

RESOLUTION 2023 - 61

A RESOLUTION TO AMEND THE POTTER RANCH CONSERVATION EASMENT

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 Prickly Pear Land Trust on behalf of the property owner, Douglas and Rhonda Potter; and

WHEREAS, in this project, referred to as the Potter Ranch Conservation Easement, Prickly Pear Land Trust as described in Exhibit "B"; and

WHEREAS, the Potter Ranch Conservation Easement (Doc. No. 3362388) was approved for funding in the amount of \$1,037,00.00 by the Board of County Commissioners on August 13th, 2020 via Resolution 2020-63; and

WHEREAS, the Potter Ranch Conservation Easement (Doc. No. 3362388) Clause 15 "Amendment" allows for the amendment to or modification of the Conservation Easement; and

WHEREAS, the Applicant (Prickly Pear Land Trust, Douglas and Rhonda Potter) submitted a Request to Amend the Potter Ranch Conservation Easement Clause 16 Extinguishment; and

WHEREAS, the Board of County Commissioners held a Public Hearing on July 18, 2023; and

WHEREAS, the Proposed Amendment (Exhibit B) meets the Amendment Clause 15 approval criteria: (1) no adverse impacts on conservation values and (2) no private inurement or financial benefit back to the landowner.

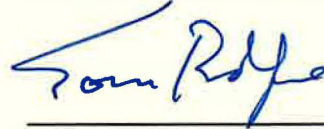
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners:

1. To approve the Potter Ranch Conservation Easement Amendment.



PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 18th Day of July, 2023.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Tom Rolfe, Chair



Amy Reeves, Clerk of the Board

Attachments: Exhibit – A Boundary Map
Exhibit – B Conservation Easement Amendment

