

RESOLUTION 2019 - 40

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEWIS AND CLARK COUNTY, MONTANA APPROVING FUNDING FROM THE COUNTY LAND, WATER, AND WILDLIFE BOND TO THE ROCKY MOUNTAIN ELK FOUNDATION FOR THE ACQUISITION OF THE FALLS CREEK PROPERTY

WHEREAS, pursuant to Resolution 2008-97, in November 2008, voters in Lewis and Clark County, Montana, approved the Land, Water and Wildlife bond measure, a \$10 million general obligation bond measure for protecting drinking water sources and ground water quality; protecting water quality in and along rivers and streams; conserving working farm, ranch and forest lands; protecting wildlife areas; preserving open lands and natural areas; providing for recreation; and managing growth and development; and

WHEREAS, the primary purpose of the Open Lands Program is to conserve resources on private lands in Lewis and Clark County that fulfill the objectives of the bond measure; and

WHEREAS, funds generated by sales of these bonds are distributed through the County's Open Lands Program; and

WHEREAS, the County's Open Lands Program has received and processed an application for Open Lands funding from the Rocky Mountain Elk Foundation on behalf of the property owner, Daniel Barrett, and

WHEREAS, in this project, referred to as the Peaks to Creeks Acquisition Project, Rocky Mountain Elk Foundation proposes to apply for \$1,400,000 of County Open Lands bond funds applied towards the acquisition of properties 05-276-833-101-03-0000 and 05-276-834-201-15-0000 for the project. Also described as; S34, T18 N, R07 W, C.O.S. 3330937, ACRES 208.4, TRACT R and S33, T18 N, R07 W, C.O.S. 3328741, TRACT R and described in Exhibit "A".

WHEREAS, the Citizen's Advisory Committee on Open Lands (CAC) recommended approval to the Board of County Commissioners that the Rocky Mountain Elk Foundation Falls Creek Project receive funding, conditioned upon, prior to the release of any County funds, Rocky Mountain Elk Foundation shall provide the County satisfactory confirmation that the full balance of the Falls Creek Acquisition price (less the County approved amount) has been secured prior to the Purchase Option Agreement expiration date outlined in Exhibit "B"; and

WHEREAS, the Commission considered the recommendation of the CAC at a regularly scheduled public hearing on May 14, 2019, along with County Legal staff's due diligence report and public comment; and

WHEREAS, the Commission determined that this project meets multiple purposes of the bond, substantially complies with the legal requirements, and may not be achieved without the involvement of the County; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners:


1. Accept the recommendation of the Open Lands Citizen Advisory Committee; and



2. Approve funding the Falls Creek Acquisition Project in the amount of \$1,400,000 contingent upon Rocky Mountain Elk Foundation providing the County satisfactory confirmation that the full balance of the Falls Creek Acquisition price (less the County approved amount) has been secured prior to the Purchase Option Agreement expiration date.

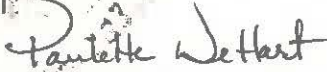
DATED this 14th Day of May, 2019.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Jim McCormick, Chair



ATTEST:



Paulette DeHart, Clerk of the Board

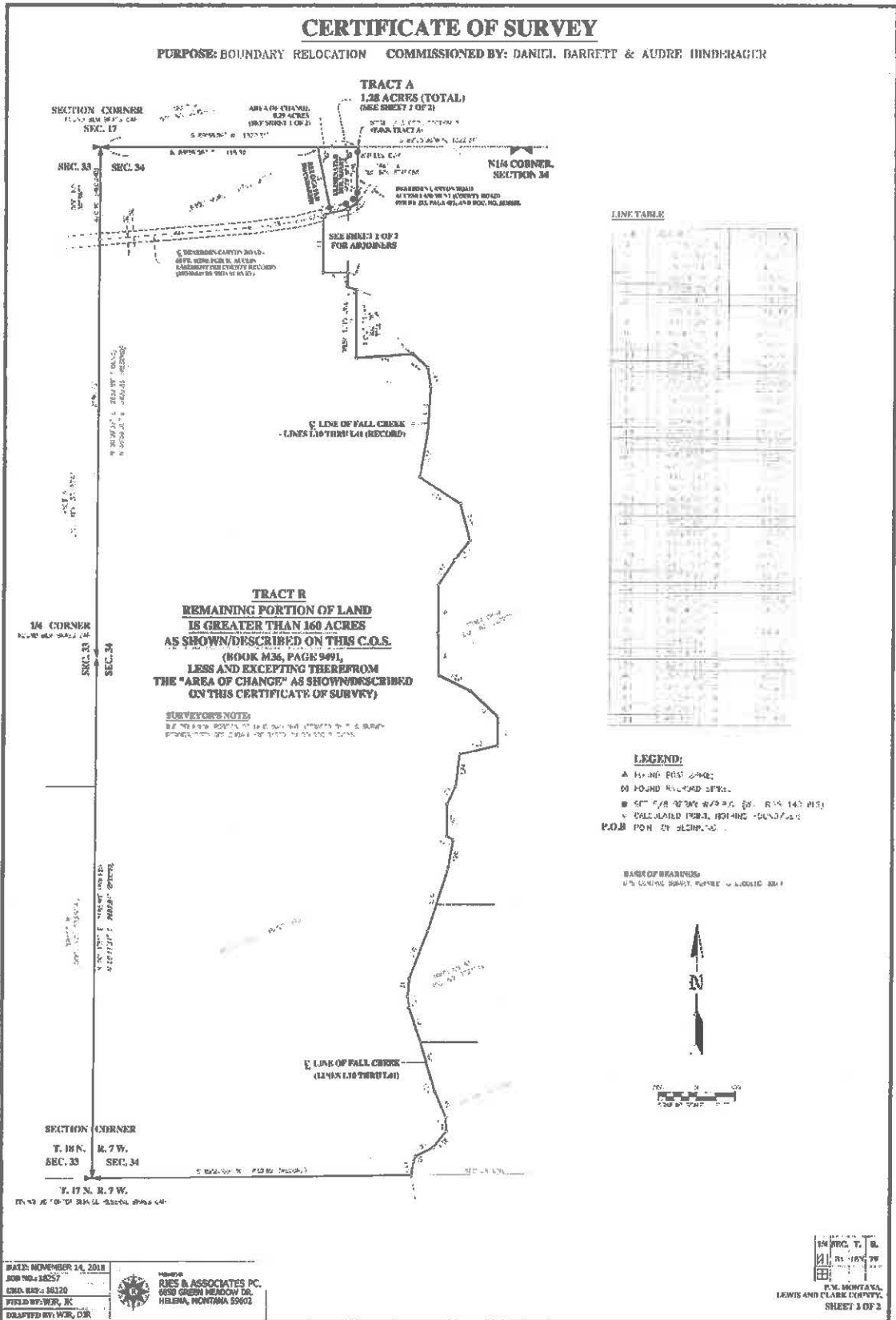
Attached:

