

RESOLUTION 2022 - 108

A RESOLUTION TO APPROVE FUNDING FROM THE COUNTY LAND, WATER, AND WILDLIFE BOND TO PRICKLY PEAR LAND TRUST FOR THE ACQUISITION OF THE CANYON CATTLE CONSERVATION EASMENT

WHEREAS, pursuant to Resolution 2008-97, in November 2008, voters in Lewis and Clark County (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 Prickly Pear Land Trust (PPLT) on behalf of the property owner, Canyon Cattle Company; and

WHEREAS, in this project, referred to as the Canyon Cattle Company Conservation Easement, PPLT proposes to apply for \$1,950,000 of County Open Lands bond funds applied towards the acquisition of properties particularly described in Exhibit A and shown in Exhibit B.

WHEREAS, the Citizen's Advisory Committee on Open Lands (CAC) recommended approval (7-0) to the Board of County Commissioners (Board) that the PPLT Canyon Cattle Company Conservation Easement receive funding at a regularly scheduled meeting on April 5, 2022; and

WHEREAS, the Board reviewed the project information, accepted the recommendation of the CAC at a regularly scheduled public meeting on April 28, 2022, and opened a 30-day public comment period; and

WHEREAS, the Board reviewed the project information and considered public comment at a regularly scheduled public meeting on June 7, 2022, and

WHEREAS, at a CAC special meeting on November 30, 2022 the application Due Diligence materials were presented to the CAC, where after consideration voted to recommend (8-0) to the Board that the PPLT Canyon Cattle Company Conservation Easement receive funding; and

WHEREAS, the Board determined, December 6, 2022, that this project meets multiple purposes of the bond, and substantially complies with the legal requirements.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners to approve funding the Canyon Cattle Company Conservation Easement in the amount of \$1,950,000.



PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 6th Day of December, 2022.



**LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS**


Jim McCormick, Chair

Attest:


Amy Reeves, Clerk to the Board

**Attachments: Exhibit – A Property Description
Exhibit – B Property Map
Exhibit – C Conservation Easement**

EXHIBIT A
Property Description

All that certain real estate situated in Lewis and Clark County, Montana, consisting of 3,975 acres, more or less, more particularly described as follows:

NOTES:

- The legal description will be modified as agreed by the Parties to be consistent with the Title Commitment after Land Trust's review and approval of the Commitment as provided in this Agreement; in addition, the legal description will be modified to exclude the Excluded Tracts and/or to be consistent with the Survey if the Survey is filed at or prior to Closing.

Township 15 North, Range 3 West, P.M.M., Lewis and Clark County, Montana

SECTION 2: Lots 3 and 4

SECTION 3: S1/2NW1/4 and N1/2SW1/4 and SW1/4NE1/4 and NW1/4SE1/4 EXCEPT the south 100 feet of said NW1/4SE1/4, also Lots 1, 2, 3 and 4 and that portion of Lots 5 and 6 lying West of the right of way of the interstate highway and further EXCEPTING from said Lot 6 that portion described as follows: Beginning at the Southwest corner of said Lot 6, thence Northerly along the West boundary line of said Lot 6, 100 feet to a point on the West boundary line of Lot 6, thence Easterly along a line parallel to the South boundary line of Lot 6 to a point in said Lot 6, 16 feet West of the West side line of the right of way of the Great Northern Railway Company, thence Southerly along a line parallel to and 16 feet West of said West sideline of said right of way to a point on the South boundary line of said Lot 6, which said point is 16 feet West of there said West side line of said right of way intersects said South boundary line of said Lot 6, thence Westerly along the South boundary line of Lot 6 to the Southwest corner of said Lot 6, and the place of beginning.

EXCEPTING THEREFROM Lot 1 of Juedeman Minor Subdivision, as shown on Plat filed under Document Number 3046187, records of Lewis and Clark County, Montana.

Township 16 North, Range 3 West, P.M.M., Lewis and Clark County, Montana

SECTION 13: THE FOLLOWING TRACTS

A tract of land located in the South one-half (S1/2) of SECTION 13, T16N, R3W, P.M.M., Lewis and Clark County, Montana, and more particularly described as follows:

Beginning at the Southeast corner of said Section 13, thence N87° 29' 15" W. along the Section line a distance of 2995.74 feet to the true point of beginning; thence North 675.85 feet; thence S89° 59' 10"E, 882.32 feet; thence S00° 18' 20"W, 654.00 feet; thence S89°

47' 50"W, 878.75 feet to the true point of beginning, as shown on Certificate of Survey filed under Document Number 246106, records of Lewis and Clark County, Montana.
(Deed ref: 303-352)

AND

A tract of land located in South One-Half of SECTION 13, T.16N., R.3W., P.M.M. Lewis and Clark County, Montana and more particularly described as follows:

Beginning at the Southwest corner of said Section 13, thence S87° 29' 15"E. along the Southerly boundary of said Section 13 a distance of 1631.77 feet to an iron pin, which point being the true point of beginning; thence North, 180.00 feet to an iron pin; thence West, 422.98 feet to an iron pin; thence North, 453.15 feet to an iron pin; thence S.89° 49' 25"E., 1060.41 feet to an iron pin; thence South 657.85 feet to an iron pin; thence N.87° 29' 15"W. along the Southerly boundary of said Section 13, 638.07 feet to the point of beginning, as shown on Certificate of Survey filed under Document Number 246092, records of Lewis and Clark County, Montana.
(Deed ref: 303-352)

AND

A tract of land located in the South one-half (S1/2) of SECTION 13, T16N, R3W, P.M.M., Lewis and Clark County, Montana and more particularly described as follows:

Beginning at the Southeast corner of said Section 13, thence N69° 31' 30"W a distance of 2252.48 feet to the true point of beginning; thence N69° 31' 30"W, 882.32 feet; thence North 464.18 feet; thence East 882.67 feet; thence South 464.68 feet to the true pint of beginning, as shown on Certificate of Survey filed under Document Number 303382, records of Lewis and Clark County, Montana.

SECTION 15: ALL

SECTION 22: ALL

SECTION 23: ALL

SECTION 24: Lots 1, 2 and 5, NE1/4NE1/4 and W1/2NE1/4 and S1/2NW1/4 and N1/2NW1/4 and N1/2SW1/4 EXCEPTING therefrom all that land of the NE1/4NE1/4 lying northeasterly of the center of the Dearborn River, as shown on Certificate of Survey filed under Document Number 3140154, and EXCEPTING therefrom a tract of land conveyed to the State of Montana in Deed recorded in Book 239 of Deeds, Page 479, records of Lewis and Clark County, Montana.

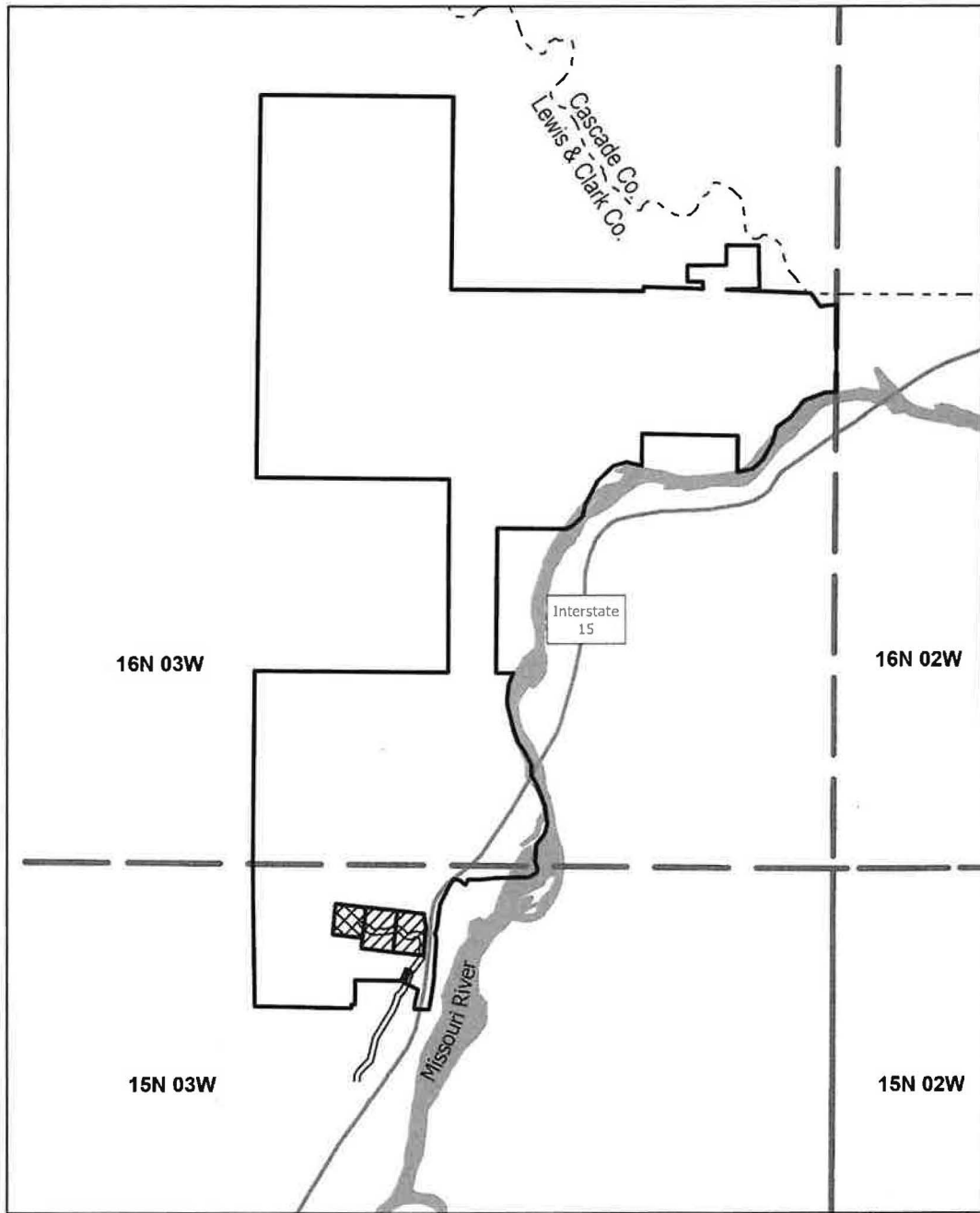
SECTION 26: Lot 5, N1/2NW1/4 and SW1/4NW1/4 and W1/2SW1/4.