Exhibit A: Boundary Map

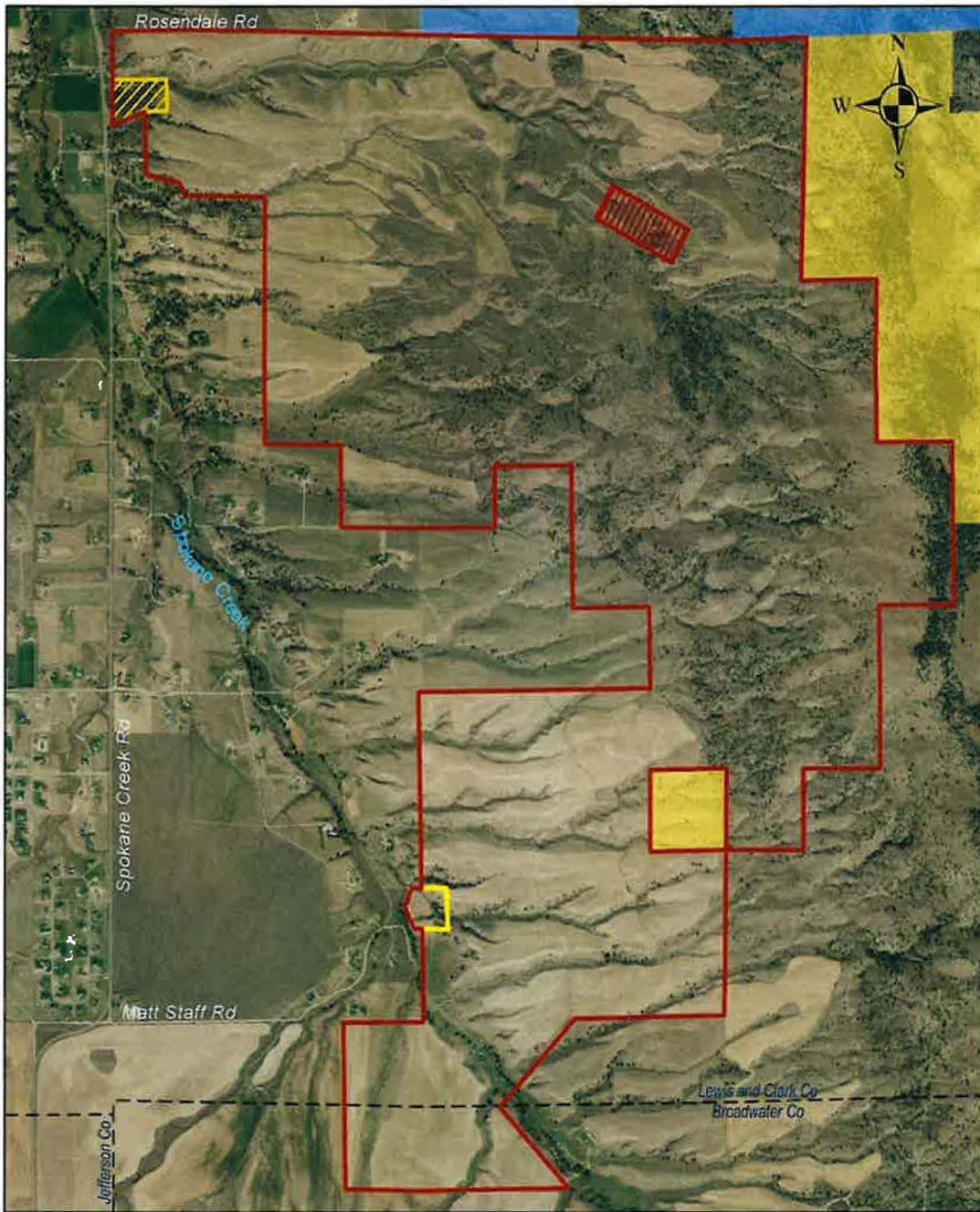


Exhibit A: Boundary Map

After recording, please return to:
Prickly Pear Land Trust
40 W. Lawrence St., Ste. A
Helena, MT 59601

AMENDMENT OF DEED OF CONSERVATION EASEMENT [Safe Harbor Provisions pursuant to IRS Notice 2023-30]

This AMENDMENT OF DEED OF CONSERVATION EASEMENT (the "**Amendment**") is entered into this _____ day of July, 2023 by and between the following: Douglas C. Potter and Ronda M. Potter, whose address is 6192 Matt Staff Rd., East Helena, MT 59635 ("**Grantor**"); and Prickly Pear Land Trust, a Montana non-profit corporation whose address is 40 W. Lawrence St., Suite A, Helena, MT 59601 ("**Grantee**"). The Grantor and Grantee are collectively referred to herein as the "**Parties**."

RECITALS

- A. Grantor is the owner of certain real property located in Lewis and Clark County and Broadwater County, Montana, consisting of approximately 3,109 acres, and as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"); and
- B. Grantor granted to Grantee a Deed of Conservation Easement, executed on September 10, 2020, and recorded on September 10, 2020 in Book M57, Page 7530, as Document No. 3362388, records of Lewis and Clark County, Montana; and recorded on September 11, 2020 in Book 212, Page 541, as Document No. 186825, records of Broadwater County, Montana (referred to herein as the "**Original Conservation Easement**"), which placed certain restrictions on the Property for the purpose of preserving and protecting the Property's significant conservation values, as more fully described in the Original Conservation Easement. The Original Conservation Easement, together with the modifications made by this Amendment, are referred to collectively herein as the "**Amended Conservation Easement**"; and
- C. Grantor claimed a charitable tax deduction in relation to the donation of the Original Conservation Easement to Grantee. On December 29, 2022, the United States Congress passed the SECURE 2.0 Act, Section 605(d)(1) of which directed the Internal Revenue

Service (the "IRS") to publish safe harbor deed language for certain clauses in conservation easements that have been challenged by the IRS in recent audits and litigation. The IRS complied with this congressional directive by issuing Notice 2023-30 on April 24, 2023 (the "Notice"), which contains two safe harbor provisions, one concerning a conservation easement's "Extinguishment Clause" and one concerning a conservation easement's "Boundary Line Adjustment Clause," if any (collectively, the "Safe Harbor Provisions"). The Notice provides the exact language for the Safe Harbor Provisions. Until July 24, 2023, if donors elect to do so, donors of conservation easements are permitted to amend their conservation easements to include the Safe Harbor Provisions; and

- D. Grantor and Grantee wish to amend the Original Conservation Easement to include the Safe Harbor Provision for the Extinguishment Clause; and
- E. The amendment of the Original Conservation Easement is consistent with the policy of the Open-Space Land and Voluntary Conservation Easement Act, as provided at Montana Code Annotated, §§ 76-6-101 to -212 (2021); and
- F. Section 15 of the Original Conservation Easement permits amendment of the Original Conservation Easement under certain conditions, and the Parties acknowledge and agree that the amendments set forth herein are consistent with those conditions and are therefore permitted, as set forth more particularly in Section 4 below.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants contained herein, and in further consideration of the mutual promises and covenants contained in the Original Conservation Easement, Grantor and Grantee hereby amend the Original Conservation Easement as follows:

1. **Incorporation of Recitals.** The Parties agree that the foregoing Recitals are true and accurate and are incorporated into the terms and conditions of the Amended Conservation Easement by this reference.
2. **Purpose of Amendment.** The sole purpose of this Amendment is to amend the Original Conservation Easement to include the Safe Harbor Provisions. This Amendment does not modify any of the terms and provisions, or any of the Parties' rights, remedies, or obligations, set forth in the Original Conservation Easement, except for the purpose of adding the Safe Harbor Provisions and deleting any terms of the Original Conservation Easement that conflict with the Safe Harbor Provisions.
3. **Amendments to Original Conservation Easement.** The Original Conservation Easement is hereby amended as follows:
 - a. **Safe Harbor Provision: Extinguishment Clause.** Notwithstanding any other provisions of the Original Conservation Easement, the Amended Conservation Easement can be extinguished in whole or in part only as provided as follows:

Pursuant to Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for the conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by Grantee in a manner consistent with the conservation purposes of the original contribution.

