

City of Whitefish
P.O. Box 158
Whitefish, MT 59937

(4)

472391-CT

**HASKILL BASIN WATERSHED
DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this 1st day of February, 2016, by **F.H. STOLTZE LAND & LUMBER COMPANY** whose address is 600 Halfmoon Road, Columbia Falls, Montana, 59912 ("Landowner"), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department") and to **THE CITY OF WHITEFISH**, a Montana municipal corporation whose address is 1005 Baker Avenue, P.O. Box 158, Whitefish, Montana 59937-0158 ("City"). In this Deed of Conservation Easement, the Department and the City may be referred to collectively as "Grantees", and Landowner and Grantees may be referred to collectively as "Parties", or individually as a 'Party'.

Exhibits to this Deed of Conservation Easement include the following:

- Exhibit A - Legal Description of the Land**
- Exhibit B - Map of the Land**

I. RECITALS

A. The people of the State of Montana and the City of Whitefish recognize the benefits of protecting forest land, watersheds, riparian corridors and conserving open space that provides clean water quality and supply for the City municipal water system and clean water and habitat for native fish, wildlife and plant communities, while simultaneously managing commercial forests on the land, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve important lands and habitat;

B. The Landowner is the sole owner of certain real property in Flathead County, Montana, comprising approximately 3020 acres and legally described in Exhibit A and depicted in Exhibit B, both of which are attached hereto and incorporated herein by this reference (the "Land");

C. The City has determined that the conservation of the Land under this Deed of Conservation Easement would satisfy a number of needs of, and provide a multiplicity of benefits to the residents and visitors of Whitefish, including (i) the protection and preservation of the City's water supply, including the primary source drinking water supply for the City's municipal water system, (ii) the aesthetic protection of the scenic backdrop to the City, (iii) the preservation of important wildlife and fish habitat, (iv) the securing of nearby and accessible recreational opportunities, and (v) the preservation of sustainable timber harvesting, along with all of the associated local job and economic benefits that come with such benefits.

D. The City is authorized under Montana Code Annotated ("MCA"), Title 7, Section 13, Part 43 and Title 7, Section 7, Part 44 to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking.

E. The Land also has significant natural habitat, scenic and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, MCA Section 76-6-101, et seq.

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Landowner Acknowledgement: *[Signature]*
Department Acknowledgement: *[Signature]*
City Acknowledgement: *[Signature]*

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 1 of 29



Debbie Pierson, Flathead County MT by NC

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Page: 1 of 29
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F. The Land provides significant benefit to the people of the City of Whitefish, the State of Montana, Flathead County, and the United States by preserving and providing the following important resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code and Sections 76-6-101, et seq., MCA:

1. Open-space lands which maintain the rural, natural scenic and agricultural qualities of the area and provide opportunities to continue traditional timber management practices and recreation opportunities in perpetuity, as encouraged and supported by the State of Montana and local land conservation policies adopted in Flathead County, Montana; and

2. Views of a working forest landscape that are enjoyed by members of the general public traveling along U.S. Highway 2, U.S. Highway 93 and Montana Highway 40 as well as the general public recreating on the Land and on adjacent public lands administered by the Flathead National Forest; and

3. Open-space lands that provide for a variety values, including:

a. The watershed that currently comprises approximately ninety percent (90%) of the source drinking water for the City;

b. Outstanding fisheries habitat and spawning grounds (provided by Haskill Creek, 1st Creek, 2nd Creek, 3rd Creek, 4th Creek and 5th Creek) for a variety of fish species, including, but not limited to, westslope cutthroat trout;

c. Exceptional wildlife habitat for a variety of species, including, but not limited to, grizzly bear, Canada lynx, wolverine, elk, mule deer, whitetail deer, black bear, moose, gray wolf, mountain lion, hoary bat, pileated woodpecker, black-backed woodpecker, and numerous other bird species, many of which are listed as species of Greatest Conservation Need in the Department's Comprehensive Fish & Wildlife Conservation Strategy (2014); and

d. Important lands, which serve as corridors for the movement of wildlife and play a central role in ensuring wildlife linkages between the North Fork of the Flathead River, Glacier National Park, the Whitefish Range and other ecologically intact areas of the Rocky Mountains of the northern United States and southern Canada.

The uses and benefits described above are collectively referred to as the Land's "Conservation Values."

G. The Land has a history of forest management, and maintaining the opportunity for a productive forest management program that sustains and enhances fish and wildlife habitat and protects the quality of the City of Whitefish's municipal water supply is of statewide and local importance.

H. The 2007 Whitefish City-County Growth Policy specifically recognizes the importance of Haskill Creek and recommends that developments in the 2nd Creek and 3rd Creek watersheds be closely evaluated and conditioned to protect the City's domestic water supply source.

