleys' remedies for a subsequent breach of the same or any other provision of this Easement, or of any of Five Valleys' rights under this Easement. No delay or omission by Five Valleys in the exercise of any right or remedy upon any breach by the Landowner shall impair such right or remedy or be construed as a waiver.
- H. Acts Beyond the Landowner's Control.** Nothing contained in this Easement shall be construed to permit Five Valleys to bring an action against the Landowner for any injury to or change in the Protected Property resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
- I. Mediation.** If a dispute arises between Landowner and Five Valleys concerning interpretation

of this Easement or concerning the consistency of any proposed use or activity with the purposes or terms of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or Five Valleys may refer the dispute to mediation by request made in writing to the other party in accordance with Section V. Within fifteen (15) calendar days of either party's receipt of a referral to mediation, Landowner and Five Valleys shall select an impartial mediator to conduct the mediation and thereby assist the Parties in cooperatively resolving the dispute. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and Five Valleys agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph I shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the Parties from seeking legal or equitable remedies available under this Section VI.

SECTION VII **Maintenance and Taxes**

The Landowner retains all responsibilities and agrees to bear all costs and liabilities of any kind related to the ownership, operation, and maintenance of the Protected Property, including the control of noxious weeds in accordance with Montana law, and agrees to defend and indemnify Five Valleys against such costs and liabilities. The Landowner shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Protected Property, except any lawful tax or assessment on this Easement, which Five Valleys shall pay.

SECTION VIII **Indemnities**

- A. Control of Risks Associated with Property Ownership.** Landowner and Five Valleys acknowledge and agree that Landowner retains ownership of the Protected Property after the grant of this Easement, and therefore Landowner controls day-to-day activities on and access to the Protected Property, except for Five Valleys' limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Except as specifically provided in this Section VIII, Paragraph C, Landowner agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Landowner's continued ownership, use, and control of the Protected Property remain with Landowner as a normal and customary incident of the right of property ownership.
- B. Landowner's Obligation to Indemnify Five Valleys.** Landowner agrees to hold harmless and indemnify Five Valleys from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Five Valleys' 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 Protected Property, regardless of cause, except as set forth in Paragraph C, below; (ii) the obligations specified in Section VII; and (iii) the obligations arising from the past, present, or future presence of any hazardous substance on the Protected Property and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

For purposes of this Paragraph B, term “hazardous substance” means any chemical, compound, material, mixture, or substance or component thereof that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance. Nothing in this Easement shall be construed as giving rise to any right or ability in Five Valleys to exercise physical or managerial control over activities on the Protected Property or to become an “owner” or “operator” of the Protected 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”), the Montana Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”), Sections 75-10-701, *et seq.*, M.C.A. (2021), or the Montana Hazardous Waste Act, Sections 75-10-401, *et seq.*, and 75-10-601 *et seq.*, M.C.A. (2021), and similar state and federal statutes.

- C. Five Valleys’ Obligation to Indemnify Landowner.** Five Valleys shall hold harmless and indemnify Landowner from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, Landowner’s 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 Protected Property, provided such acts or omissions are related to or associated with the duties and obligations of Five Valleys under the terms of this Easement.
- D. Landowner’s Obligation to Indemnify the United States.** Landowner must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, 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 United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowner’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Easement or violations of any Federal, State, or local laws, including all Environmental Laws (defined in Section XIV, Paragraph F, below). [MDT II.2]
- E. Scope of Indemnity.** For the purposes of this Section VIII, Landowner’s and Five Valleys’ agreement to hold harmless and indemnify each other extends to their respective directors,

officers, members, partners, employees, agents, heirs, personal representatives, successors, and assigns.