- Exhibit "A" to the Resolution: COS# 3330937 and COS# 3328741: Identifying Falls Creek Acquisition Properties
- Exhibit "B" to the Resolution: Purchase Option Agreement between RMEF and Daniel Barrett

**Exhibit "A" to Resolution 2019-40: COS# 3330937 and COS# 3328741:
Identifying Falls Creek Acquisition Properties**

CERTIFICATE OF SURVEY

PURPOSE: BOUNDARY RELOCATION COMMISSIONED BY: DANIEL GARRETT & AUDRE HINDENRAGER

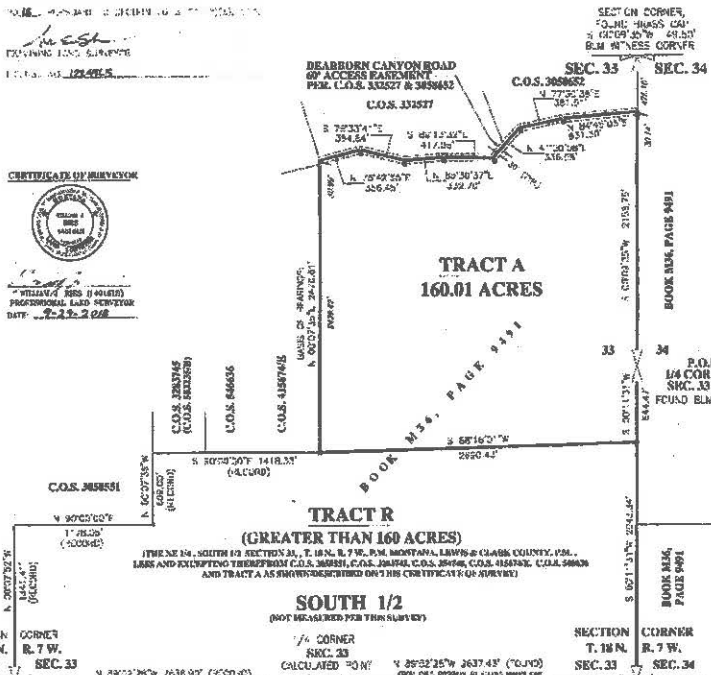


CERTIFICATE OF SURVEY

PURPOSE: CREATE A TRACT OF LAND GREATER THAN 160 ACRES.
 COMMISSIONED BY: DANIEL E. BARRETT

CERTIFICATE OF EXAMINING LAND SURVEYOR
 I HEREBY CERTIFY THAT THE PROCEEDINGS AND CALCULATIONS
 ARE CORRECT AND ACCORDING TO THE MEASUREMENTS
 MADE BY ME OR BY OTHERS UNDER MY SUPERVISION.
 I AM A LICENSED SURVEYOR IN THE STATE OF MONTANA.
 My Commission Expires on 12/31/2015.
 DANIEL E. BARRETT
 REGISTERED LAND SURVEYOR
 No. 124215

CERTIFICATE OF SURVEYOR
 I HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR
 IN THE STATE OF MONTANA.
 My Commission Expires on 12/31/2015.
 DANIEL E. BARRETT
 REGISTERED LAND SURVEYOR
 No. 124215



LEGAL DESCRIPTION: TRACT A
 A TRACT OF LAND LOCATED IN THE EAST 1/2 OF SECTION 33, TOWNSHIP 18 NORTH, RANGE 7 WEST 7TH, MONTANA, LEWIS AND CLARK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE CORNER OF SECTION 33 AND SECTION 34, THENCE S 89°13'31"W, 544.44 FEET ALONG THE EAST LINE OF SAID SECTION 33; THENCE S 89°18'01"W, 2830.43 FEET TO THE SOUTH-EAST CORNER OF 28.04 ACRE C.O.S. 415677/2; THENCE N 02°07'36"E, 2470.0 FEET ALONG THE EAST LINE OF SAID C.O.S. 415677/2; THENCE N 75°42'55"W, 366.48 FEET ALONG THE SOUTHERLY LINE OF 22.5 ACRE TRACT C.O.S. 332827/1; THENCE S 76°43'41"E, 284.84 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 85°43'37"E, 332.70 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE S 89°13'32"E, 4740.00 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 41°23'05"E, 356.28 FEET TO THE POINT OF BEGINNING AND SAID TRACT C.O.S. 332827/1; THENCE N 77°30'38"E, 381.61 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 84°45'05"E, 631.29 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1 TO THE EAST LINE OF SECTION 33; THENCE S 02°07'34"W, 2182.70 FEET ALONG THE EAST LINE OF SAID SECTION 33 TO THE POINT OF BEGINNING. ALL SAID TRACT CONTAINS 160.01 ACRES MORE OR LESS AND SUBJECT TO ALL RIGHTS, EASEMENTS, AND ENCUMBRANCES OF RECORD.

LEGAL DESCRIPTION: TRACT R (GREATER THAN 160 ACRES)
 A TRACT OF LAND LOCATED IN THE SOUTH 1/2 OF SECTION 33, TOWNSHIP 18 NORTH, RANGE 7 WEST, 7TH MONTANA, LEWIS AND CLARK COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE CORNER OF SECTION 33 AND SECTION 34, THENCE S 89°13'31"W, 544.44 FEET ALONG THE EAST LINE OF SAID SECTION 33; THENCE S 89°18'01"W, 2830.43 FEET TO THE SOUTH-EAST CORNER OF 28.04 ACRE C.O.S. 415677/2; THENCE N 02°07'36"E, 2470.0 FEET ALONG THE EAST LINE OF SAID C.O.S. 415677/2; THENCE N 75°42'55"W, 366.48 FEET ALONG THE SOUTHERLY LINE OF 22.5 ACRE TRACT C.O.S. 332827/1; THENCE S 76°43'41"E, 284.84 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 85°43'37"E, 332.70 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE S 89°13'32"E, 4740.00 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 41°23'05"E, 356.28 FEET TO THE POINT OF BEGINNING AND SAID TRACT C.O.S. 332827/1; THENCE N 77°30'38"E, 381.61 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1; THENCE N 84°45'05"E, 631.29 FEET ALONG THE SOUTHERLY LINE OF SAID TRACT C.O.S. 332827/1 TO THE EAST LINE OF SECTION 33; THENCE S 02°07'34"W, 2182.70 FEET ALONG THE EAST LINE OF SAID SECTION 33 TO THE POINT OF BEGINNING. ALL SAID TRACT CONTAINS MORE OR LESS AND SUBJECT TO ALL RIGHTS, EASEMENTS, AND ENCUMBRANCES OF RECORD.