Grantor and Grantee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

4. **Consistency with Amendment Provision of Original Conservation Easement.** Section 15 of the Original Conservation Easement permits amendments of the Original Conservation Easement if the requirements in that paragraph are satisfied. The Parties acknowledge and agree that each amendment individually and the amendments collectively are consistent with the requirements of Section 15 of the Original Conservation Easement.

5. **Ratification of Original Conservation Easement.** Aside from the amendments enumerated in Section 3, above, this Amended Conservation Easement does not effect any other changes to the Original Conservation Easement. The Parties restate and reaffirm all of the terms and conditions and all of the Parties' rights, remedies, and obligations as set forth in the Original Conservation Easement, except as expressly amended herein. Nothing in this Amended Conservation Easement shall be interpreted to extinguish, modify, change, alter, remove, revoke, or otherwise amend the terms and conditions of the Original Conservation Easement, except as expressly stated herein.

6. **Integration of Amendment and Original Conservation Easement.** The Parties intend that the terms and conditions set forth in this Amended Conservation Easement and in the Original Conservation Easement will be fully integrated and shall be interpreted, construed, and enforced as one Amended Conservation Easement only. Any references in the Original Conservation Easement to the "Easement" shall be interpreted to refer to the Original Conservation Easement and this Amended Conservation Easement.

7. **Miscellaneous Provisions**

- a. **Effective Date.** The provisions of this Amendment shall be treated as effective, for purposes of §170 of the Internal Revenue Code, §605(d)(2) of the SECURE 2.0 Act, and Section 3.01(2) of the Notice, as of the date on which the Original Conservation Easement was originally recorded in the office of the Clerk and Recorder of Lewis and Clark County and Broadwater County, Montana (the “**Effective Date**”). For purposes of determining priority of recorded third-party rights in and to the Property, this Amended Conservation Easement relates back to the Effective Date.
- b. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Montana and the United States of America.
- c. **Recording.** The Parties shall record this Amendment in the office of the Clerk and Recorder of Lewis and Clark County and Broadwater County, Montana, following full execution and acknowledgment by the parties.
- d. **Binding Effect.** The covenants, terms, conditions, and restrictions of this Amended Conservation Easement shall be binding upon, and inure to the benefit of, the Parties and their successors and assigns and shall continue as a servitude running in perpetuity with title to the Property.
- e. **Definitions; Headings.** Any initially capitalized words not defined herein shall have the meanings given to such terms in the Original Conservation Easement. The headings, titles, and subtitles herein have been inserted solely for convenient reference and shall be ignored in its construction.
- f. **Severance.** Should any portion of this Amended Conservation Easement be declared invalid and unenforceable, then such portion shall be deemed to be severed from this instrument and shall not affect the remainder of this Amended Conservation Easement.
- g. **Entire Agreement.** This Amendment, together with the Original Conservation Easement, constitute the entire agreement among the parties hereto with respect to the subject matter hereof. This Amended Conservation Easement supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof.
- h. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one fully executed agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands.

[Signature Pages Follow]

Grantee:

PRICKLY PEAR LAND TRUST, INC.
a Montana non-profit corporation

By: *Mary Hollow*
Mary Hollow
Executive Director

Dated: 7-12-23

ACKNOWLEDGMENT

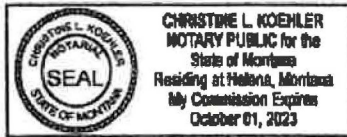
STATE OF MONTANA)
) ss.
County of LEWIS & CLARK)

This instrument was signed and acknowledged before me on the 12th day of July, 2023, by Mary Hollow as Executive Director of Prickly Pear Land Trust, Inc., a Montana non-profit corporation.

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

Notary Signature: *Christine L Koehler*
Notary Public for the State of Montana

(NOTARIAL SEAL)



Grantor:

Douglas C. Potter
Douglas C. Potter

ACKNOWLEDGMENT

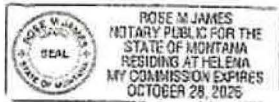
STATE OF MONTANA)
: ss.
County of Lewis & Clark)

This instrument was signed and acknowledged before me on the 12th day of July, 2023, by Douglas C. Potter.

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

Notary Signature: Rose M. James
Notary Public for the State of Montana

(NOTARIAL SEAL)



Ronda M. Potter
Ronda M. Potter

ACKNOWLEDGMENT

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

This instrument was signed and acknowledged before me on the 12th day of July, 2023, by Ronda M. Potter.