SECTION IX **Assignment of Easement**

Five Valleys may transfer or assign this Easement, provided that any assignment shall be to a qualified organization, including a qualified governmental entity, that is an eligible donee under Internal Revenue Code Section 170(h)(3) and associated Treasury Regulations and under Sections 76-6-104(4), M.C.A. (2021) or 76-6-104(5), M.C.A. (2021). Furthermore, the recipient organization, if it is not a governmental entity, must be organized or operated primarily or substantially for one or more of the conservation purposes specified in Internal Revenue Code Section 170(h)(4)(A). Five Valleys must require, and any recipient organization must agree as a condition of such assignment or transfer, that the purposes of this Easement shall be enforced in perpetuity. Five Valleys represents to Landowner that it will make a reasonable effort in the event of any assignment of this Easement to consult with Landowner and suggest an assignee that is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code and that has conservation of agricultural and open-space land and natural resources as a substantial organizational purpose. Five Valleys represents to Landowner that its present intention is to assign this Easement only in connection with the dissolution of Five Valleys.

SECTION X **Resource Data**

Competent naturalists have studied the Protected Property and have collected data, photographs, maps, surveys, studies, reports, and other information that documents the condition of the Protected Property and its resources as of the date of execution of this Easement, and this documentation is referred to in this Easement as the “Baseline Report.” The Landowner acknowledges receipt of a copy of the Baseline Report. The Parties have signed a written acknowledgment, attached hereto as Exhibit C, which is incorporated herein by this reference, that the Baseline Report accurately represents the condition of the Protected Property at the time of the execution and conveyance of this Easement, as required by Treasury Regulation Section 1.170A-14(g)(5)(i). The original of the Baseline Report shall be maintained in the files of Five Valleys and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The Parties intend that Five Valleys will use the Baseline Report to monitor Landowner’s compliance with the purposes and terms of this Easement, to evaluate the effects of Landowner’s exercise of the rights reserved in this Easement, and to protect the Conservation Values of the Protected Property. The Parties agree that if a dispute arises concerning the condition of the Protected Property on the date of execution of this

Easement, the Parties may use the Baseline Report and all other relevant data, photographs, maps, surveys, studies, reports, and other information to assist in the resolution of the dispute. The Parties further agree that if the Baseline Report contains any summaries of or representations about the terms or conditions of this Easement, any conflict or inconsistency between the terms and conditions of this Easement and the Baseline Report shall be governed by the express terms and conditions contained in this Easement and not in the Baseline Report.

SECTION XI

Extinguishment and Condemnation

- A. Approval Required for Extinguishment.** The interests and rights under this Easement may only be extinguished or terminated with written approval of Five Valleys and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property. Furthermore, extinguishment of this Easement must be accomplished through judicial proceedings, as provided in Paragraph B, below. [MDT II.4]
- B. Provisions Governing Landowner and Five Valleys.** As between Landowner and Five Valleys, the following provisions shall apply:
1. Extinguishment and Compensation. If a subsequent unexpected change in the conditions surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes set forth herein, this Easement may only be extinguished by a judicial proceeding, and then only if such extinguishment complies with this Section XI, Paragraph A and with Treasury Regulation Section 1.170A-14(g)(6). In the event of such an extinguishment, Five Valleys shall be entitled to proceeds arising from any subsequent sale, exchange, or involuntary conversion of the Protected Property. The amount of compensation to which Five Valleys shall be entitled at that time shall be the proportionate value that the Conservation Easement bears to the whole of the Protected Property, as set forth in this Paragraph B, subparagraph 2, below. Five Valleys shall use all such proceeds that it receives in a manner consistent with the purposes of this Easement, which are set forth in Section II, Paragraph A.
 2. Calculation of Compensation to Five Valleys. This Easement constitutes a real property right immediately vested in Five Valleys. The Parties agree that Five Valleys' real property right has a fair market value that is at least equal to the "proportionate value" that this perpetual Easement, on the date of its conveyance to Five Valleys, bears to the value of the Protected Property as a whole at that time, unencumbered by this Easement. For the purposes of determining Five Valleys' entitlement to proceeds in the event of extinguishment of this Easement under this Paragraph B, subparagraph 1, the proportionate value of Five Valleys' property right that this subparagraph 2 establishes

shall remain constant. The values of this Easement and of the Protected Property prior to the grant of this Easement and at the time of the grant of this Easement, which together establish the proportionate value of this Easement, will be established by appraisal. Within one (1) year of the completion of the appraisal, Landowner and Five Valleys shall acknowledge and agree to such values by signing a written acknowledgement in form similar to the sample attached hereto as Exhibit D, which is incorporated herein by this reference. The original of the acknowledgement shall be held on file with Five Valleys.