SUBDIVISION EXEMPTION:
 TRACTS A AND R ARE CREATED PURSUANT TO SECTION 104 OF MCA, AS THESE TRACTS ARE NOT LESS THAN 160 ACRES, AND THEY DO NOT CONSTITUTE A SUBDIVISION.

DEQ EXEMPTION:
 WE, THE UNDERSIGNED, HEREBY CERTIFY THAT THE TWO PARCELS SHOWN ARE EXEMPT FROM THE REVIEW IN ACCORD WITH THE PROVISIONS OF SECTION 16-4-105(1) OF MCA BECAUSE THESE ARE PARCELS 20 ACRES OR GREATER, EXCLUSIVE OF PUBLIC HIGHWAYS.

Daniel E. Barrett
 OWNER, DANIEL L. BARRETT

STATE OF Montana
 COUNTY OF Lewis & Clark
 THIS INSTRUMENT WAS DATED AND ACKNOWLEDGED BEFORE US ON THE 29th DAY OF September, 2014,
 BY Daniel Barrett
 NOTARY PUBLIC FOR THE STATE OF Montana

CERTIFICATE OF COUNTY TREASURER:
 HEREBY CERTIFY PURSUANT TO SECTION 16-3-207(1)(D) OF MCA, THAT ALL REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS ASSESSED AND DUE ON THE LAND DESCRIBED ON THIS MAP AND ENCUMBERED BY THE PROPOSED BOUNDARY LINE RELOCATION HAVE BEEN PAID.
 SEACOIL CO-2788-33-1-01-07-0000; ASSESSMENT CODE 18779
 DATED THIS 9th DAY OF October, 2014.
Janette DeWitt
 TREASURER, LEWIS AND CLARK COUNTY, MONTANA.

DATE: SEPTEMBER 28, 2014
 JOB NO. 1818
 FIELD SURVEYOR, D. BARRETT
 DRAWING BY: VCR
RIES & ASSOCIATES P.C.
 6850 GREEN MEADOW DR.
 HELENA, MONTANA 59602

Exhibit "B" to Resolution 2019-40: Purchase Option Agreement between RMEF and Daniel Barrett

REAL ESTATE PURCHASE OPTION AGREEMENT

In consideration of the amounts paid pursuant to this Agreement and other good and valid consideration, Daniel E. Barrett, an individual whose address is P.O. Box 609, Augusta, Montana 59410 ("Seller"), hereby grants the Rocky Mountain Elk Foundation, Inc., a Montana non-profit corporation whose address is 5705 Grant Creek Road, Missoula, Montana 59808 ("RMEF") an exclusive option, on the terms and conditions set forth in this Agreement ("Option"), as follows:

Section 1. Agreement to Grant Purchase Option Agreement. Seller grants RMEF an exclusive option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title, and interest in and to the real property located in Lewis and Clark County, Montana, more particularly described in Exhibit A and depicted in the map on Exhibit A-1 ("Property"). RMEF intends to then convey the Property to the U.S. Forest Service, Montana Fish, Wildlife and Parks, or other agency for public management ("Take-Out Partner"). Seller will retain approximately 160 acres located in the E1/2 of Section 33, lying south of the Dearborn Canyon Road. This parcel is identified in Exhibit A-1, and Seller will survey and establish boundaries and a legal description for this parcel prior to closing. RMEF must agree to the location, description, and boundaries of this parcel.

Section 2. Purchase Price of Option. Upon the execution of this Agreement by all parties, RMEF will pay to the Closing Agent to be held for and on behalf of Seller Two Thousand Five Hundred Dollars (\$2,500.00) as consideration for the Option granted by the Seller in this Agreement ("Option Price").

Section 3. Terms, Conditions, and Exercise of Option.

(a) This Option Agreement will remain in effect until 5:00 o'clock p.m. Mountain Time on June 15, 2018. RMEF has the right to exercise this Option at any time on or before such date and time by delivering written notice of its exercise of the Option to Seller pursuant to the "Notice" Section of this Agreement.

(b) Upon exercise of the Option, this Agreement will become a Purchase and Sale Agreement, subject to the terms and condition, contingencies, representations, and warranties contained below.

(c) If RMEF fails to exercise this Option on or before the date and time named above, then this Agreement will expire and terminate, and Seller will have the right to retain the Option Price, and RMEF will, at the request of Seller, execute a quitclaim deed transferring all of RMEF's right, title, and interest in the Property back to Seller in order to remove any cloud that this Option may create on the title to the Property.

Section 4. Notice of Option. Upon the execution of this Agreement, Seller will execute a Notice of Option in the form attached to this Agreement as Exhibit B and deliver it to RMEF. RMEF will have the right to record this Notice of Option.

Section 5. Purchase Price. If RMEF exercises this Option, it will have the right and obligation to purchase the Property, at Fair Market Value as determined by the Appraisal, subject to approval and acceptance of the appraisal by Seller and RMEF pursuant to the Appraisal

Section below. RMEF will pay the balance of the purchase price to the Seller in immediately available collected funds in the form of a wire transfer, cashier's check, or money order acceptable to the Closing Agent on the date of closing.

Section 6. Appraisal. The Property will be appraised at its Fair Market Value by a qualified state certified professional appraiser selected by RMEF, using methods and procedures in compliance with federal appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisitions ("Yellow Book") and the Uniform Standards of Professional Appraisal Practices ("USPAP"). The Appraisal and the Fair Market Value determination must be acceptable to Take-Out Partner. RMEF will pay the cost of the Appraisal. Take-Out Partner or RMEF will pay for the review of the Appraisal, if required by RMEF or Take-Out Partner.

The Seller and RMEF will have the right to review the Appraisal. Both Seller and RMEF must provide the other party with written notice that the Appraisal or the Fair Market Value is not acceptable within fifteen (15) calendar days of receipt of the Appraisal, or the Appraisal will be deemed to be acceptable. If Seller rejects the Appraisal or the Fair Market Value, RMEF may recover the Option Price.

Section 7. Closing Agent. The parties hereby designate Helena Abstract and Title Company, whose address is P.O. Box 853, Helena, Montana 59624 and whose phone number is (406) 442-5080 ("Closing Agent"), to hold and disperse the Option Price, and to perform the closing in accordance with the requirements of this Agreement.

Section 8. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow, shall not merge with transfer of title but shall remain in effect until fulfilled.

Section 9. Direct Deed to Government Agency. At RMEF's election, RMEF may direct that Seller convey title to the Property directly to Take-Out Partner. Such direction by RMEF shall not relieve Seller of any of its obligations hereunder.

Section 10. Costs, Adjustments, and Prorations. RMEF will pay the costs of recording the Notice of Option. If RMEF exercises the option granted by this Agreement, RMEF will pay the costs of recording the deed and the cost of the appraisal.