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

Notary Signature: Rose M. James
Notary Public for the State of Montana

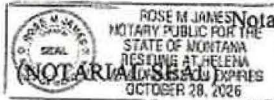


Exhibit A
Description of the Property

All that certain real estate situated in Lewis and Clark and Broadwater Counties, Montana, consisting of 3,109 acres, more or less, more particularly described as follows:

PARCEL 1:

Government Lots 1 and 2 and the E1/2 of the NW1/4 of Section 19, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book 218 of Deeds, Page 287)

Less and excepting therefrom the following parcels: Lots 1 and 2 of Harms Minor Subdivision as shown on Plat filed under Document No. 3013656 AND that certain tract described in Book 261 of Deeds, Page 183.

PARCEL 2:

The E1/2 of Section 19, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M11, Page 4976)

PARCEL 3:

The N1/2, SW1/4, Government Lots 2 and 4 and SW1/4SE1/4 of Section 20, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M11, Page 4976)

Less and excepting therefrom: The Lilley Lode MS #7077.

PARCEL 4:

The SE1/4SE1/4 of Section 20, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M5, Page 6900)

PARCEL 5:

The W1/2NW1/4 and the NW1/4SW1/4 of Section 21, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M11, Page 4976)

PARCEL 6:

The S1/2SW1/4 of Section 21, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M5, Page 6900)

PARCEL 7:

The NW1/4, N1/2SW1/4, SW1/4NE1/4 and the NW1/4SE1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book M5, Page 6900)

PARCEL 8:

The SW1/4SW1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book 289 of Deeds, Page 738)

PARCEL 9:

The SE1/4SW1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 10:

The NE1/4, N1/2NW1/4, N1/2SE1/4, N1/2N1/2SE1/4NW1/4 and the SW1/4NW1/4 of Section 29, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book M5, Page 6900)

PARCEL 11:

The SE1/4SE1/4 of Section 29, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 12:

The N1/2NE1/4 and the SE1/4NE1/4 of Section 30, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana
(Deed Reference – Book M5, Page 6900)

PARCEL 13:

The N1/2SW1/4, W1/2SE1/4, NE1/4NE1/4, W1/2NE1/4 and the NW1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 189 of Deeds, Page 456)

PARCEL 14:

The E1/2SE1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 15:

The S1/2SW1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 16:

The W1/2NW1/4 of Section 33, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 17:

The NE1/4NW1/4 of Section 33, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 18:

All of Government Lot 4 and that portion of Government Lot 3, more particularly described as follows:

Commencing at the Northwest corner of said Lot 3 and running thence east to the Northeast corner of said Lot, thence running Southwesterly to the Southwest corner of Lot 3, thence North to the place of beginning. Both Lots being located in Section 5, Township 9 North, Range 1 West, P.M.M. Lewis and Clark County, Montana.

(Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 19:

Government Lot 1 in Section 6, Township 9 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 20:

The SW1/4NW1/4 and that portion of the SW1/4SE1/4NW1/4, being more particularly described as follows: Commencing at the Southwest corner of said Southeast Quarter of Northwest Quarter and running thence East along the South line of said subdivision to the Southeast corner thereof, thence Northwesterly to the Northwest corner of said subdivision, thence South to the place of beginning, EXCEPTING from the above, a twenty foot strip along the South Line of the Northwest Quarter of Section Five (5) for roadway purposes. All being located in Section 5, Township 9 North, Range 1 West, P.M.M., Broadwater County, Montana. (Deed Reference - Book 59 of Deeds, page 537)

AND

The SE1/4NE1/4 of Section 6, Township 9 North, Range 1 West, P.M.M., Broadwater County, Montana. (Deed Reference - Book 59 of Deeds, page 537)

PARCEL 21:

All that part of the Northeast quarter of the Southeast quarter (NE1/4SE1/4) of Section 31, Township 10 North, Range 1 West of the Montana Meridian, more particularly described as follows:

Beginning at the Southeast corner of the NE1/4SE1/4, running thence North along the Section Line 716.4 feet; thence West 170 feet; thence S. 11°30'W. 90.5 feet; thence S. 24°30' W. 272 feet; thence S. 23° E. 211 feet; thence S. 26° E. 207 feet; thence East 127.7 feet to the place of beginning. All being located in Section 31, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana.

(Deed Reference - Book 189 of Deeds, page 456)

All of the foregoing described Property is conveyed subject to the following (collectively, the “**Encumbrances**”): (i) all third party rights of record in the Property existing at the time of conveyance of 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 offices of the Clerk and Recorder or Lewis and Clark County, Montana and Broadwater County, Montana, pursuant to Mont. Code Ann. Title 70, Chapter 21; and (iv) title to that portion of the Property, if any, lying below the mean high water mark of abutting navigable rivers.

*Excludes portion described in Exhibit E

[End of Exhibit A]