C. Provisions Governing Five Valleys and the United States. As between Landowner, Five Valleys, and the United States, the following additional provisions shall apply:

1. Minimum Value of Conservation Easement. With respect to a proposed extinguishment, termination, or condemnation action, Five Valleys and the United States stipulate that the fair market value of the Easement for purposes of the reimbursement provisions of this Paragraph C, subparagraph 2, is _____ (___%) (hereinafter referred to in this Section XI as the “Proportionate Share”) of the fair market value of the Protected Property unencumbered by this Easement. The Proportionate Share shall remain constant over time. [MDT II.4]
2. Reimbursement of Five Valleys and the United States. If this Easement is extinguished, terminated, or condemned, in whole or in part, then Landowner must reimburse Five Valleys and the United States in an amount equal to the Proportionate Share of the fair market value of the Protected 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 Five Valleys and the United States. [MDT II.4]
3. Allocation of Proportionate Share. The allocation of the Proportionate Share between Five Valleys and the United States will be as follows: (i) to Five Valleys _____ percent (___%) of the Proportionate Share; and (ii) to the United States _____ percent (___%) of the Proportionate Share. Until such time as Five Valleys and the United States receive the Proportionate Share from Landowner or Landowner’s successor or assign, Five Valleys and the United States shall each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Five Valleys, Five Valleys must reimburse the United States for the amount of the Proportionate Share due to the United States. [MDT II.4]
4. Use of Proceeds. Five Valleys shall use any portion of the Proportionate Share that it receives in a manner that is consistent with the purposes of this Easement, which are set forth in Section II, Paragraph A.

- D. Landowner's Obligation.** Notwithstanding any requirements of this Section XI to the contrary, Landowner's sole obligation pursuant to the provisions of this Section XI shall be to pay an amount of any proceeds resulting from an extinguishment, termination, or condemnation equal to the greater of the "proportionate value" determined according to Paragraph B, subparagraph 2, or the Proportionate Share according to Paragraph C, subparagraph 1. Landowner's payment shall be made to Five Valleys.
- E. Eminent Domain.** If part or all of the Protected Property is taken for a public purpose by right of eminent domain so as to abrogate the restrictions imposed by this Easement, Landowner and Five Valleys may join in appropriate actions to recover the full value of the Protected Property, or portion thereof taken, and all incidental or direct damages resulting from the taking. Proceeds from any condemnation award or settlement shall be divided between the Landowner, Five Valleys, and the United States in proportion to their interests in the Protected Property, as determined by Paragraphs B and C of this section. Five Valleys must use the compensation which it receives with respect to a condemnation in a manner that is consistent with the general purposes of this Easement, which are set forth in Section II, Paragraph A.

SECTION XII **Interpretation**

The provisions of this Easement shall be liberally construed to effectuate the purposes and terms of this Easement and the policy and purposes of the Open-Space Land and Voluntary Conservation Easement Act, Section 76-6-101, *et seq.*, M.C.A. (2021). The provisions of this Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Agricultural Purpose of the Easement. The Parties acknowledge that each party and its legal counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. If any provision of this Easement is found to be ambiguous or in conflict with any other provision of this Easement, or if this Easement is silent on any question or point in dispute, then this Easement shall be interpreted in a manner that is consistent with the purposes of this Easement. [MDT I.3.Intro]

If a conflict arises between protection of both of the Conservation Values, and if such conflict may have an actual or potential impact on Five Valleys' ability to protect both of the Conservation Values, Five Valleys 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 listed in Recital 4. The hierarchy set forth in this Section XII is intended to resolve actual or

potential conflicts between the Conservation Values, and therefore, this Section XII may not be interpreted or construed by Landowner, Five Valleys, or any other party to justify a disregard of, or to discount, Five Valleys' and Landowner's obligations hereunder to protect and preserve both of the Conservation Values if such actual or potential conflict between the Conservation Values does not exist.