SECTION 34: ALL

SECTION 35: Lots 2, 3, 6 and 7 and SW1/4NW1/4 and W1/2SW1/4.

All of the foregoing described Property is conveyed SUBJECT TO the following: (i) all third party rights in the Property of record, or encroachments or other third party rights visible from examination of the Property at the time of conveyance of this Easement and not subordinated to this Easement; (ii) all reservations, exceptions, covenants, conditions, and restrictions of record and in patents from the United States or the State of Montana and acts authorizing the same; (iii) county road rights-of-way, if any, not recorded and indexed as a conveyance in the office of the Clerk and Recorder of Lewis and Clark County, Montana, pursuant to Mont. Code Ann. Title 70, Chapter 21; (iv) title to that portion of the Property, if any, lying below the mean high water mark of abutting navigable rivers; and (v) [other exceptions to title shown on the title commitment that Land Trust concludes must be referenced here].

EXHIBIT B –MAP



-  The Property
-  Equipment Envelope
-  Building Envelopes 1 & 2
-  PLSS
-  Access Road
-  County

Exhibit B
Map of the Property

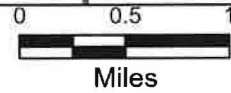


EXHIBIT C – EASMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Prickly Pear Land Trust
PO Box 892
Helena, MT 59624

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the “Easement”) is made this _____ day of _____, 2022 by and between CANYON CATTLE CO., a Montana corporation, whose address is 3155 Canyon View Drive, Wolf Creek, MT 59648, and its successors and assigns (the “Landowner”); and PRICKLY PEAR LAND TRUST, a Montana non-profit corporation, whose principal address is 40 W. Lawrence Street, Suite A, Helena, Montana 59601 (the “Land Trust”).

Exhibits to this Deed of Conservation Easement include the following:

- Exhibit A - Legal Description of the Property
- Exhibit B - Map of the Property
- Exhibit C - Map of the Building Envelopes
- Exhibit D –Map of Areas of Importance
- Exhibit E - Acknowledgment of Baseline Documentation Report

RECITALS:

A. Landowner is the owner of certain real property in Lewis and Clark County, Montana, consisting of 3,975 acres, more or less, more particularly described and shown in Exhibits A and B attached hereto and incorporated herein by this reference (the “Property”);

B. The Property currently remains in a relatively natural state, and consists of significant “open-space land” as defined in Mont. Code Ann. § 76-6-104(3) (2021), and provides significant relatively natural habitat for native plants and wildlife, and will yield a significant public benefit as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(iii);

C. This Easement will protect the Conservation Values defined in Section 1.B below, and therefore this Easement meets the requirements of Section 170(h)(4)(A) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder;

D. Protection of the Property will contribute to the ecological integrity of the Upper Missouri River Corridor and the Limestone Hills and conserve significant relatively natural habitat for wildlife, fish, and plants [cite to a delineated conservation policy];

E. The Lewis and Clark County Commissioners recognized in the Lewis and Clark County Growth Plan the importance of “[m]aintaining . . . open spaces and rural lifestyle” as among their issues of concern;

F. The Lewis and Clark County Commissioners have expressly recognized in Lewis and Clark County Resolution No. 2008-97, recording # 3153419, passed and adopted August 12, 2008, and in the Lewis and Clark County Growth Policy, adopted in 2004 and updated in 2016 per Resolution No. 2016-13, the importance of preserving open-space lands, including working lands and land for protecting water and wildlife, in Lewis and Clark County, Montana; and in furtherance of such Resolution and Growth Policy have specifically committed funds for the purchase of all or a portion of this Easement; and

G. The Montana Department of Fish, Wildlife and Parks’ Comprehensive Fish and Wildlife Conservation Strategy (2005) includes the Property as part of the Central Montana Broad Valleys, an intermountain/grassland ecotype which is identified as an ecotype focus area of greatest conservation need, and this Easement complements said Strategy;

H. All of the Conservation Values defined in Section 1.B of this Easement are of great importance to Landowner and to the people of the State of Montana, and are worthy of preservation in perpetuity;

I. Landowner, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its open space character; its significant relatively natural features; and the Conservation Values defined in Section 1.B of this Easement;

J. Landowner desires to engage in long-term carbon sequestration in the soil through appropriate agricultural practices;

K. Landowner desires and intends, fully, freely, and voluntarily, to grant such rights to the Land Trust;

L. The State of Montana has recognized the importance of private efforts toward the preservation of natural systems in the state by enactment of Mont. Code Ann. § 76-6-101, et seq. and Mont. Code Ann. § 76-6-201, et seq.;

M. The Land Trust is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a “holder” under the terms of Mont. Code Ann. § 76-6-104(5) and Mont. Code Ann. § 76-6-204, and is a “qualified organization” within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the “IRS Code”), qualified to acquire and hold conservation

easements and meets the requirements of the IRS Code as a Section 501(c)(3) exempt organization.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, pursuant to Mont. Code Ann. § 76-6-101, et seq., Landowner hereby gives, grants, and conveys to Land Trust, its successors and assigns, with warranties of title, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, on, over, and across the Property (the “Easement”).

1. Conservation Values; Purposes of this Easement.

A. The purposes of this Easement are to preserve, protect, enhance upon mutual agreement, and in the event of their degradation or destruction, to restore, in perpetuity, the Conservation Values defined in Section 1.B of this Easement.

B. The Conservation Values of this Easement (collectively, the “Conservation Values”) are as follows:

i. Relatively natural habitat and ecosystems for fish, wildlife, and plants, as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(iii), including but not limited to red fox, black bear, mountain lion, deer, elk, moose, pronghorn antelope, grassland and migratory birds and waterfowl, and native trout;

ii. Open space lands, which maintain the rural, agricultural, and scenic qualities of the area, and the significant relatively natural features and values of the Property, as encouraged and supported by the clearly delineated federal, state, and local policies described in the recitals above; and

iii. Scenic views of historic Montana landscapes, working agricultural lands, the Dearborn Confluence and Wolf Creek areas that are enjoyed by members of the general public traveling on Interstate 15 and Sevenmile Road, visiting the town of Craig, and recreating on the Missouri River.

In achieving these purposes, it is the intent of the Easement to ensure the continuation of ranching, agricultural, residential, and other uses of the Property as may be conducted consistent with the Conservation Values protected herein.

C. Any and all rights or interests of the Landowner not specifically conveyed to the Land Trust or specifically prohibited by the Easement are reserved to the Landowner.

2. Baseline Documentation Report. A collection of baseline data on the Property and its resources has been prepared and the data and explanatory text are presented in the

“Canyon Cattle Company Baseline Documentation Report”, dated December 1st, 2022 (the “Report”). A copy of the Report is on file with both Landowner and Land Trust and by this reference made a part hereof. The parties acknowledge that the Report is intended to establish the condition of the Property subject to the Easement as of the date written above and that both Landowner and Land Trust have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit D, that the Report accurately represents the condition of the Property at the time of conveyance of this Easement.

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

3. Rights of the Land Trust. The rights conveyed from the Landowner to the Land Trust by the Easement are the following:

A. To identify, to preserve and protect in perpetuity, and in the event of their degradation or destruction to restore, the Conservation Values.