Seller will pay the premium for the title insurance policy required by this Agreement, the fee of the Closing Agent, the costs of recording any documents required to clear up Seller's title to the Property, the costs of a survey (if required by Take-Out Partner), the cost of filing the water rights transfer certificate and any realty excise tax and other documentary, stamp or transfer tax imposed in connection with the transfer of the Property, or other tax, penalty or other fee associated with the removal of the Property from, or the failure of the Property to continue any classification under, any zoning, forestland, agricultural land or other land use classification.

All rents, lease payments, utility charges, interest, and ad valorem real and personal property taxes and assessments will be prorated between the parties on the basis of the number of days for which such amounts were paid or are owing, with Seller paying such costs for the days

on or before the date of closing, and RMEF paying such costs for the days after the date of closing. If the amount of any taxes and assessments is not ascertainable on the date of closing, the amount of taxes and assessments from the most recent tax bill will be used as the basis for proration and the parties agree to re-prorate the cost on the basis of the actual amount when the bill is received. If the taxes and assessments for the current year cannot be paid on the date of closing, then RMEF will be given a credit towards the purchase price for Seller's share of these taxes and assessments, and RMEF will then be responsible for paying all taxes and assessments for the current year when they become due and payable.

Section 11. Title to Property.

(a) If RMEF exercises the option granted by this Agreement, Seller will convey good and marketable fee simple title to the Property to RMEF free and clear of all liens, encumbrances, easements, restrictions, conditions, defects, and burdens, except as follows:

- (i) Easements and rights-of-way which are acceptable to RMEF;
- (ii) Reservations made in patents or in acts authorizing the issuance of patents; and
- (iii) Taxes and assessments which are not yet due and payable.

(b) The Property together with all appurtenances and other associated rights identified in Exhibit A will be conveyed by general warranty deed.

Section 12. Evidence of Title.

(a) RMEF has obtained a commitment for a standard ALTA owner's title insurance policy issued by Helena Abstract and Title Company with respect to the Property. RMEF will examine the title commitment and notify the Seller in writing if in the opinion of RMEF the title insurance commitment discloses liens, encumbrances, easements, or defects in title other than those acceptable to RMEF. If RMEF objects to any liens, encumbrances, easements, or defects in title, the Seller will make good faith efforts to remove or cure the matter objected to on or before the date of closing. If the Seller cannot remove or cure the matter objected to on or before the date of closing, then RMEF will have the right to rescind and terminate this Agreement and recover the Option Price paid to the Seller.

(b) After the closing a title insurance policy in the amount of the purchase price of the Property will be issued pursuant to the title insurance commitment described in Paragraph (a) of this section to insure RMEF's title to the Property.

Section 13. Date of Closing. If RMEF exercises the option granted by this Agreement, a closing will be held to consummate this Agreement at the office of the Closing Agent by December 31, 2020. The date by which the closing must occur can be extended by mutual written agreement of the parties. Depending on availability of funding, RMEF may elect to close on portions of the Property prior to the closing date. Earlier closing on smaller portions of the Property will not relieve RMEF of the obligation to purchase the entire Property or relieve the Seller of the obligation to sell the entire Property.

Section 14. Conditions to RMEF's Performance.

(a) RMEF will not be obligated to complete the purchase of the Property and perform its other obligations under this Agreement unless the following conditions have been met:

- (i) RMEF's Board of Directors has approved RMEF's exercise of the Option and acquisition of the Property, and RMEF has exercised the Option provided by this Agreement;
- (ii) The Fair Market Value established in the Appraisal and described in the Appraisal section is acceptable to RMEF and Take-Out Partner;
- (iii) Seller's title to the Property, as indicated by the commitment for title insurance described in this Agreement, is acceptable to RMEF, or if RMEF has objected to any defects in Seller's title, then Seller has cured these defects on or before the date of closing;
- (iv) RMEF has been able to secure funding for the purchase and commitments for take-out of the Property on terms satisfactory to RMEF;
- (v) Seller has delivered all of the documents that this Agreement requires Seller to execute and deliver on the date of closing in form acceptable to RMEF;
- (vi) Inspection of the Property reveals no conditions which are unacceptable to RMEF;
- (vii) Inspection of the Property reveals no evidence of underground storage tanks or hazardous substances which are unacceptable to RMEF. For the purposes of this paragraph, "hazardous substances" means any toxic, dangerous, or hazardous waste, substance, or material under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, any so-called Superfund or Superlien law, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material;
- (viii) Seller has repaired all defects of which RMEF has notified Seller in writing;
- (ix) All of the representations and warranties of Seller set forth in this Agreement are true, correct, or complied with on the date of closing;
- (x) Seller has performed all of the obligations and complied with all of the requirements which this Agreement requires the Seller to perform or comply with before the date of closing;
- (xi) No action shall have been brought, and remain undismissed, seeking to enjoin or alleging the illegality or invalidity of the transactions contemplated by this Agreement; and
- (xii) Seller has delivered to RMEF documents which demonstrate to the

satisfaction of the title company and the Closing Agent that the Seller has the power and authority to execute the closing documents and to transfer the Property to RMEF.

(b) If any of the conditions set forth above are not met, RMEF will have the right to terminate this Agreement. If RMEF elects to terminate this Agreement subject to this Section, RMEF may recover the Option Price.

Section 15. Conditions to Seller's Performance. Seller will not be required to convey title to the Property to RMEF, or to perform the other obligations set forth in this Agreement, unless the following conditions have been met:

- (a) RMEF has exercised the Option provided by this Agreement;
- (b) RMEF has tendered to Seller the purchase price of the Property due on or before the date of closing;
- (c) RMEF has delivered all of the documents that this Agreement requires RMEF to execute and deliver on the date of closing in form acceptable to Seller; and
- (d) All of the representations of RMEF set forth in this Agreement are true, correct, or complied with on the date of closing.

Section 16. Documents to be Delivered at Closing.

(a) If RMEF exercises the Option granted by this Agreement, on the date of closing, Seller will execute and deliver to RMEF, in form acceptable to RMEF, a general warranty deed transferring a fee simple interest in the Property to RMEF (or to the Take-Out Partner in the case of a direct deed), water rights transfer documents sufficient to document the transfer of all water rights appurtenant to the Property, and all documents required to remove or cure the defects in title which Seller has agreed to remove or cure and such additional documents as may reasonably be required by RMEF to consummate the sale of the Property to RMEF.