SECTION XII

Representations and Warranties

Jody Cutler, acting in her capacity as President of Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc., hereby represents and warrants, after reasonable investigation and to the best of her knowledge, that:

1. Landowner has clear title to the Protected Property; Landowner has the right to convey this Conservation Easement; and the Protected Property is free and clear of any encumbrances, except those encumbrances that are apparent or of record.
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 Protected 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 Protected Property in violation of applicable law.
3. No underground storage tanks are located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned. No underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property, other than the ongoing statewide adjudication of water rights in Montana. No civil or criminal proceedings or investigations have been instigated at any time or are now pending. Landowner has received no notices, claims, demands, or orders arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Landowner might

reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

SECTION XIV
ACEP and NRCS Required Provisions

- A. Impervious Surface Limitation.** Impervious surfaces will not exceed one percent (1%) percent of the Protected Property, excluding NRCS-approved conservation practices (referred to in this Easement as the “Impervious Surface Limitation”). Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected 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 rights superior to those rights that this Easement conveys to Five Valleys.
- B. 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 Five Valleys does not enforce the terms of the Easement. 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 Five Valleys, 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 Landowner, including, but not limited to, attorney’s fees and expenses related to Landowner’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 Five Valleys, including, but not limited to, attorney’s fees and expenses related to Five Valleys’ violations or failure to enforce the Easement against the Landowner, up to the amount of the United States’ contribution to the purchase of the Easement. [MDT II.1]

- C. Monitoring Reports.** Five Valleys will annually monitor compliance and provide the United States with an annual monitoring report that documents that Five Valleys and the Landowner 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 set forth in this Section XIV, Paragraph D, below. [MDT II.1]
- D. United States’ Right of Access and Inspection.** For purposes of inspection and enforcement of the Easement and the United States’ Easement Agreement with Five Valleys, the United

States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Five Valleys and Landowner and provide Five Valleys and Landowner a reasonable opportunity to participate in the inspection. In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the Easement and will give notice to Five Valleys and Landowner at the earliest practicable time. [MDT II.1]

E. General Disclaimer. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Five Valleys' or Landowner's negligent acts or omissions or Five Valleys' or Landowner'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 (defined in this Section XIV, Paragraph F, below) 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 Protected Property. [MDT II.2]

F. Environmental Warranty. 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.

Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner 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 Protected Property. Landowner further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to Five Valleys and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Five Valleys 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 Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Protected Property. Landowner's indemnification obligation will not be affected by any authorizations provided by Five Valleys or the United States to Landowner with respect to the Protected Property or any restoration activities carried out by Five Valleys on the Protected Property; provided, however, that Five Valleys will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Five Valleys. [MDT II.3]

SECTION XV

Miscellaneous Provisions

- A. Partial Invalidity.** If any provision of this Easement or the application of any provision of this Easement 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 by the finding of invalidity.

- B. "Landowner" and "Five Valleys".** The terms "Landowner" and "Five Valleys", as used in this Easement, and any pronouns used in place of those terms, shall mean and include the Landowner named above and Landowner's successors and assigns, and Five Valleys Land Trust, Inc., and its successors and assigns.

- C. "Chief of NRCS".** As used in this Easement, the term "Chief of NRCS" means the Chief of the Natural Resources Conservation Service or his or her authorized designee.