B. To enter upon the Property to monitor and enforce the rights herein granted, to study and make scientific observations of its ecosystems, and to determine that Landowner’s activities are in compliance with the terms of the Easement, all upon prior notice to Landowner and in a manner that does not unreasonably disturb the use of the Property by Landowner consistent with the Easement. Land Trust shall also have a right of immediate entry onto the Property if, in Land Trust’s sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the Conservation Values. Land Trust will maintain liability insurance for damage or losses that occur pursuant to Land Trust’s exercise of the rights provided in this Section 3, and Land Trust will, upon Landowner’s request, share evidence of such insurance with Landowner. Land Trust will, upon Landowner’s request, name Landowner as Additional Insured on such insurance policy.

C. To enjoin and prevent any activity on or any use of the Property that is inconsistent with the Easement or that has a material adverse effect on the Conservation Values, and to enforce the restoration of such areas or features of the Property as may be damaged by such activities.

D. Upon prior notice to Landowner, Land Trust shall have the right, during visits to the Property pursuant to this Section 3, to place and replace small markers to identify boundaries, corners, and other reference points on the Property. Landowner shall not remove such markers without Land Trust’s prior approval as provided in Section 6 below.

4. Consistent Uses of the Property. The following uses and practices by Landowner, though not an exhaustive recital of consistent uses and practices, are consistent with the

Easement. Certain of these consistent uses and practices are identified as being subject to the requirement that Landowner must obtain the prior approval of the Land Trust before undertaking such uses and practices; procedures for prior approval are provided in Section 6 below. The remainder of these consistent uses shall not be precluded, prevented, or limited by this Easement, as long as they are consistent with the specific and general terms and purposes of this Easement.

A. **Ranching Activities.** To continue ongoing ranching activities on the Property, and to carry on new ranching activities, including but not limited to the following activities: grazing, pasturing, and managing livestock; and marketing and selling livestock and livestock products (collectively, the “Ranching Activities”). All such Ranching Activities are subject to the restrictions included in Section 5 of this Easement, and are permitted provided that the Ranching Activities do not substantially adversely affect the Conservation Values.

B. **Construction within the Building Envelopes.** To construct, maintain, repair, remodel, and use, and, in the event of their removal or destruction, to replace the following structures within the two (2) designated “Building Envelopes,” whose general locations are depicted in Exhibit C:

i. The term “Residential Dwelling Unit” refers to a structure, whether currently existing or to be constructed, with sleeping accommodations and/or kitchen facilities that is provided, used, constructed, or converted for habitation or occupation by one or more people, including but not limited to residences, guest houses, employee houses, barndominiums or other apartments that are a part of associated agricultural structures, or cabins.

ii. Residential Dwelling Units are permitted within the Building Envelopes, as follows: No more than a total of three (3) Residential Dwelling Unit in each Building Envelope.

iii. Non-residential outbuildings that are used in association with Residential Dwelling Units are permitted within the Building Envelopes, including but not limited to garages, workshops, sheds, and recreational structures. All such associated outbuildings must be located within the Building Envelopes.

All Residential Dwelling Units must conform to applicable federal, state or local laws, or regulations, and Landowner shall be solely responsible for securing any required governmental approval or permits.

C. **Construction of structures outside of the Building Envelopes.** Outside of the Building Envelopes, Landowner may construct new non-residential agricultural buildings and structures, such as calving sheds, hay sheds, storage sheds, stables, and corrals, which are necessary for the operation of the Property as a working agricultural property, provided that the construction of such non-residential agricultural structures

does not substantially adversely affect the Conservation Values. Notwithstanding the foregoing, any structure located within those portions of the Property labeled “Sensitive Areas” on Exhibit D attached hereto (the “Sensitive Areas”), and/or any structure outside of the Building Envelopes exceeding 5,000 square feet in footprint may only be constructed on the Property with the prior approval of the Land Trust.

D. **Existing structures.** Use, maintenance, and repair, of all existing and permitted buildings and structures identified in the Baseline Documentation Report, and in the event of their destruction, the right to reconstruct them on the same site with buildings of equal or smaller size; including the “Caldwell Homestead,” which may be brought back to its original building sizes, shown on Exhibit D. The Landowner may restore and/or repair the Caldwell Homestead, provided that such restoration does not substantially adversely affect the Conservation Values, but may not use it as a Residential Dwelling Unit. Use of existing structures other than the Caldwell Homestead for habitation or occupation by one or more people, if outside of the Building Envelopes, is prohibited.

E. **Roads.** Maintenance, repair, improvement, use, and removal of existing roads identified in the Baseline Documentation Report, and construction of new roads as follows:

i. Construction of new road segments or driveways from existing roads identified in the Baseline Documentation Report to provide ingress and egress to the Building Envelopes is permitted provided that such road segments or driveways do not cross any of the Sensitive Areas;

ii. Except as provided in Section 4.Ei. above, any construction of new roads on the Property outside the Building Envelopes is subject to prior approval by Land Trust;

iii. All roadways and driveways on the Property shall be of unimproved dirt or gravel surfaces and shall not be paved, except as provided in this subsection 4.E.iii. Landowner may improve or pave roads within the Building Envelopes, and may improve or pave the existing access road from the edge of the Property leading into the Building Envelope, as shown on Exhibit C, provided that such improved or paved roads do not substantially adversely affect the Conservation Values. In addition, Landowner may repair or replace existing culverts, or add new culverts to existing roads.

iv. In any event, no construction of any new roads as provided in this Section 4.E shall be permitted if it substantially adversely affects the Conservation Values.

Landowner also reserves the right to grant right-of-way easements: (i) to appropriate governmental entities for the improvement and/or expansion of public roads

bordering and/or traversing the Property, provided the governmental entity seeking the right-of-way easement documents the public necessity of such easements in accordance with the provisions of Title 70, Chapter 30, Mont. Code Ann.; and (ii) to neighbors over existing or permitted roads on the Property.

F. **Fences.** Maintenance, repair, replacement, and removal of existing fencing identified in the Baseline Documentation Report, and construction of new fences, provided that (i) construction of such new fences does not substantially adversely affect the Conservation Values, and (ii) any new and/or replacement fences shall permit the reasonable passage of wildlife, including but not limited to small game, deer, elk, pronghorn antelope, bear, and non-game wildlife. Notwithstanding the foregoing, Landowner reserves the right to construct fences impassable to wildlife around or within the Building Envelopes and around residential yard areas, gardens, haystacks, newly-seeded areas, and temporary vegetative restoration areas.

G. **Agricultural Chemicals.** Use and storage for use on the Property (or on adjacent properties) of agricultural chemicals, including fertilizers, pesticides, herbicides, insecticides and rodenticides, and petroleum products such as oil and gas in compliance with applicable law as may be necessary to carry out agricultural and ranching activities. The use and storage of such agents shall be conducted in such a manner as to minimize adverse effects upon the Conservation Values and the natural ecosystem.

H. **Agricultural Crops.** Raising, harvesting, and marketing of hay and other crops, including plowing, planting of native and non-native plant species, creating and using natural compost piles, and irrigating and harvesting, on those portions of the Property labeled "Crop Cultivation Areas" on Exhibit attached hereto. Within those portions of the Property labeled "Sensitive Areas" on Exhibit attached hereto, Landowner shall not engage in any of the following activities: conversion of grassland or shrubland to cultivated areas, tilling or sodbusting, seeding, planting, raising, or harvesting of agricultural crops, or livestock confinement. Establishment and maintenance of a garden for non-commercial use shall also be allowed within the Building Envelopes provided that the garden is surrounded by a fence impassable to wildlife. Outside of the Sensitive Areas, Landowner may engage in inter-seeding within pastures, or mitigate against conifer encroachment as provided in Section 4.P below.

I. **Permitted Commercial Uses.**

i. The following commercial uses of the Property are specifically permitted provided that they are consistent with the provisions of this Easement, and provided that they shall not substantially adversely affect the Conservation Values: Agricultural uses permitted in Sections 4.A and 4.H herein, including the leasing of the Property for agricultural operations, commercial outfitting for hunting and fishing, the renting or leasing for residential purposes of any Residential Dwelling Unit authorized in this Easement, the use of any Residential Dwelling Unit as a bed and breakfast, the incidental collection of antler sheds, or

any commercial activity that can be conducted from within existing or authorized structures in a manner that does not substantially adversely affect the Conservation Values and does not involve regular visits to the Property by the general public.

ii. Other commercial uses of the Property, including but not limited to hosting a leadership program for embattled youth or troubled veterans, or hosting weddings, are acceptable, provided that (a) they are not expressly prohibited in Section 5.D of this Easement, (b) Landowner obtains the prior approval of Land Trust as provided in Section 6 of this Easement, and (c) such other commercial use shall not substantially adversely affect the Conservation Values.

J. **Weed Control.** Introduction of biological weed and pest control agents in compliance with applicable law as may be necessary to carry out agricultural and ranching activities.

K. **Sand and Gravel.** Removal of surface sand and gravel in limited quantities, for use solely in ranch operations and on roads and driveways on the Property, consistent with historical practices from those portions of the Property labeled “Existing Sand and Gravel Sources” on Exhibit D attached hereto. Sand and gravel may not be removed or extracted from any other portions of the Property. Under no circumstances is any sale or commercial use of sand or gravel located on the Property permitted by this Easement, nor may any sand or gravel be mined for any purpose, either commercial or non-commercial, or transported, stored, or used off of the Property. All sand and gravel extraction permitted hereunder shall have only limited, localized impacts, and shall be suspended if Land Trust determines such removal adversely affects the Conservation Values.