(b) If RMEF exercises the option granted by this Agreement, on the date of closing, RMEF will execute and deliver to the Seller such documents as may reasonably be required by RMEF to consummate the sale of the Property to RMEF

Section 17. Seller Not a Foreign Person. Seller is not a foreign person as defined in Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code, in that Seller is a citizen or resident of the United States, a partnership or corporation created or organized in the United States or under the law of the United States or of any state, or an estate or trust (but not an estate or trust the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includable in gross income under Subtitle A of the Internal Revenue Code). At closing, Seller will deliver to RMEF an affidavit of non-foreign status in the form required by the Internal Revenue Code Regulations and acceptable to RMEF. If Seller does not deliver such an affidavit at the closing, RMEF may deduct and withhold ten percent (10%) of the purchase price and report and pay over

this amount to the Internal Revenue Service, as required by Section 1445 of the Internal Revenue Code and the regulations promulgated under that section.

Section 18. Representations of Seller. Seller represents as follows:

(a) No other person has any right or option to acquire the Property, or any portion of the Property, from Seller;

(b) No easements, rights-of-way, reservations, restrictions, encumbrances, or liens exist which affect the Property but which are not of record, whether acquired by prescription or otherwise, other than those described in this Agreement;

(c) No other person is in possession of the Property or claims any rights in the Property which are adverse to the rights of Seller;

(d) Seller has legal access to all portions of the Property, and that this access is adequate for the present use of the Property;

(e) Seller knows of no disputes or disagreements with any person with regard to access to or over the Property;

(f) Seller knows of no disputes or disagreements with any person with regard to the location of any fence or other monumentation of boundary to the Property, or with regard to previous surveys of the Property;

(g) The fences on the perimeter of the Property are on or within the boundaries of the Property, and that no fence or other structure encroaches on property owned by adjacent landowners;

(h) Seller is not a party to and is not aware of any Conservation Reserve Program contracts, cost-sharing contracts, or other agreements with the United States Agricultural Stabilization and Conservation Service or any other government agency, which agreements affect Seller's use or management of the Property, and Seller will indemnify RMEF and hold RMEF harmless against all obligations of any such contracts;

(i) There are no underground storage tanks on the Property, or any evidence of environmental contamination by any dangerous, hazardous or toxic materials as defined by any government agency;

(j) Seller has never manufactured, processed, treated, handled, stored, installed, released, or disposed of any "hazardous substances" (as defined in this paragraph) on or under the Property, that to the best of the Seller's knowledge no hazardous substances have ever been manufactured, processed, treated, handled, stored, installed, released, or disposed of on or under the Property, and to the best of Seller's knowledge no investigation, administrative proceeding, litigation, or other action has been proposed, threatened, or brought alleging the presence, handling, storage, transportation, release, or disposal of hazardous substances on or under the Property. For the purposes of this paragraph, "hazardous substances" means any toxic,

dangerous, or hazardous waste, substance, or material under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, any so-called Superfund or Superlien law, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material;

(k) The Property is not in violation of the building, health, safety, environmental, fire, land use, zoning, or other such regulations, ordinances, or statutes of any governmental entities having jurisdiction over the Property, or of any restrictive covenants relating to the Property, and no private person or government entity has claimed that Seller may be in violation of such requirements;

(l) Seller has no information or knowledge of any change contemplated in any applicable laws, ordinances, or restrictions, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions on the Property or adjacent property, which could have a material adverse effect upon the Property or its value. There is no significant adverse fact or condition relating to the Property which has not been specifically disclosed in writing by Seller to RMEF, and Seller knows of no fact or condition of any kind or character whatsoever which adversely affects RMEF's intended use of the Property;

(m) Seller knows of no materially misleading, inaccurate, or incomplete information in the documents, lists, and reports furnished or to be furnished to RMEF under this Agreement;

(n) That there is no litigation, suit, condemnation action, foreclosure action, trustees sale proceeding, forfeiture proceeding, special assessment proceeding, zoning proceeding, land use regulation proceeding, or other proceeding which is pending or, to the best of Seller's knowledge, threatened, relating in any manner to the Property or this Agreement;

(o) There are no bankruptcy, insolvency, receivership, or other similar proceedings by or against Seller which are pending in any federal or state court;

(p) No portion of the Property is within any area determined by the Department of Housing and Urban Development to be flood prone under the Federal Flood Disaster Protection Act of 1973 (16 USC Section 1001 et seq.);

(q) The Property has no material physical or mechanical defects, including, without limitation, defects involving the plumbing, heating, air conditioning and electrical systems, and to the best of Seller's knowledge all such systems are in good operating condition and repair and in compliance with all applicable governmental laws or regulations;

(r) That the water rights appurtenant to the Property are sufficient for the conduct of all domestic and stock watering activities which have traditionally been carried out on the Property;

(s) That all water, sewer, gas, electric, telephone, drainage facilities, and other utilities required by law or for the normal use and operation of the Property are installed to the property lines of the Property, are operating and are connected into public utility systems, have valid

permits and no unpaid installation or connection charges, and are adequate to service the Property and to permit full compliance with all requirements of law and normal usage of the Property by the tenants thereof and their licensees and invitees;

(t) Seller has obtained all licenses, permits, authorizations, easements, and rights-of-way required from governmental authorities having jurisdiction over the Property or from private parties for the normal use and operation of the Property and to insure vehicular and pedestrian ingress to and egress from the Property;

(u) No tenant is entitled to any rent rebates, rent concessions, rent credits, rent offsets, or free rent, and Seller has not entered into any agreement or understanding which would reduce the amounts payable under the Leases;

(v) No commitments have been made to any tenant for repairs and improvements other than a general agreement for normal maintenance and repair of the Property;

(w) None of the rents due under any of the Leases have been assigned, hypothecated, or encumbered;

(x) Seller has received no notice and has no knowledge of any pending or proposed improvements, liens, or special assessments to be made by any governmental authority with respect to the Property;

(y) Seller has paid all taxes, assessments, charges, and expenses which are now due and payable and which could, if unpaid, become a lien on the Property, no person or government entity has asserted that Seller has failed to pay any such taxes, assessments, charges, and expenses, or that Seller has failed to file or has improperly filed any tax return or report required with respect to any such taxes, assessments, charges, and expenses, and no action or proceeding is now pending against the Seller for the assessment or collection of any such taxes, assessments, charges, or expenses;

(z) No leases affecting the Property which will be in effect on the date of closing;

(aa) Seller has not severed, leased, conveyed, or otherwise transferred any interest in the mineral rights to the Property, including any rights to sand, gravel, and rocks, during its ownership of the Property;

(bb) Seller has the right, power, and authority to sell the Property to RMEF under the terms set forth in this Agreement, and to carry out Seller's obligations under this Agreement; and

(cc) That the Seller knows of no facts, nor has the Seller failed to disclose any fact, which would prevent RMEF from using and operating the Property after the closing in the normal manner in which similar properties in the area are operated.