- D. "Consultation with Chief of NRCS".** For purposes of this Easement, the phrase "in consultation with the Chief of NRCS", as used in Section III, Paragraphs M and N, means providing timely and adequate written notice to the Chief of NRCS, or his or her authorized designee, and receipt of a written response from NRCS, which response may, but is not required to, approve the road easement or utility easement that is the subject of the consultation.

- E. Titles.** Section, paragraph, and subparagraph titles are for convenience only and shall not be deemed to have legal effect.

- F. Subordination.** No provision of this Easement shall be construed as impairing Landowner's ability to use the Protected Property as collateral for any loan, provided that any mortgage, lien, or security interest arising after the date of execution of this Easement shall be subordinate to this Easement, and said security interest in the Protected Property may not be foreclosed so as to create a division or subdivision of the Protected Property.
- G. Subsequent Deeds.** Landowner shall refer to this Easement in any subsequent purchase and sale agreements, deeds, leases, rental agreements, easements, or other legal instruments conveying an interest in the Protected Property. Nevertheless, Landowner's failure to refer to this Easement in such conveyance documents shall not affect the validity of this Easement, its binding nature, or its applicability to the Protected Property.
- H. Amendment.** This Easement may be amended only if, in the sole and exclusive judgment of Five Valleys and the United States, acting by and through the Chief of NRCS, such amendment is consistent with the Agricultural Purpose of the Easement and complies with all applicable laws and regulations. Five Valleys 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 Five Valleys, Landowner, and the United States, acting 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 affects the qualification of the Easement or the status of Five Valleys under any applicable laws, including Section 170(h) of the Internal Revenue Code or Section 76-6-101, *et seq.*, M.C.A. (2021). Any amendments must be consistent with the purposes and terms of this Easement, must not affect its perpetual duration, and must either enhance or have no effect on the Conservation Values that this Easement protects. Amendments made pursuant to this Paragraph H may not result in prohibited private benefit or inurement to any party. Any amendment to this Easement shall be in writing, shall be signed by the Landowner and Five Valleys, and shall be recorded in the public records of Granite County, Montana. [MDT II.5]
- I. Governing Law.** If 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 the resolution of such dispute, without regard to conflict of laws.
- J. Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this Easement shall be valid or binding unless contained in an amendment that complies with Section XV, Paragraph H above.
- K. Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their successors and assigns and shall continue as a servitude running in perpetuity with title to the Protected Property.

L. Joint Obligation. The obligations and liabilities that this Easement imposes upon Landowner shall be joint and several.

M. Notice of Suit. Landowner shall immediately notify Five Valleys of any lawsuit or administrative action involving the Protected Property, or of any other proceeding which may affect Five Valleys' rights in this Easement. Landowner shall send notice to Five Valleys of any such suits, actions, or proceedings in accordance with Section V, and Landowner's notice shall include a copy of any lawsuit or administrative action filed. Landowner agrees not to object to Five Valleys' intervention in any lawsuit or administrative 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 Protected Property or potentially affecting the Conservation Values that this Easement protects.

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

IN WITNESS WHEREOF, this Easement has been entered into by the Landowner and Five Valleys on _____, 2022 and is effective on the date that this Easement is recorded in the public records of Granite County, Montana.

FIVE VALLEYS LAND TRUST, INC.:

By (Signature): _____

By (Signature): _____

Name (Printed): _____

Name (Printed): _____

Title: _____

Title: _____

ACKNOWLEDGMENT

STATE OF MONTANA)

: ss.

County of _____)

This instrument was acknowledged before me this _____ day of _____, 2022 by _____, acting in the capacity of _____, on behalf of Five Valleys Land Trust, Inc., a Montana Non-Profit Corporation.

Notary Signature: _____

Notary Public for the State of Montana

(NOTARIAL SEAL)

ACKNOWLEDGMENT

STATE OF MONTANA)

: ss.

County of _____)

This instrument was acknowledged before me this _____ day of _____, 2022 by _____, acting in the capacity of _____, on behalf of Five Valleys Land Trust, Inc., a Montana Non-Profit Corporation.