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 2 of 29

I. The Land provides important public recreational opportunities, including, but not limited to, hunting, fishing, trapping, trail running, mountain biking, hiking, cross country skiing, huckleberry picking, and wildlife viewing.

J. The Conservation Values of the Land can best be protected by the Landowner granting a conservation easement to the Grantees, with the Landowner retaining fee title to and overall management of the Land, so long as management is consistent with the terms, conditions and purposes of this Easement (as described).

K. The Forest Legacy Program, administered by the U.S. Department of Agriculture, Forest Service ("Forest Service") pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) and created "to protect environmentally important private forest lands threatened with conversion to non-forest uses", has awarded a Forest Legacy grant to the Department for a portion of the purchase price of this Easement.

L. A portion of the value of this Easement is being provided by the City through the issuance of water revenue bonds to be repaid by an increase in the City's resort tax through January 31, 2025;

M. A portion of the appraised value of this Easement is being provided by U.S. Department of Interior, Fish and Wildlife Service ("USFWS") grant funds under its Habitat Conservation Plan Land Acquisition Grants Program (Section 10(a)(1)(B) of the Endangered Species Act). Such grant funds are provided for acquisition of vital habitat for threatened and endangered fish, wildlife, and plant species. This Easement will be managed so as to protect and preserve the Conservation Values of the Land, which Conservation Values are consistent with the purposes of the USFWS grant. This Easement may not be encumbered, disposed of in any manner, or used for purposes other than those for which it was acquired, without prior written approval of the USFWS, Region 6, Denver, Colorado as well the City and the Department.

N. If the purchase price for the Easement is less than the fair market value of the Easement, and Landowner intends that the difference between the purchase price and the fair market value shall be a charitable contribution by Landowner.

O. The fair market value of the Land both before and after taking into account the effect of the Easement was determined by a full appraisal in accordance with the definitions and methodologies of the Uniform Appraisal Standards for Federal Land Acquisitions, and the purchase price for the Easement is no more than the fair market value of such interest in the Land at the time of the grant of the Easement. The parties acknowledge that no part of the consideration paid for the Easement is being paid for public access to the Land since Landowner has had the long-standing practice of providing such open access and is agreeing to continue such practice as set forth herein.

II. AGREEMENT

In consideration of the sums paid by the Parties, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 3 of 29

State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, MCA §§76-6-101 through 76-6-211, the Department's wildlife habitat acquisition authority, §§87-1-209 *et seq.*, MCA; and Title 70, Chapter 17, MCA, and the City's source water protection authority under MCA Title 7, Chapter 7, Part 44, Landowner grants and conveys to Grantees and Grantees accept this Easement in perpetuity consisting of the following rights and restrictions over and across the Land.

A. PURPOSES

This Easement is being acquired using the charitable contribution from Landowner described in Recital N and three different, but mutually consistent and compatible, funding sources in order to preserve and protect the Conservation Values of the Land. In the interest of protecting such Conservation Values, Landowner and Grantees agree that the purposes of this Easement (the "Purposes") are generally described as follows:

1. Protect the City's municipal water quality and supply in 1st Creek, 2nd Creek and 3rd Creek and ensure that the water being diverted continues to remain as pure and clean as possible, free from sedimentation and pollution that the commercial, industrial or residential development of the Land would entail.

2. Further the goals of the Forest Legacy Program, in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c), to protect environmentally important forest areas that are threatened by conversion to non-forest uses and therefore also protect important scenic, cultural, fish, wildlife, recreational resources, and riparian areas.

3. A further purpose and goal of the Forest Legacy Program and this Easement is to protect the Land's capacity to produce economically valuable forestry products and to allow Landowner and its successors and assigns to continue to conduct commercial timber and resource management activities in a sustainable manner.

4. Further the goals of the Habitat Conservation Plan Land Acquisition Grants Program to manage floodplain, riparian areas, and stream habitats along certain fish bearing creeks on the Land as delineated on the map attached hereto as Exhibit B in a manner suitable to the long-term conservation of certain wildlife and native fish species.

5. Perpetuate the use of the Land as working forestland; to ensure the opportunity for long-term, professional management of the forest resources through sustainable forestry activities permitted hereunder; and to provide that commercial production of forest products is conducted in a manner compatible with the conservation of water quality, fish and wildlife habitat, recreation, and the Conservation Values.

6. Continue the Landowner's current practice of allowing members of the public with reasonable access to the Land for public outdoor recreational uses as provided for in Paragraph II.C. and subject to Paragraph II.I.