L. **Permitted Utilities.** Landowner retains the right to install, construct, maintain, repair, and/or replace utility structures, lines, cables, wires, or pipelines (collectively, “utilities”), including without limitation propane or other fuel tanks and sewage disposal facilities, to serve existing structures, and in association with construction of new structures that are expressly permitted on the Property by this Easement, provided that construction of such utilities does not substantially adversely affect the Conservation Values. Landowner also retains the right to grant right-of-way easements for utility services to neighboring properties, provided that any such new right-of-way easements are not located within, across, over, or under any Sensitive Areas and provided that such right-of-way easements do not substantially adversely affect the Conservation Values.

M. **Alternative Energy Production** – Landowner retains the right to install, construct, maintain, repair, and/or replace photovoltaic or other solar panels and related infrastructure, wind turbines and related infrastructure, and geothermal energy infrastructure (collectively, “**Alternative Energy Infrastructure**”), as provided in this Section 4.M, and provided that such Alternative Energy Infrastructure does not

substantially adversely affect the Conservation Values. Photovoltaic or other solar panels mounted on roofs may not exceed a height of thirty-five (35) feet in height, and all other free-standing Alternative Energy Infrastructure permitted by this Paragraph may not exceed a height of ninety (90) feet. Construction of any Alternative Energy Infrastructure outside of the Building Envelopes requires prior approval from Land Trust.

Any Alternative Energy Infrastructure permitted by this Section 4.M may be used for non-commercial energy production for energy consumed on the Property. Notwithstanding any other provision of this Section 4.M that may be construed to the contrary and excluding net metering credits, which might permit Landowner's electrical meters to credit the Landowner's utility service with the excess energy produced, the Property may not be used as a commercial wind farm, commercial solar energy collection facility, or for other commercial energy collection or generation purposes.

N. **Water Use.** Maintenance, repair, construction, and reconstruction of existing agricultural and residential water facilities and the development of new water resources and facilities, including the diversion, withdrawal and use of water, consistent with valid water rights, for agricultural and residential uses provided for herein; provided that any maintenance, repair, reconstruction, construction or development activities do not cause significant or long-term impairment of riparian values. Notwithstanding the foregoing, construction of ponds outside of the Building Envelopes requires prior approval from Land Trust.

O. **Predator Control.** In accordance with all applicable state or federal laws, the control of predatory and problem animals, excluding raptors, that have caused damage to persons, livestock, or other property. Wherever possible, measures used for control of predatory or problem animals shall be limited in the application to specific animals that have caused damage to livestock or other property, provided, however, that if it is not possible to identify a specific predatory or problem animal, Landowner may use appropriate preventive control techniques.

P. **Timber Harvest.** Harvesting of timber and cutting of trees using Best Management Practices as set forth in Montana State University Extension Service Publication Number EB0096 and its subsequent updates ("Best Management Practices"), including stringent protection of soil and watershed values, riparian areas, and wildlife habitat; provided that such harvest does not substantially adversely affect the Conservation Values and is consistent with the following provisions:

i. Without prior approval, non-commercial tree cutting is permitted only for firewood, fencing, building construction, and other uses personal to Landowner and to be used on the Property, to remove select trees that present a hazard to persons and property, or to cut trees located within the Sensitive Areas to mitigate against conifer encroachment into the Sensitive Areas.

ii. With prior approval by Land Trust, commercial or non-commercial tree cutting is permitted for other purposes so long as all tree cutting achieves at least one of the following objectives: controlling forest disease; improving forest health; forest restoration; timber stand thinning for wildfire prevention; controlling encroachment of timber into the Sensitive Areas; and enhancing wildlife habitat. Landowner must submit a written Timber Harvest Plan for review by Land Trust. The Timber Harvest Plan must include timber inventory data, purpose of the harvest, anticipated future stand condition, selection criteria for tree removal, provisions for the protection of streamside zones and wildlife habitat, harvest and skidding methods, slash disposal techniques, reforestation plans, and other relevant information necessary to an evaluation of the proposed harvest. Tree cutting and timber harvest should emphasize treatments that maintain or restore a natural ecological condition.

Q. Transfer of Land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively, "Transfer") all or any portion of Landowner's right, title, estate, and interest in the Property in unified title and as no more than three (3) parcels, subject to the rights, restrictions, and obligations contained in this Easement.

i. None of the Building Envelopes described in Section 4.B above may be split or partitioned by any Transfer.

ii. All Transfers of part or all of the Property shall be conveyed expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement; and shall comply with all applicable federal, state, and local laws and regulations concerning subdivision, including if necessary the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract.

iii. In any deed, contract, or other instrument which conveys title to a portion of the Property pursuant to this Section 4.P, Landowner agrees to expressly designate which parcel shall have the right to divide the Property again to create a third parcel. If Landowner does not expressly allocate the foregoing right, such right shall remain with the parcel retained by Landowner. If the Landowner does not retain a parcel but is completely divested by one or two Transfers, then any remaining right to further divide the Property may occur only with the prior approval of the Land Trust and with the written approval of all of the owners of the two portions of the Property.

iv. After a Transfer of a portion of the Property, an act or omission constituting a violation of the terms of this Easement by an owner of a portion of the Property shall not constitute a violation of the terms of this Easement by an owner of another portion of the Property (the "Other Portion"), unless the owner of the Other Portion has also committed the act or omission constituting a violation of the terms of this Easement.

v. After a Transfer of a portion of the Property, any notice from Land Trust shall be delivered only to the owner of the portion of the Property that is the subject of the notice.

R. **Manipulation of Water Courses.** With prior approval of Land Trust, the following activities may be permitted: rip-rapping within a water course, or other manipulation, diversion, or other alteration of natural water courses, for purposes of streambank stabilization, provided that Landowner also obtain all necessary permits for such activities from federal, state, and local governing bodies, and further provided that the manipulation of the water courses shall not substantially adversely affect the Conservation Values.

S. **Recreational Use.** To use the Property for non-commercial recreational uses including but not limited to, hunting, fishing, hiking, wildlife viewing, and quiet enjoyment by Landowner and Landowner's guests and invitees, provided that such recreational use of the Property shall not substantially adversely affect the Conservation Values. With the prior approval of Land Trust, Landowner shall have the right to consent to the public use of any trails on the Property, and/or transformation of former railroad rights of way into public trails.

T. **Cemetery.** Landowner retains the right to place and maintain one (1) small private cemetery on the Property (the "Cemetery"), for the use of Kevin Juedeman, Mark Juedeman, Ward Juedeman, and Corry Juedeman Prestidge, and their spouses and their immediate family descendants (collectively, the "Juedeman Family"), subject to all state and local laws and ordinances. The Cemetery shall be limited in size to no more than one-half (0.5) acre. The Cemetery shall not be located within the Sensitive Areas, and shall be located such that it shall not substantially adversely affect the Conservation Values. Landowner shall provide notice to Land Trust when it has selected a location for the Cemetery. The reserved rights in this Section 4.T shall include a right to bury the remains or scatter the ashes of members of the Juedeman Family in and on the Cemetery. The Cemetery may not be severed or subdivided as a separate plot or subdivision of the Property.

5. **Inconsistent Uses of the Property.** The following uses and practices on the Property shall be prohibited, except as specifically provided for under Section 4 herein.

A. **Hazardous Materials.** Storage, dumping discharge, or other disposal of toxic and/or hazardous materials, except that agricultural chemicals, including fertilizers, pesticides, herbicides, insecticides and rodenticides, and petroleum products such as oil and gas for use exclusively by the Landowners may be stored for use on the Property and used in accordance Section 4.G of this Easement, and in accordance with applicable state and federal regulations for the permitted uses set forth herein.

Notwithstanding anything in this Easement to the contrary, this prohibition does not make Land Trust an owner of the Property, nor does it permit Land Trust to control any use of the Property by the Landowner which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Land Trust may bring an action to protect the Conservation Values of the Property, as described in this Easement. (This prohibition does not impose liability on Land Trust, nor shall Land Trust be construed as having liability as a “responsible party” under CERCLA or similar federal or state statutes.)

B. **Dumping.** Dumping or other disposal of sewage, garbage, tires, inoperable machinery, or other refuse; or any items that could be an attractant to bears or other wildlife; except that Landowner is permitted to store old or inoperable machinery, tools, and parts in the existing “Equipment Area” identified in the Baseline Report and shown on Exhibit attached hereto. This prohibition does not include animal carcasses involved in the Montana Department of Fish, Wildlife and Parks’ “Carcass Redistribution Program” or domestic livestock that dies on the Property.

C. **Mining.** Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property, except as expressly permitted in Section 4.K of this Easement.