Notary Signature: _____

Notary Public for the State of Montana

(NOTARIAL SEAL)

LANDOWNER: ROCKING CHAIR RANCH, a/k/a ROCKING CHAIR RANCH, INC.

By (Signature): _____ By (Signature): _____
Name (Printed): _____ Name (Printed): _____
Title: _____ Title: _____

ACKNOWLEDGMENT

STATE OF MONTANA)
 : ss.
County of _____)

This instrument was acknowledged before me this _____ day of _____, 2022 by _____ in his or her capacity as _____ on behalf of Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

ACKNOWLEDGMENT

STATE OF MONTANA)
 : ss.
County of _____)

This instrument was acknowledged before me this _____ day of _____, 2022 by _____ in his or her capacity as _____ on behalf of Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

EXHIBIT A
LEGAL DESCRIPTION OF PROTECTED PROPERTY

NOTE: AFTER THE EFFECTIVE DATE OF THE CONSERVATION EASEMENT TO WHICH THIS EXHIBIT A IS ATTACHED, THE FOLLOWING DESCRIBED REAL PROPERTY MUST BE CONVEYED AND TRANSFERRED TOGETHER, IN UNIFIED TITLE, AS A SINGLE TRACT, AND MAY NOT BE DIVIDED, PARTITIONED OR OTHERWISE SPLIT IN OWNERSHIP.

Lands located in Township 7 North, Range 14 West, P.M.M., Granite County, Montana

Section 21: A tract of land located in the North 1/2 of Section 21, more particularly described as follows: Beginning at the section corner common to sections 16, 17, 20 and 21, thence S. 00° 20'04"W., 1734.23 ft. along the section line common to sections 20 and 21, thence S.89° 58'42"E., 5298.11 ft. to the westerly right-of-way of State Highway No. 348. Thence along the following three (3) courses along said right-of-way: North, 975.92 ft., East 10.0 ft., North 670.31 ft., thence leaving said right-of-way, N.89°58'42"W. 5298.51 ft. along the section line common to sections 16 and 21 to the point of beginning. All according to Certificate of Survey No. 295 on file and of record in the office of the County Clerk and Recorder of Granite County, Montana.

Recording Reference: Roll 48, Page 729, Records of Granite County, Montana.

LESS AND EXCEPTING THEREFROM the North Half of the Northwest Quarter of the Southwest Quarter of the Northeast Quarter (N1/2NW1/4SW1/4NE1/4) and the South Half of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (S1/2SW1/4NW1/4NE1/4).

Section 26: The Southwest Quarter of the Northeast Quarter (SW1/4NE1/4), all that portion of the East Half of the Northwest Quarter (E1/2NW1/4) located south of the southern boundary of the right-of-way for State Highway 348, and the Southwest Quarter (SW1/4)

Recording Reference: Book 43 of Deeds, Page 290, Records of Granite County, Montana.

The West Half of the Southeast Quarter (W1/2SE1/4)

Recording Reference: Book 74, Page 49, Records of Granite County, Montana.

Section 27: All that portion of the Northwest Quarter (NW1/4) located south of the southern boundary of the right-of-way for State Highway 348.

Recording Reference: Roll 17, Page 99, Records of Granite County, Montana.

The South Half (S1/2)

Recording Reference: Book 43 of Deeds, Page 290, Records of Granite County, Montana.

Section 28: The South Half (S1/2), the Northwest Quarter (NW1/4)

Recording Reference: Book 43 of Deeds, Page 290, Records of Granite County, Montana.

Section 34: The North Half of the North Half (N1/2N1/2)
Recording Reference: Book 43 of Deeds, Page 290, Records of Granite County, Montana.

Section 35: The North Half of the Northwest Quarter (N1/2NW1/4), the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4)
Recording Reference: Book 43 of Deeds, Page 290, Records of Granite County, Montana.