Section 19. Representations of RMEF. RMEF represents that RMEF is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of

Montana, and this Agreement and all documents executed by RMEF which are to be delivered to Seller at closing are or on the date of closing will be duly authorized, executed, and delivered by RMEF, and are or on the date of closing will be legal, valid, and binding obligations of RMEF, and do not and on the date of closing will not violate any provisions of any agreement or judicial order to which RMEF is a party or to which it is subject.

Section 20. Hazardous Wastes. If RMEF exercises the option granted by this Agreement, Seller agrees to defend and indemnify RMEF and hold RMEF harmless against any and all costs, expenses, liabilities, losses, damages, or injuries, including but not limited to attorney's fees, which arise from or relate to any underground storage tanks, or environmental contamination by any hazardous or toxic materials as defined by any government agency, which is present on the Property on the date of closing.

Section 21. 1031 Exchange. If Seller wishes to structure the sale of the Property as a tax-deferred exchange under Section 1031 of the Internal Revenue Code, RMEF agrees to cooperate in such an exchange, provided that RMEF will incur no additional liability, cost, or expense as a result of such cooperation.

Section 22. Remedies.

(a) If Seller fails, refuses, or is unable to furnish good title to the Property as required by this Agreement or to perform Seller's other obligations under this Agreement, RMEF may either (i) rescind this Agreement and recover all deposits and other amounts paid by RMEF under this Agreement, and all expenses paid or incurred by RMEF, or (ii) pursue any remedy available to RMEF in law or equity, including, but not limited to, an action to compel specific performance, or an action for damages for breach, separately or alternatively.

(b) If RMEF fails, refuses, or is unable to comply with the conditions of this Agreement or to perform RMEF's obligations under this Agreement, Seller may either (i) hold and retain the option payment and any additional funds paid or deposited by RMEF as liquidated damages and not as a penalty for breach of this Agreement, and rescind and terminate this Agreement, whereupon all rights and obligations under this Agreement will cease, or (ii) pursue any remedy available to Seller in law or equity, including, but not limited to, an action for specific performance or an action for damages for breach, separately or alternatively, and retain all moneys paid or deposited by RMEF pending the resolution of such action.

Section 23. Maintenance of Property by Seller. Seller will maintain, repair, manage and operate the Property in accordance with Seller's prior practices until possession is transferred to RMEF, will make all good faith efforts to keep the Property in its condition on the date of execution of this Agreement, with the exception of normal wear and tear, and will not engage in any logging, mining, road building, sod busting, cultivation or other activity which alters the character or value of the Property.

Section 24. Inspection. RMEF and RMEF's representatives and Take-Out Partner are authorized to enter the Property at any reasonable time or times before the date of closing on twenty-four (24) hours' prior notice to conduct any and all inspections, examinations, and tests of the Property which RMEF may wish to perform.

Section 25. Transfer of Possession. If RMEF exercises the option granted by this Agreement, Seller will transfer possession of the Property to RMEF on the date of closing.

Section 26. RMEF's Consent to New Contracts Affecting the Property. Seller will not, after the effective date of this Agreement, enter into any lease, amendment of lease, contract or agreement, or permit any tenant of the Property to enter into any sublease, assignment of lease, contract or agreement pertaining to the Property, or modify any lease, contract or agreement pertaining to the Property, or waive any rights of the Seller under such a document, without obtaining RMEF's prior written consent.

Section 27. Destruction or Taking of Property Prior to Closing. Risk of loss or damage to the Property or any part of it by fire, burglary, vandalism or other casualty between the effective date of this Agreement and the date of closing is retained by Seller. If prior to the date of closing all or a material portion of the Property is damaged, destroyed or taken by right of eminent domain, RMEF may, by written notice to Seller, elect to cancel this Agreement. If RMEF elects to cancel this Agreement, both parties will be relieved of and released from any further liability or obligation under this Agreement, and Seller will repay to RMEF all amounts paid or deposited pursuant to this Agreement. If RMEF does not cancel this Agreement, the agreement will remain in full force and effect, and Seller will assign to RMEF all right to recovery on account of such damage, destruction or taking.

Section 28. Time of Essence. Time will be of the essence in complying with the terms and conditions of this Agreement.

Section 29. Notice. Any notice given pursuant to this Agreement must be in writing and must be delivered: (i) personally, (ii) by electronic transmission that has documented proof of delivery, (iii) by depositing it in the United States mail, certified mail, or (iv) by other nationally recognized private delivery service (such as UPS or FedEx) with documented proof of delivery. Notice will be deemed complete upon confirmed delivery to the noticed party. The parties to this Agreement may hereafter designate in writing a different address or person to whom such notices must be given.

If to Seller: Dan Barrett P.O. Box 609 Augusta, MT 59410	If to RMEF: Lands Program Rocky Mountain Elk Foundation 5705 Grant Creek Road Missoula, MT 59808 lverhaeghe@rmeff.org
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Section 30. Attorney's Fees. If either of the parties to this Agreement institute legal proceedings to enforce the terms of this Agreement, the unsuccessful party to such proceedings will pay the reasonable attorney's fees and legal costs of both parties, as approved by the court having jurisdiction over such proceedings.

Section 31. Agreement Survives Transfer of Title. The warranties, representations, covenants, and agreements made in this Agreement will survive the closing and the transfer of title to the Property to RMEF.

Section 32. Successors. This Agreement is binding upon and will inure to the benefit of the parties, their heirs, executors, representatives, successors and assigns.

Section 33. Assignment of Agreement. RMEF does not have the right to assign any right or interest under this Agreement without the prior written consent of Seller. Seller will not unreasonably refuse to consent to an assignment.

Section 34. Modification of Agreement. No modification of this Agreement will be valid or binding unless the modification is in writing, signed by all parties to this Agreement.

Section 35. Entire Agreement. This instrument constitutes the entire agreement between the parties. No party will be bound by any terms, conditions, understandings, warranties, statements or representations, oral or written, not contained in this Agreement. Each party hereby acknowledges that the execution of this Agreement was not induced or motivated by any promise or representation made by any other party, other than the promises and representations expressly set forth in this Agreement. All previous negotiations, statements and preliminary instruments by the parties or their representatives are merged into this Agreement, except as expressly provided herein.

Section 36. Severability of Invalid Provisions. If any provision of this Agreement is declared or becomes invalid, unenforceable or contrary to law, then the provision will be severed from the remaining provisions of this Agreement and will not affect the validity or enforceability of the other provisions of this Agreement.

Section 37. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Montana.