D. **Prohibited Commercial Activities.** Establishment or maintenance of any commercial or industrial facilities or activities, including but not limited to game farms, commercial feed lots, motels or hotels, retail sales businesses, service businesses, restaurants, night clubs, campgrounds, gas stations, retail stores, facilities for the manufacture or distribution of any product, or trailer or recreational vehicle parks; except that Landowner is permitted to conduct any commercial uses of the Property expressly permitted by Section 4 of this Easement. In order to preserve the potential for further reduction of estate taxes in accordance with Subsection 2031(c) of the IRS Code only *de minimus* commercial recreational use shall be allowed.

E. **Prohibited Agricultural Activities.** Intentional introduction of non-native plant species or farming, planting, seeding, plowing, discing, chiseling, interseeding, or any type of cultivation, except as provided for in Section 4.H.

F. **Subdivision.**

i. Landowner and Land Trust mutually intend that the Property shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as no more than three (3) parcels, as further described in Section 5.F.iii below. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, the Property will be considered one parcel for

purposes of this Easement, unless divided, transferred, and conveyed in accordance with the terms and conditions of this Easement.

ii. The partition, division, subdivision, or de facto subdivision of the Property is prohibited, including but not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, partitions in bankruptcy, allocation of title or property rights among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, subdivision for purpose of providing new security for a mortgage, time-share or interval ownership arrangements, long-term leases of portions of the Property, or other process by which the Property is divided into lots or in which title to different portions of the Property are held by different owners.

iii. Notwithstanding the above, the Transfer of a portion of the Property shall be allowed, provided that no more than three (3) parcels may be created from the Property (i.e. up to two divisions, for a maximum of three total parcels), and provided further that any such Transfer(s) must be effected with an express provision reflecting that said land is subject to the terms and conditions of this Easement, without modification or expansion of such terms.

iv. In the event of any such Transfer(s), no additional structures shall be allowed upon any portion of the Property beyond those structures already expressly authorized in this Easement, and all other terms of this Easement shall continue to apply. Furthermore, in the event of any such Transfer(s), the Landowner must comply with all applicable federal, state, and local laws, ordinances, and regulations concerning subdivision, including, if required, the surveying of the parcels to be conveyed and the submission of the proposed separate tract(s) to state and/or local review authority for approval. Land Trust shall be furnished with a copy of the pertinent portion of any document or conveyance utilized to effect such a transfer at least thirty (30) days prior to the execution of the same.

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

vi. If local or state government requires creation of one or more tracts, parcels, or lots through survey, lot line, boundary adjustment, or other internal division of the Property to accommodate Landowner's exercise of reserved rights to use the Property as permitted in Section 4 of this Easement, Landowner may file such application and/or obtain such governmental approval, and may create one or more tracts, parcels, or lots within the exterior boundaries of the Property; provided, however, that no tract, parcel, or lot so created may be conveyed or

transferred into separate ownership from any other portion of the Property except in accordance with Section 4.P of this Easement.

G. Prohibited Structures; Temporary Occupancy. Construction or placement of any buildings, temporary living quarters of any sort, or other structures; except as expressly permitted by this Easement and except that vehicular campers owned by Landowner or Landowner's temporary guests may be parked on the Property (except the Sensitive Areas) as appropriate to accommodate normal short-term visitation for non-commercial purposes.

H. Roads and Trails. Construction of any new roads or vehicle trails, except as provided for in Section 4E.

I. Prohibited Utilities. Construction of any utility infrastructure, or granting easements, permits, or licenses to third parties to construct any utility infrastructure on the Property, except as permitted in Sections 4.L and 4.M of this Easement.

J. Change to Ecological Features. The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values; or the destruction of any of the Conservation Values on the Property.

K. Fill. Any change in the topography of the Property through the placement therein of soil, land fill, dredging spoils, or other material, except as incidental and necessary to the activities permitted hereunder.

L. Prohibited Manipulation of Water Courses. Except as specifically permitted in Section 4.M above, any other manipulation, diversion, or other 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 Property's surface or sub-surface waters are prohibited. Additionally, the removal of woody riparian vegetation is prohibited unless incidental to the establishment and/or maintenance of fences, water gaps, water tanks, irrigation structures and other practices compatible with the permitted uses of the Property and the protection of the Conservation Values.

M. Billboards. There shall be no construction, maintenance, or erection of any billboards on the Property. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising property for lease or sale. Any other use of signs requires the Prior Approval of the Land Trust.

6. Prior Notice and Approval. Landowner shall not undertake or permit any use or activity requiring prior approval by Land Trust without first having notified in and received approval from the Land Trust as provided herein.

A. Prior to the commencement of any such use or activity, Landowner shall send the Land Trust written notice of Landowner's intention to undertake or permit such use or activity. The notice shall inform the Land Trust of all aspects of the proposed use or activity, including location, siting, size, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, or by a courier service that provides delivery information, to Prickly Pear Land Trust, P.O. Box 892, Helena, MT 59624, or such other addresses as Landowner may from time to time be informed of in writing by the Land Trust.

B. The Land Trust shall have sixty (60) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed use or activity and to notify Landowner of any objections thereto; provided that the 60-day period shall not begin until such time as the Land Trust has received adequate information from Landowner to evaluate the proposed use or activity. In the event that Land Trust requires additional information to evaluate the proposed use or activity, the Land Trust shall request the information from Landowner as soon as practicable and in any case not later than thirty (30) days after the receipt of the notice of the proposed use or activity.

C. The Land Trust's decision to approve or disapprove the use or activity proposed by Landowner shall be sent by registered or certified mail, return receipt requested, to Landowner at the address first stated above, or to such other address as the Land Trust may from time to time be informed of in writing by Landowner.

D. A decision by the Land Trust to disapprove a proposed use or activity must be based upon the Land Trust's determination that the proposed activity is inconsistent with the Conservation Values, or other terms, conditions, and provisions of this Easement. If in the Land Trust's judgment it is possible that the proposed use or activity can be modified to be consistent with the Easement, the Land Trust's decision notice shall inform Landowner of such modification(s). Once modification is made to the satisfaction of the Land Trust or the Landowner otherwise concurs with the matters set forth in the Land Trust's notice, the proposed use or activity may thereafter be conducted in the manner that is acceptable to the Land Trust.

E. The Land Trust agrees to use reasonable diligence to respond to the Landowner's request to approve a proposed use or activity; however, approval shall not be deemed to have been given in the event Land Trust fails to respond within sixty (60) days.

F. Landowner shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Landowner under emergency

conditions to prevent, abate, or mitigate significant injury to the Property or to any person resulting from natural causes beyond Landowner's control, including, without limitation, fire, flood, storm, and earthquake, or from any other natural cause beyond the control of Landowner similar to those occurrences specified. Landowner shall provide notice to Grantee of any such emergency actions.

7. Remedies, Breach and Restoration. In the event a violation of any restriction contained herein, whether by Landowner or a third party, comes to the attention of the Land Trust, the Land Trust shall notify Landowner in writing of the violation. Landowner shall have sixty (60) days after the receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the violation and/or conditions caused by such violation. If Landowner fails to take such corrective action, the Land Trust may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of the corrections, including the Land Trust's expenses, court costs, and reasonable attorneys' fees, shall be paid by Landowner, provided that either Landowner, Landowner's family, any shareholders in the entity owning an interest in the Property, or agents, guests, employees or other persons permitted by Landowner are determined to be responsible for the violation.

In the event that Landowner undertakes any use or activity requiring prior approval of the Land Trust without or in advance of securing such prior approval, or undertakes any use or activity in violation of the terms of the Easement, the Land Trust shall have the right to require, by appropriate legal or equitable action, including an action for injunction or specific performance, the restoration of that portion of the Property affected by the use or activity to the condition that existed prior to the undertaking of the unauthorized use or activity. In such case, the costs of restoration and the Land Trust's costs of suit, including reasonable attorneys' fees, shall be borne by Landowner or those of his/her heirs, personal representatives, or assigns against whom a judgment is entered, or, in the event that the Land Trust secures redress without a completed judicial proceeding, by Landowner or the Landowner's heirs, personal representatives, or assigns who are otherwise determined to be responsible for the unauthorized activity.

Nothing contained in this Restated Easement shall be construed to entitle Land Trust to bring any action against Landowner for any injury to or change in the Property resulting from natural causes including, without limitation, fire, flood, storm, and earthquake, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such natural causes, except that this sentence shall not entitle Landowner or any third party to undertake any action or omission that would otherwise be a violation of the terms of this Easement in emergency conditions caused by the gross negligence or willful, wanton, or intentional acts or omissions of Landowner or any third party.

8. Enforcement.

A. Enforcement of the terms and provisions of this Easement shall be at the discretion of the Land Trust. Any forbearance on behalf of the Land Trust to exercise its rights hereunder in the event of any breach by Landowner or Landowner's respective

heirs, personal representatives, or assigns shall not be deemed or construed to be a waiver of the Land Trust's rights hereunder in the event of any subsequent breach. The Land Trust shall also have the right of immediate entry to the Property if such entry is necessary to prevent damage to or the destruction of the Conservation Values protected by the Easement, which will be reasonably exercised and will take into account Landowner's right to engage in ranching, agricultural, and other activities expressly permitted in this Easement.