EXHIBIT B-1
MAP OF PROTECTED PROPERTY

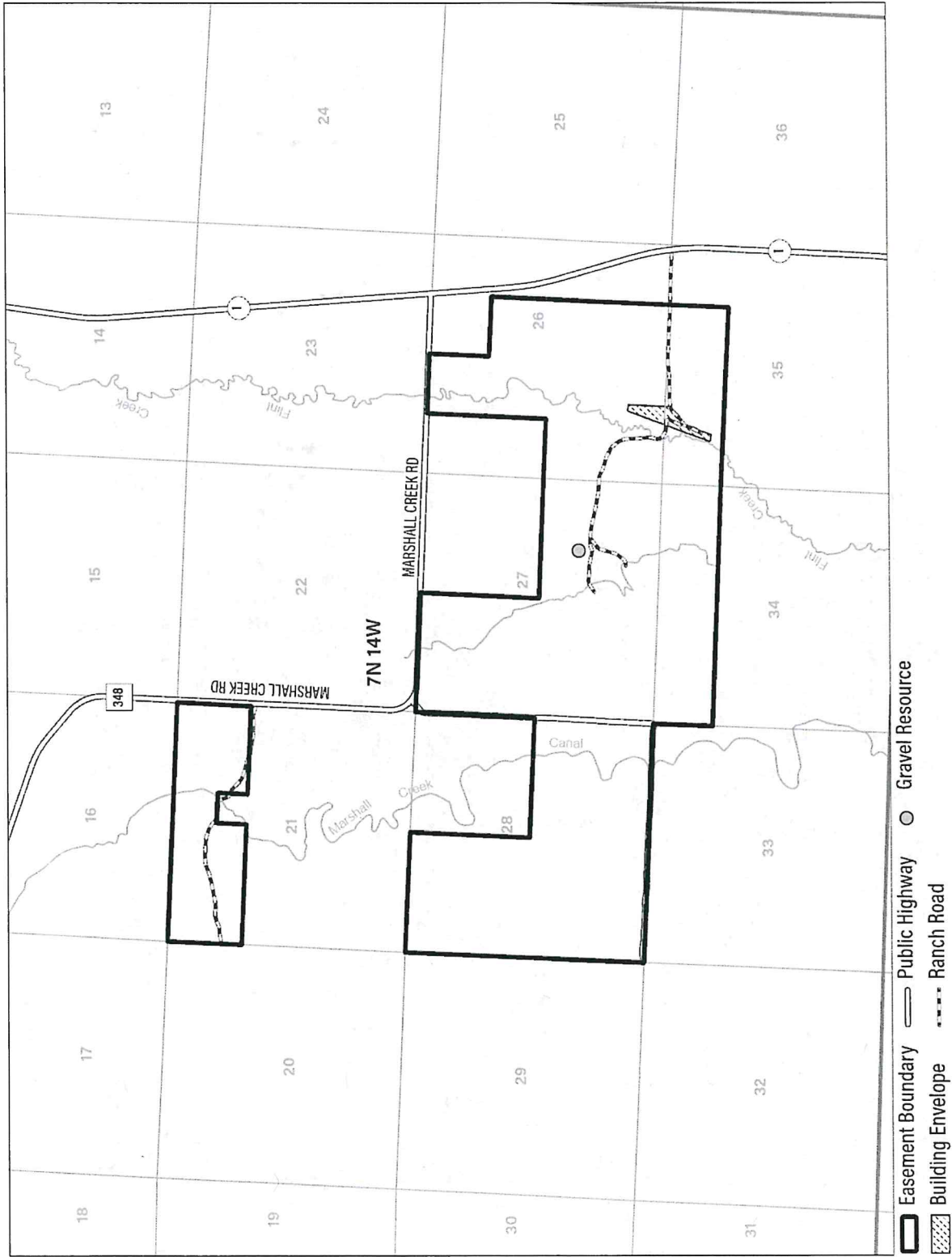


EXHIBIT B-2
MAP OF BUILDING ENVELOPE





 Building Envelope
 Existing Residential Dwelling Unit

EXHIBIT C
ACKNOWLEDGMENT OF BASELINE REPORT

This Acknowledgement of Baseline Report (the “Acknowledgement”) is made by Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc., a Montana corporation with an address of 72 Rocking Chair Ranch Road, Philipsburg, Montana 59858 (referred to in this Acknowledgement as the “Landowner”) and Five Valleys Land Trust, Inc., a Montana non-profit corporation with an address of 120 Hickory Street, Suite B, Missoula, Montana 59801 (referred to in this Acknowledgment as “Five Valleys”). Landowner and Five Valleys hereby acknowledge and agree as follows:

1. The Landowner is the owner of certain real property located in Granite County, Montana (referred to in this Acknowledgment as the “Protected Property”), and Landowner intends to grant Five Valleys a conservation easement on the Protected Property (referred to in this Acknowledgement as the “Conservation Easement”).
2. Landowner has made the Protected Property available to Five Valleys for the purpose of gathering information and data about the condition of the Conservation Values identified in the Conservation Easement as of the date of the grant of the Conservation Easement. This information and data have been compiled into a Baseline Report entitled “Baseline Report for the Rocking Chair Ranch-Philipsburg Conservation Easement” and dated _____, 2022 (referred to in this Acknowledgement as the “Baseline Report”).
3. In accordance with Treasury Regulation Section 1.170A-14(g)(5)(i), Landowner and Five Valleys hereby acknowledge, declare, and agree that they have reviewed the information contained in the Baseline Report and that the Baseline Report provides an accurate representation of the condition of the Conservation Values to be protected by this Conservation Easement at the time of the grant of the Conservation Easement.

Dated _____, 2022

LANDOWNER: ROCKING CHAIR RANCH, a/k/a ROCKING CHAIR RANCH, INC.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