Section 38. Execution in Counterparts and by Facsimile. The parties agree that this agreement may be executed in counterparts and with signatures delivered by electronic means. Such execution will, whether by original electronic signatures, bind the parties, notwithstanding that all parties may not have signed the same copy of this agreement. Any party who transmits a signature by electronic means will provide the other party with copies of this Agreement bearing the original signatures within ten (10) calendar days.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

SELLER:
By:  Daniel E. Barrett
Rocky Mountain Elk Foundation, Inc.
By:  Nancy J. Holland, Chief Executive Officer

Dated 3-21, 2018

Dated 3-21, 2018

Exhibit A
Legal Description

Township 18 North, Range 7 West, M.P.M., Lewis and Clark County, Montana
Section 33: (ALL)

EXCEPTING THEREFROM the following tracts of land:

- 1) Tract "A" as shown on the Certificate of Survey filed under Doc. No. 3058652.
- 2) A tract of land in the N1/2 as shown on the Certificate of Survey filed under Doc. No. 332527.
- 3) A tract of land in the W1/2 as shown on the Certificate of Survey filed under Doc. No. 415674-E.
- 4) Tract "B" as shown on the Certificate of Survey filed under Doc. No. 354748.
- 5) Tract "B-1" as shown on the Certificate of Survey filed under Doc. No. 3283745.
- 6) Tract "A1-A" as shown on the Certificate of Survey filed under Doc. No. 3283745.
- 7) Tract "B1-A" as shown on the Certificate of Survey filed under Doc. No. 3058551.
- 8) Tract "C1-A" as shown on the Certificate of Survey filed under Doc. No. 3058551.
- 9) Tract "A1" as shown on the Certificate of Survey filed under Doc. No. 614219-B.

PARCEL I:

A tract of land in the northwest quarter (NW1/4) of Section Thirty four (Sec. 34), Township Eighteen North (T. 18 N.), Range Seven West (R. 7 W.) of the Principal Meridian, Lewis and Clark County, Montana, more particularly described as follows: Commencing at a survey monument which marks the west one-sixteenth corner on the north section line of Section 34, T. 18 N., R. 7 W., P.M.; thence S. 00°06'23" E., 1,095.58 feet to a survey cap, the true point of beginning; thence N. 85°39'00" E., 290.00 feet to the centerline of Falls Creek; thence upstream (southerly) along the centerline of Falls Creek to the intersection of the east-west centerline of Section 34; thence N. 89°58'14" W., 436.00 feet along the east-west centerline of Section 34 to the center-west 1/16 corner which is marked by a survey cap; thence N. 00°06'23" W., 1,552.34 feet along the 1/16 line to the point of beginning. (Ref: Book 270 Deeds, page 254.

PARCEL II:

Township 18 North, Range 7 West, M.P.M., Lewis and Clark County, Montana
Section 34: N1/2SW1/4 and Government Lots 1 and 2.
EXCEPTING THEREFROM all that land lying east of Falls Creek. (Ref: Book 270
Deeds, page 331)

PARCEL III:

Township 18 North, Range 7 West, M.P.M., Lewis and Clark County, Montana
Section 34: W1/2NW1/4.
EXCEPTING THEREFROM the following tracts of land:

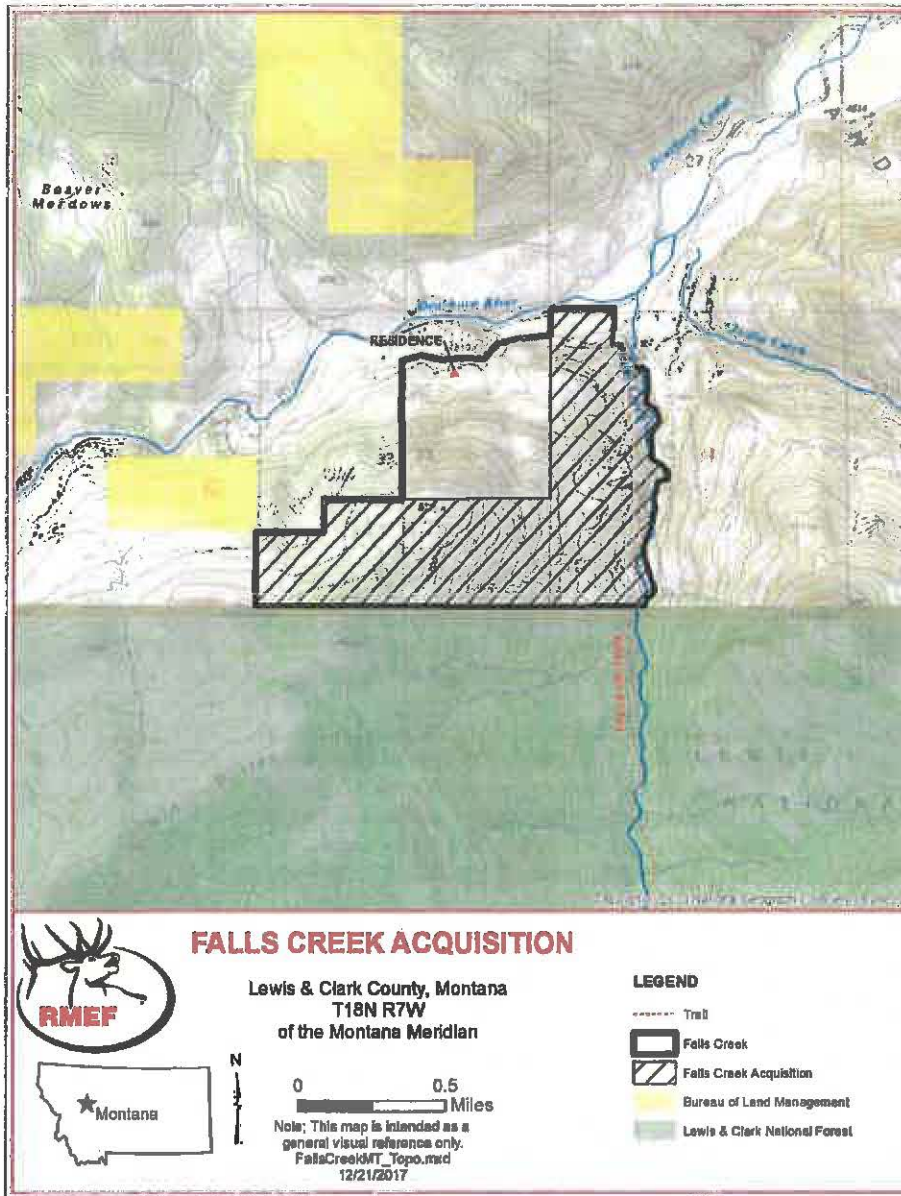
- A. A tract of land in the northwest quarter (NW1/4) of the northwest quarter (NW1/4) of Section Thirty four (Sec. 34), Township 18 North (T. 18 N.), Range Seven West (R. 7 W.) of the Principal Meridian, Lewis and Clark County, Montana, more particularly described as follows: Commencing at a survey monument which marks the west one-sixteenth corner on the north section line of Section 34, T. 18 N., R. 7 W., P.M.; thence S. 7°47'48" W., 330.09 feet to an iron pin in the center of the County Road, corner number one (1), the true point of beginning; thence S. 0°07'15" W., 327.63 feet to an iron pin, corner number two (2); thence S. 89°55' W., 128.31 feet to a survey cap, corner number three (3); thence N. 0°07'50" E., 294.76 feet to an iron pin in the center of the County road, corner number four (4); thence N. 75°33'20" E. along the center of the County road, 132.52 feet to corner number one (1), the point of beginning and containing 0.92 acres, more or less. Deed recorded March 24, 1972 at Book 267, page 420.
- B. A tract of land in the NW1/4NW1/4 of Section 34, T. 18 N., R. 7 W. of the Principal Meridian, Lewis and Clark County, Montana, more particularly described as follows: Commencing at a survey monument which marks the west 1/16 corner on the north section line of Section 34, T. 18 N., R. 7 W., P.M.; thence S. 00°06'23" E., 297.32 feet to an iron pin in the center of the County road, the northeast corner, the true point of beginning; thence S. 56°43' W. along the center of the County road, 54.16 feet to an iron pin, the northwest corner; thence S. 00°07'15" W., 401.89 feet to a survey monument, the southwest corner; thence S. 71°16' E., 49.59 feet to a survey monument, the intersection of the 1/16 line, and the southeast corner; thence N. 00°06'23" W., 447.53 feet along the 1/16 line, which is also the property boundary to the point of beginning, and containing 0.45 acres, more or less, as particularly described in the survey plat attached to the deed recorded November 16, 1972 at Book 270, page 331.
- C. A tract of land in the northwest quarter (NW1/4) of the northwest quarter (NW1/4) of Section Thirty four (Sec. 34), Township Eighteen North (T. 18 N.), Range Seven West (R. 7 W.) of the Principal Meridian, Lewis and Clark County, more particularly described as follows: Beginning at a survey monument which marks the west one-sixteenth corner of the north section line of Section 34, T. 18 N., R. 7 W., P.M.; thence from the point of beginning, S. 0°06'23" E. along the 1/16 line 297.32 feet to a corner number one (1), an iron pin and the center of the County road; thence S. 56°43' W. along the center of the County road 54.16 feet to corner number two (2), an iron pin; thence S. 75°33'20" W. along the center of the County road 91.01 feet to corner number three (3), an iron pin; thence N. 0°06'23" W., 349.73 feet to a survey monument, corner number four (4), the intersection of the north section line of Section 34; thence east along the north section line of Section 34, 133.54 feet to the one-sixteenth (1/16) corner, the point of beginning and containing 1.01 acres, more or less, as particularly described in the survey plat attached to the deed recorded June 29, 1973 at Book 273, pages 483-485.