B. Back-Up Grantee with Third-Party Right of Enforcement. If the Land Trust is unable or unwilling to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, the Landowner and the Land Trust expressly agree that Lewis and Clark County shall be the Backup Grantee. In Lewis and Clark County's role as Backup Grantee, the County shall be construed as holding the Conservation Easement for purposes of enforcement pursuant to MCA § 76-6-211(2). As a public body holder of an easement, Lewis and Clark County shall have the right to enforce the terms of this Easement to protect the Conservation Values for the benefit of the public as described below.

The Land Trust will retain primary authority to monitor the Property and enforce the terms of the Easement. Lewis and Clark County recognizes and agrees that the Land Trust shall have discretion to assure that the Conservation Values are protected for the benefit of the public. Lewis and Clark County's third-party right of enforcement may only be exercised pursuant to this Section 8A.

If a violation or threatened violation of the purposes or terms of this Easement come to the attention of Lewis and Clark County, Lewis and Clark County shall notify the Land Trust in writing of the violation or threatened violation. Upon receiving Lewis and Clark County's written notice, the Land Trust shall have thirty (30) days to investigate the violation or threatened violation, determine whether a violation has occurred or is threatened or imminent, and communicate its findings to Lewis and Clark County in writing. If the Land Trust determines a violation has occurred or is threatened or imminent, the Land Trust may exercise its discretion to enforce, pursuant to the previous paragraph.

If Lewis and Clark County believes that the enforcement actions (or lack of enforcement) taken by the Land Trust are not sufficient to protect the Conservation Values for the benefit of the public and that the Land Trust's actions are outside of its discretion in protecting those Conservation Values, Lewis and Clark County may notify the Land Trust and the Landowner of its intention to intervene and assert its right of enforcement to compel the Landowner to comply with the Easement in thirty days unless: (i) the Land Trust and the Landowner resolve the basis of Lewis and Clark County's planned intervention to the County's satisfaction, or (ii) the Land Trust agrees to undertake Lewis and Clark County's planned intervention.

If, after thirty (30) days, neither (i) nor (ii) in the preceding sentence occurs, Lewis and Clark County may enforce the terms of this Easement to protect the Conservation Values for the benefit of the public pursuant to MCA § 76-6-211(2).

9. Liabilities. Landowner shall hold harmless, indemnify, and defend the Land Trust and the Land Trust's directors, officers, employees, agents, and contractors and Land Trust's successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Property.

Land Trust shall hold harmless, indemnify, and defend Landowner and Landowner's members, directors, officers, employees, agents, and contractors and Landowner's successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Property if such presence or release was caused by Land Trust.

10. Taxes and Costs. Landowner agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, and does hereby indemnify the Land Trust therefor.

11. Access. Nothing herein contained shall be construed as affording the public access to any portion of the Property.

12. Assignment. Land Trust may assign this Easement with Landowner's consent, which shall not be unreasonably withheld, provided that:

A. Land Trust requires, as a condition of such transfer, that the conservation purposes of the Easement continue to be carried out;

B. The organization accepting such transfer shall expressly agree to uphold the purposes and Conservation Values of this Easement; and

C. An assignment may be made only to the United States of America or to an organization qualified at the time of transfer as an eligible donee under Section 170(h)(3) of the IRS Code and Section 76-6-104 and -205, MCA.

13. Change of Conditions. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Landowner in granting this Easement. It is Landowner's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Landowner and the Land Trust that any changes should not be assumed to

be circumstances justifying the termination or extinguishment of this Easement pursuant to this paragraph. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this paragraph.

14. Condemnation and Other Extinguishment of the Easement. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, or if the Easement is extinguished pursuant to Paragraph 16 herein, the Landowner and the Land Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds shall be divided between the Landowner and the Land Trust in proportion to the fair market value of their interests in the Property on the date of execution of the Easement (as provided in Treas. Reg. Section 1.170A-14(g)(6)(ii)). The Land Trust shall use its share of the proceeds in a manner consistent with the purposes and intent set forth herein, or for the protection of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem,” as that phrase is used in Internal Revenue Code Section 170(h)(4)(a)(ii), as amended, and in regulations promulgated thereunder.

15. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Landowner and the Land Trust may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or relevant Montana law. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Lewis and Clark County, Montana.

To obtain the approval of Lewis and Clark County, a request to amend must be submitted in writing to the County’s Community Development and Planning Office together with proof that the conservation values will not be adversely affected. The request must be placed on the Commissioners’ agenda for the next available regularly scheduled public meeting of the County Commission, and a public hearing must be held on the request.

Lewis and Clark County’s approval of amendments sought jointly by Landowner and Land Trust shall not be unreasonably withheld, as long as there is (1) no adverse impact on conservation values and (2) no private inurement or financial benefit back to the landowner.

16. Extinguishment. If circumstances arise in the future that render the Conservation Values and/or the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction, and the amount of the compensation to which Land Trust and Lewis and Clark County shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with this

Section 16 and as provided for in Treasury Regulation Section 1.170A-14(g)(6)(ii). Land Trust and Lewis and Clark County shall use any such proceeds in a manner consistent with the conservation purposes of the original contribution.

A. Compensation. This Conservation Easement constitutes a real property interest immediately vested in Land Trust, which, for purposes of this Section 16, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Landowner's qualified appraisal (pursuant to Treasury Regulation 1.170A-13 and 1.170A-14(h)) for federal income, gift or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement, at the time of the qualified appraisal, shall remain constant.

In the event that this Easement is extinguished Land Trust will allocate a proportional share of proceeds from the extinguishment of the Easement to Lewis and Clark County in recognition of the Open Space Bond funds Lewis and Clark County contributed to the acquisition of this Easement and pursuant to Section 76-6-107, MCA. For the purposes of this paragraph, Lewis and Clark County's proportional interest shall be the value of Lewis and Clark County's contribution toward the purchase of the Easement to the value of the Easement at the time of the grant, and Lewis and Clark County's proportional value shall remain constant.

B. Eminent Domain and Condemnation. If all or a portion of the Property is taken for a public purpose in exercise of eminent domain so as to abrogate the restrictions imposed by this Conservation Easement, Landowner, Lewis and Clark County and Land Trust may join in appropriate actions to recover the value of each party's proportionate interest in the Property (or portion) taken, as established in paragraph 16A, including the value of Land Trust's Conservation Easement as it pertains to the condemned property at the time of the taking or condemnation. Landowner, Lewis and Clark County and Land Trust shall be entitled to any proceeds resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned. Proceeds shall be divided between Landowner, Lewis and Clark County and Land Trust as set forth above, and Land Trust shall use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

17. Interpretation. The provisions of this Easement shall be construed to effectuate the Conservation Values. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.

18. Miscellaneous.

A. Governing Law. The laws of the State of Montana (without regard to conflicts of law principles) shall apply to the interpretation and enforcement of this Easement.

B. Definitions. The terms “Landowner” and “Land Trust” as used herein shall be deemed to include, respectively, the Landowner, the Landowner’s heirs, successors, personal representatives, and assigns, and the Land Trust, its successors and assigns.

C. Binding Effect. Landowner intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Landowner, his/her heirs, successors, personal representatives, and assigns.

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

E. IRS Requirement. Canyon Cattle Company represents that it is a Montana corporation that is a qualified farm or ranch and may make a qualified conservation contribution of property used in agriculture or livestock production (or is available for such production) and deduct up to 100% of the corporation’s taxable income only if the property is subject to a restriction that requires the property to remain available for such production, as per IRC § 170(b)(2)(B).

F. 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 instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15 above.

TO HAVE AND TO HOLD the said Easement unto the said Land Trust, its successors and assigns, forever.

IN WITNESS WHEREOF, Landowner has hereunto set their hands this _____ day of _____, 2022.

[Signature page follows.]

LANDOWNER:

Canyon Cattle Co., a Montana corporation

By: _____
Kevin Juedeman, President

Date: _____, 2022

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Kevin Juedeman, President of Canyon Cattle Co., a Montana corporation, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL)

Print Name _____
Notary Public for the State of _____
Residing at _____
My Commission Expires _____, 20_

LAND TRUST:

Accepted this ___ day of _____, 2022, by Prickly Pear Land Trust.

PRICKLY PEAR LAND TRUST, a Montana non-profit corporation

By: _ Mary Hollow, its Executive Director

Date: _____, 2022

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Mary Hollow, the Executive Director of Prickly Pear Land Trust, a Montana non-profit corporation, known to me to be the person whose name are subscribed to the within instrument, acknowledged to me that she executed the same.

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

(SEAL)

Print Name _____
Notary Public for the State of _____
Residing at _____
My Commission Expires _____, 20_

EXHIBIT A
Property Description

All that certain real estate situated in Lewis and Clark County, Montana, consisting of 3,975 acres, more or less, more particularly described as follows:

NOTES:

- The legal description will be modified as agreed by the Parties to be consistent with the Title Commitment after Land Trust's review and approval of the Commitment as provided in this Agreement; in addition, the legal description will be modified to exclude the Excluded Tracts and/or to be consistent with the Survey if the Survey is filed at or prior to Closing.