FIVE VALLEYS LAND TRUST, INC.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT D
SAMPLE FORM OF
ACKNOWLEDGMENT OF VALUE OF CONSERVATION EASEMENT

Rocking Chair Ranch, a/k/a Rocking Chair Ranch, Inc., a Montana corporation with an address of 72 Rocking Chair Ranch Road, Philipsburg, Montana 59858 is the grantor of a Deed of Conservation Easement dated _____, 2022, and recorded on _____, 2022, at Roll _____, Page _____, as Document Number _____, Records of Granite County, Montana (the "Conservation Easement"). Five Valleys Land Trust, Inc., a Montana non-profit corporation with an address of 120 Hickory Street, Suite B, Missoula, Montana 59801, is the grantee of the Conservation Easement (referred to in this Acknowledgement as "Five Valleys"). _____, with an address of _____, is the appraiser of the Conservation Easement and the property subject to the Conservation Easement (the "Protected Property"). Rocking Chair Ranch, Five Valleys, and the appraiser declare and agree as follows:

1. That the value of the Protected Property immediately *prior to* the Rocking Chair Ranch's grant of the Conservation Easement to Five Valleys and to the Conservation Easement's encumbrance of the Protected Property was \$_____.
2. The value of the Protected Property immediately *after* Rocking Chair Ranch's conveyance of the Conservation Easement to Five Valleys and the Conservation Easement's encumbrance of the Protected Property was \$_____.
3. Thus, Rocking Chair Ranch, Five Valleys, and the appraiser agree that the grant of the Conservation Easement reduced the value of the Protected Property by _____ percent (_____%).
4. The original of this Acknowledgment will be retained in the files of Five Valleys, and its successors and assigns, at its normal place of business.

LANDOWNER: ROCKING CHAIR RANCH, a/k/a ROCKING CHAIR RANCH, INC.

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

FIVE VALLEYS LAND TRUST, INC.

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

APPRAISER:

Signature: _____

Name: _____

Title: _____

Date: _____