Also excepting therefrom, approximately 160 acres located in the E1/2 of Section 33, lying south of the Dearborn Canyon Road. This parcel is identified and described in Exhibit A-

1, and Seller will survey and establish boundaries and a legal description for this parcel prior to closing. RMEF must agree to the location, description and boundaries of this parcel.

Together with all improvements, rights, privileges, easements, reversions, remainders, rents, royalties, issues, and profits which are appurtenant to or obtained from such real property, including, without limitation, all water, water rights, ditches, ditch rights, timber rights, oil, gas and other hydrocarbon rights, geothermal and hydrothermal rights, gravel rights, aggregate rights, and mineral rights appurtenant to such real property, and all right, title, and interest of the Seller in the roads and travelways adjoining or passing through such real property.

**Exhibit A-1
Map of Property**



After Recording Please Return to:
Rocky Mountain Elk Foundation
Attention: Lands Department
5705 Grant Creek Road
Missoula, Montana 59808

NOTICE OF REAL ESTATE PURCHASE OPTION

NOTICE IS HEREBY GIVEN that Daniel E. Barrett, whose address is P.O. Box 609, Augusta, Montana 59410 (the "Owner"), has entered into a Real Estate Purchase Option Agreement with the ROCKY MOUNTAIN ELK FOUNDATION, INC., a Montana non-profit corporation whose address is 5705 Grant Creek Road, Missoula, Montana 59808 (the "Optionee"), in which the Owner granted the Optionee an exclusive right to purchase all of the Owner's right, title, and interest in and to the real property located in Lewis and Clark County, Montana, more particularly described as follows (the "Property"):

Section 33: (ALL)

EXCEPTING THEREFROM the following tracts of land:

- 1) Tract "A" as shown on the Certificate of Survey filed under Doc. No. 3058652.
- 2) A tract of land in the N1/2 as shown on the Certificate of Survey filed under Doc. No. 332527.
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PARCEL II:

Notice of Real Estate Purchase Option

pg. 1

Township 18 North, Range 7 West, M.P.M., Lewis and Clark County, Montana
Section 34: N1/2SW1/4 and Government Lots 1 and 2.
EXCEPTING THEREFROM all that land lying east of Falls Creek. (Ref: Book 270
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Township 18 North, Range 7 West, M.P.M., Lewis and Clark County, Montana
Section 34: W1/2NW1/4.

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The option will expire on December 31, 2020. This document is an abstract of the Real Estate Purchase Option, prepared pursuant to and in compliance with MCA § 70-21-101. A full and complete copy of the Real Estate Purchase Option will be provided to any person upon request, without cost, by the Owner or the Optionee.

OWNER, Daniel E. Barrett

Signature: *Daniel E. Barrett*

Dated this 21 day of March, 2020

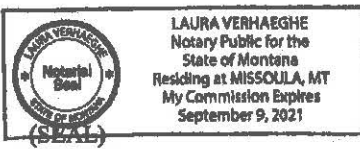
ACKNOWLEDGEMENT

STATE OF MONTANA)
) :ss
COUNTY OF MISSOULA)

This instrument was acknowledged before me on the 21st day of MARCH, 2018 by DANIEL E. BARRETT, the AN INDIVIDUAL of the _____.

Laura Verhaeghe (signature)
LAURA VERHAEGHE (printed name)

Notary Public for the state of [STATE] MONTANA
Residing at MISSOULA, MT
My commission expires: SEPT. 9, 2021



OPTIONEE, Rocky Mountain Elk Foundation, Inc.

By: *Nancy J. Holland*
Nancy J. Holland, Chief Executive Officer

Dated this 21st day of March, 2018

ACKNOWLEDGEMENT

STATE OF MONTANA)
 :SS
COUNTY OF MISSOULA)

This instrument was acknowledged before me on the 21st day of MARCH, 2018, by Nancy J. Holland, Chief Executive Officer of the Rocky Mountain Elk Foundation, Inc.

Laura Verhaeghe (signature)
LAURA VERHAEGHE (printed name)

Notary Public for the state of Montana
Residing at MISSOULA, MT
My commission expires: SEPT. 9, 2021