Township 15 North, Range 3 West, P.M.M., Lewis and Clark County, Montana

SECTION 2: Lots 3 and 4

SECTION 3: S1/2NW1/4 and N1/2SW1/4 and SW1/4NE1/4 and NW1/4SE1/4 EXCEPT the south 100 feet of said NW1/4SE1/4, also Lots 1, 2, 3 and 4 and that portion of Lots 5 and 6 lying West of the right of way of the interstate highway and further EXCEPTING from said Lot 6 that portion described as follows: Beginning at the Southwest corner of said Lot 6, thence Northerly along the West boundary line of said Lot 6, 100 feet to a point on the West boundary line of Lot 6, thence Easterly along a line parallel to the South boundary line of Lot 6 to a point in said Lot 6, 16 feet West of the West side line of the right of way of the Great Northern Railway Company, thence Southerly along a line parallel to and 16 feet West of said West sideline of said right of way to a point on the South boundary line of said Lot 6, which said point is 16 feet West of there said West side line of said right of way intersects said South boundary line of said Lot 6, thence Westerly along the South boundary line of Lot 6 to the Southwest corner of said Lot 6, and the place of beginning.

EXCEPTING THEREFROM Lot 1 of Juedeman Minor Subdivision, as shown on Plat filed under Document Number 3046187, records of Lewis and Clark County, Montana.

Township 16 North, Range 3 West, P.M.M., Lewis and Clark County, Montana

SECTION 13: THE FOLLOWING TRACTS

A tract of land located in the South one-half (S1/2) of SECTION 13, T16N, R3W, P.M.M., Lewis and Clark County, Montana, and more particularly described as follows:

Beginning at the Southeast corner of said Section 13, thence N87° 29' 15" W. along the Section line a distance of 2995.74 feet to the true point of beginning; thence North 675.85 feet; thence S89° 59' 10"E, 882.32 feet; thence S00° 18' 20"W, 654.00 feet; thence S89°

47' 50"W, 878.75 feet to the true point of beginning, as shown on Certificate of Survey filed under Document Number 246106, records of Lewis and Clark County, Montana. (Deed ref: 303-352)

AND

A tract of land located in South One-Half of SECTION 13, T.16N., R.3W., P.M.M. Lewis and Clark County, Montana and more particularly described as follows:

Beginning at the Southwest corner of said Section 13, thence S87° 29' 15"E. along the Southerly boundary of said Section 13 a distance of 1631.77 feet to an iron pin, which point being the true point of beginning; thence North, 180.00 feet to an iron pin; thence West, 422.98 feet to an iron pin; thence North, 453.15 feet to an iron pin; thence S.89° 49' 25"E., 1060.41 feet to an iron pin; thence South 657.85 feet to an iron pin; thence N.87° 29' 15"W. along the Southerly boundary of said Section 13, 638.07 feet to the point of beginning, as shown on Certificate of Survey filed under Document Number 246092, records of Lewis and Clark County, Montana. (Deed ref: 303-352)

AND

A tract of land located in the South one-half (S1/2) of SECTION 13, T16N, R3W, P.M.M., Lewis and Clark County, Montana and more particularly described as follows:

Beginning at the Southeast corner of said Section 13, thence N69° 31' 30"W a distance of 2252.48 feet to the true point of beginning; thence N69° 31' 30"W, 882.32 feet; thence North 464.18 feet; thence East 882.67 feet; thence South 464.68 feet to the true pint of beginning, as shown on Certificate of Survey filed under Document Number 303382, records of Lewis and Clark County, Montana.

SECTION 15: ALL

SECTION 22: ALL

SECTION 23: ALL

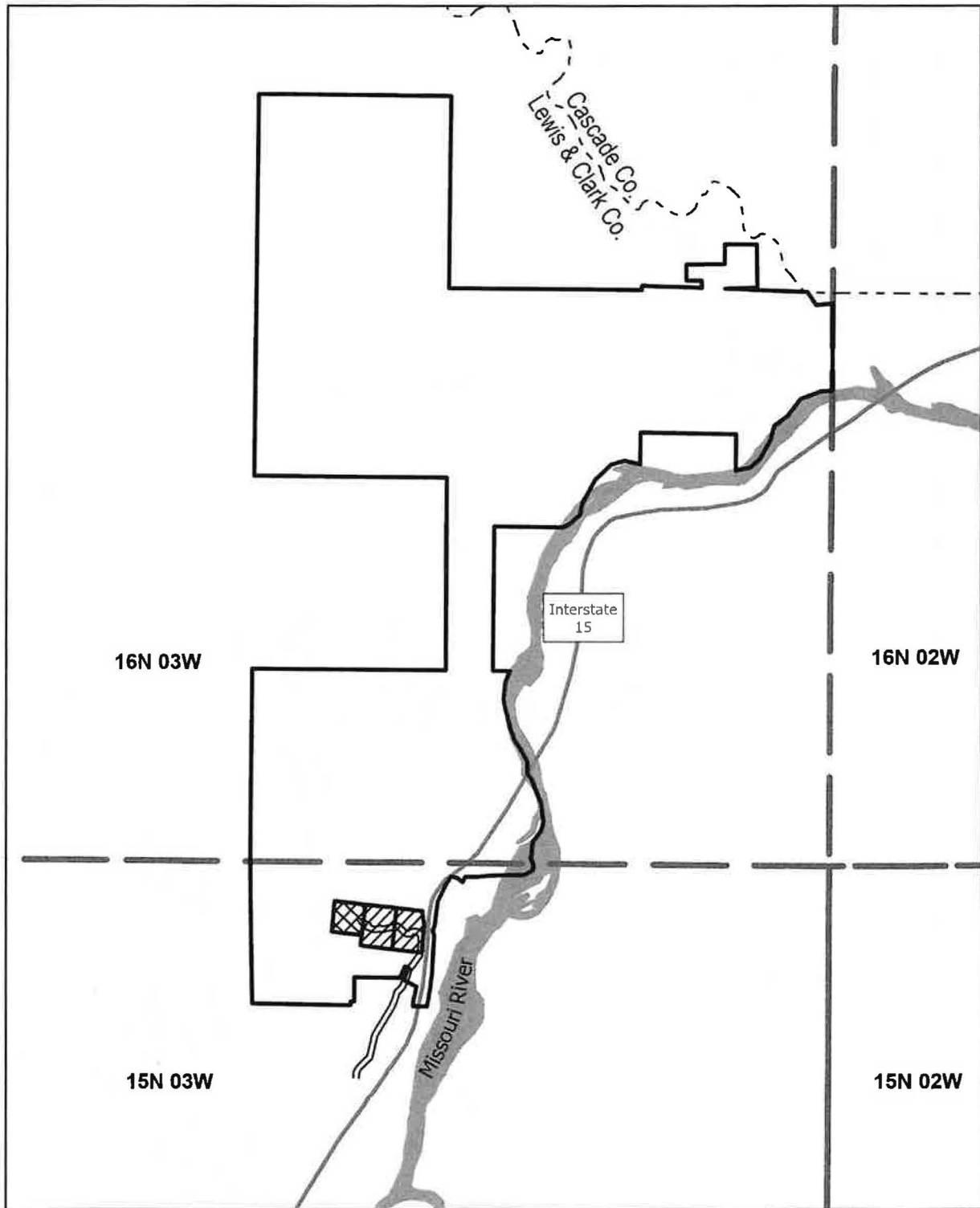
SECTION 24: Lots 1, 2 and 5, NE1/4NE1/4 and W1/2NE1/4 and S1/2NW1/4 and N1/2NW1/4 and N1/2SW1/4 EXCEPTING therefrom all that land of the NE1/4NE1/4 lying northeasterly of the center of the Dearborn River, as shown on Certificate of Survey filed under Document Number 3140154, and EXCEPTING therefrom a tract of land conveyed to the State of Montana in Deed recorded in Book 239 of Deeds, Page 479, records of Lewis and Clark County, Montana.

SECTION 26: Lot 5, N1/2NW1/4 and SW1/4NW1/4 and W1/2SW1/4.

SECTION 34: ALL

SECTION 35: Lots 2, 3, 6 and 7 and SW1/4NW1/4 and W1/2SW1/4.

All of the foregoing described Property is conveyed SUBJECT TO the following: (i) all third party rights in the Property of record, or encroachments or other third party rights visible from examination of the Property at the time of conveyance of this Easement and not subordinated to this Easement; (ii) all reservations, exceptions, covenants, conditions, and restrictions of record and in patents from the United States or the State of Montana and acts authorizing the same; (iii) county road rights-of-way, if any, not recorded and indexed as a conveyance in the office of the Clerk and Recorder of Lewis and Clark County, Montana, pursuant to Mont. Code Ann. Title 70, Chapter 21; (iv) title to that portion of the Property, if any, lying below the mean high water mark of abutting navigable rivers; and (v) [other exceptions to title shown on the title commitment that Land Trust concludes must be referenced here].









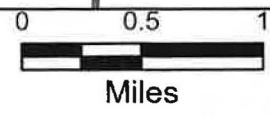
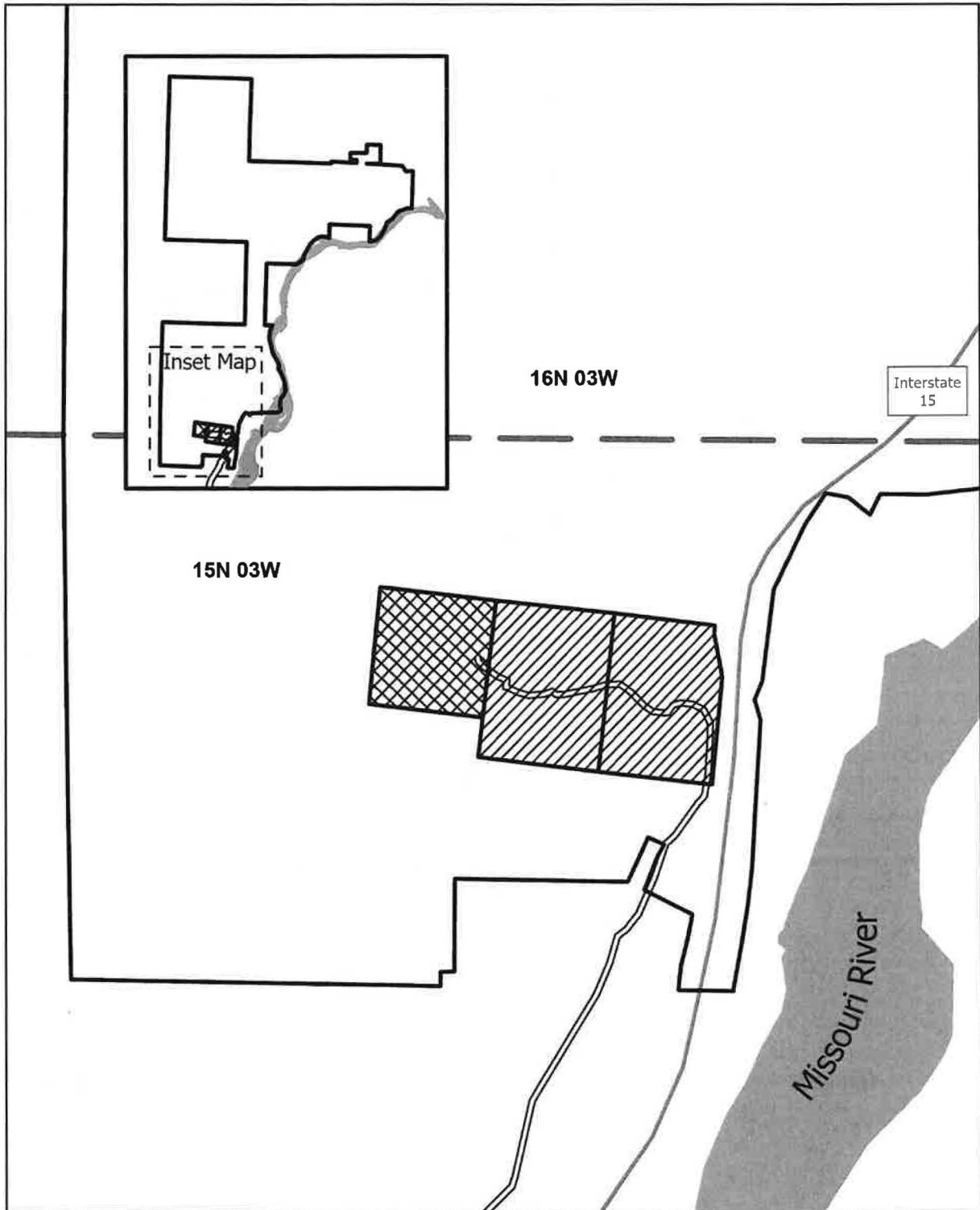
-  The Property
-  Equipment Envelope
-  Building Envelopes 1 & 2
-  PLSS
-  Access Road
-  County

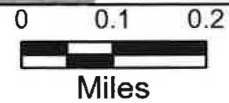
Exhibit B
Map of the Property

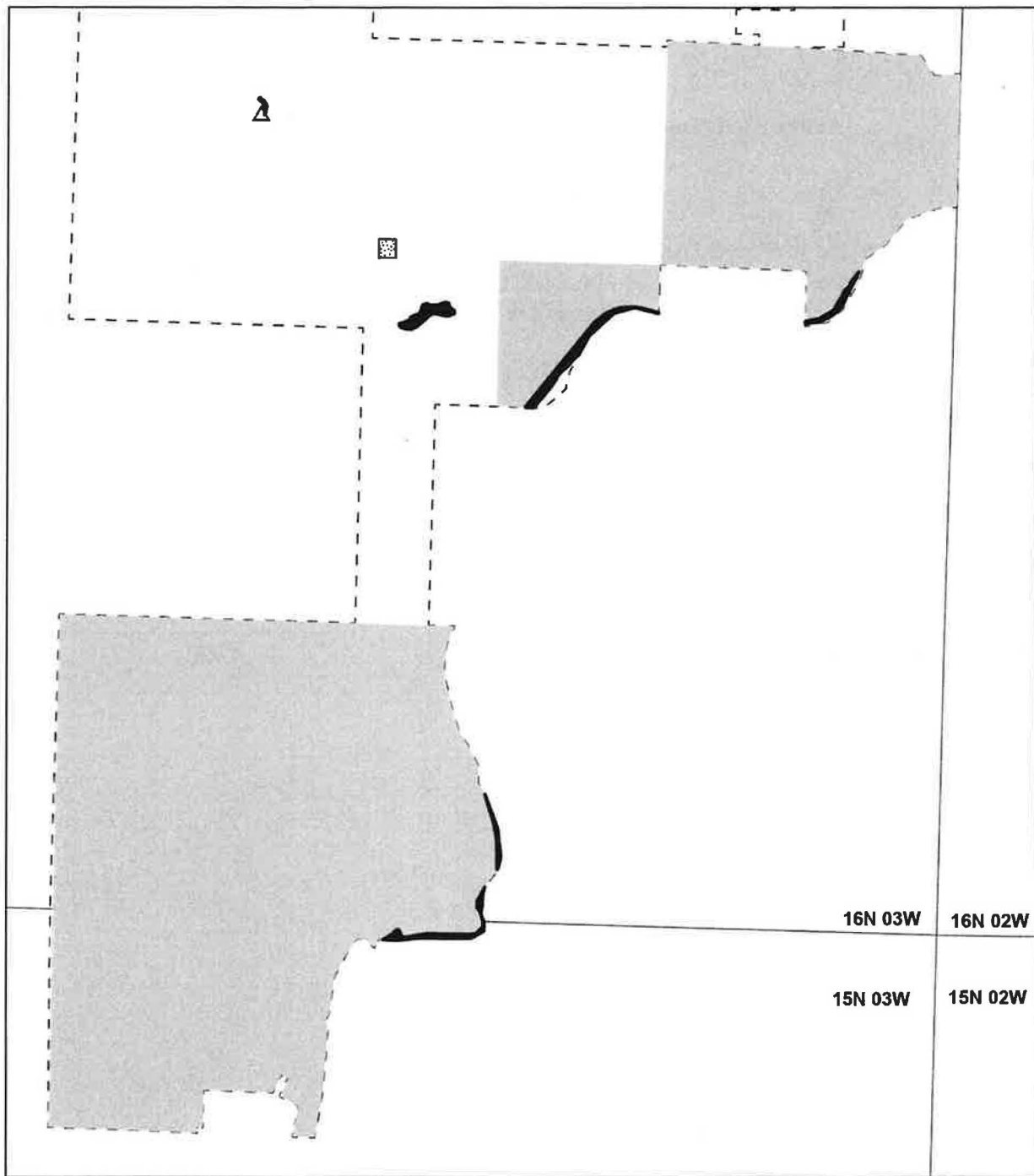




-  The Property
-  Equipment Envelope
-  Building Envelopes 1 & 2
-  Access Road

Exhibit C
Map of Building Envelopes





-  The Property
-  Sensitive Areas
-  Caldwell Homestead
-  Crop Cultivation Areas
-  Sand and Gravel Resources

Exhibit D
Map of Areas of Importance

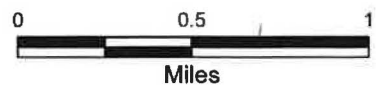


EXHIBIT E

Acknowledgement of Baseline Documentation Report

Landowner and the Land Trust acknowledge that each has read the “Landowner Baseline Documentation Report”, dated December 1st, 2022, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

Landowner

Date

Prickly Pear Land Trust

Date