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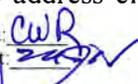
7. To prevent the Land from being converted or diverted to any use prohibited by Paragraph II.D of this Easement pursuant to the terms of §76-6-107, MCA, or to any use otherwise inconsistent with the terms, conditions, Conservation Values or Purposes of this Easement.

B. LANDOWNER'S RIGHTS

Landowner reserves to itself, its successors and assigns, all rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that are not contrary to this Easement. Without limiting the generality of the previous statement, and subject to the specific restrictions on Landowner's activities in this Easement, the following rights are expressly reserved and are consistent with this Easement. As specified in the following paragraphs, Landowner's exercise of certain of these rights is conditioned upon prior approval by the Grantees under the procedures provided for in Paragraph II.G. of this Easement (hereafter referred to as "Prior Approval") and Landowner's exercise of other rights is subject to prior notice to Grantees also as provided for in of Paragraph II.G. (hereafter referred to as "Prior Notice"). Furthermore Landowner's exercise of many of these rights is conditioned upon their adherence to the Multi Resource Management Plan executed by Landowner and the Grantees pursuant to Section II.E. hereof (the "MRMP"). The following rights are expressly reserved and are deemed to be consistent with the Conservation Values and Purposes of this Easement:

1. Forest Management. The right to harvest, prepare for sale, and sell timber, timber products and other forest products or resources and to manage the Land including all aspects of commercial forestry in accordance with Applicable Law (as defined below); in accordance with good and sound silvicultural practices as addressed in the MRMP as defined in Paragraph II.E. hereof. For purposes of this Easement, the term "Applicable Law" shall mean any federal or state regulation, rule or statute which may be in effect from time to time which regulates the harvest of timber or land management with respect to the Land, including, but not limited to, Title 77, chapter 5, part 3, MCA, and the associated Administrative Rules of Montana, Title 36, Chapter 11, Sub-chapter 3, governing forest practices in the streamside management zone, as the law and rules may be revised or amended from time to time, and "Best Management Practices for Forestry in Montana, December 2015" (the "BMPs"), with such changes as the parties may agree to from time to time. In addition, Landowner will harvest the timber and manage the Land and its resources in accordance with the MRMP required pursuant to the Forest Legacy Program and further described in Paragraph II.E of this Easement.

2. Regulation of Public Use. The right to regulate public use of the Land at all times, subject to the public's recreational access and limits thereon as described hereinafter in this Easement. The Landowner retains the right to temporarily restrict public use as required to protect and restore environmentally sensitive areas, sites damaged by public use or natural processes, or areas undergoing timber harvest or timber management activities such as reseeded or replanting; in emergency situations; for public safety reasons subject to the provisions of Section I; and in other areas or circumstances where the Conservation Values could be adversely impacted by public use. Landowner must give Grantees written notice of areas closed to public use as soon as practical after such closure. Restrictions to protect and restore environmentally sensitive areas or to address circumstances where the Conservation Values could be adversely

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City Acknowledgement: 

impacted by public use require mutual consent of the Landowner and Grantees. Consent of the Grantees is not required to restrict motorized use of roads; provided that non-motorized use is allowed. Grantees agree to assist Landowner in enforcing Landowner's right to restrict public use as outlined in this Easement and/or in the MRMP. Further, Landowner retains the right to temporarily suspend public access subject to the provisions of Section C.6.(a), (b), and (c).

3. Structures and Improvements. Landowner may:

a. repair, renovate, remove, maintain, or replace nonresidential improvements existing at the time of the grant of this Easement, provided that such repair, renovation, maintenance, or replacement does not expand the size or materially change the use of such nonresidential improvements;

b. construct, remove, maintain, renovate, repair, or replace timber platforms, bridges, culverts, road ditches, and other structures necessary for land management purposes not specifically disallowed in this Easement; and

c. with Prior Approval, construct or place on the Land for temporary use one or more buildings or structures for resource-management purposes, including but not limited to forest management and road work. The temporary placement of equipment and machinery for log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Land is not deemed to be a "timber processing mill." However, such equipment or machinery may not be placed within the Streamside Management Zone (as defined in Paragraph II.D.1.) unless approved in writing by the Department. Any buildings allowed by this Paragraph II.B.3.c. must be removed from the property upon conclusion of the use for which the buildings were erected and the site reclaimed.

4. Roads, Road Maintenance, Road Easements, Trails and Bridges. Notwithstanding the provisions of Paragraph II.B.1. the Landowner:

a. may maintain and improve, or replace, existing roads, bridges, and culverts consistent with conditions and restrictions in the MRMP. This right includes the right to abandon or reclaim roads that are no longer used;

b. with Prior Notice to the Grantees, may construct and maintain new roads necessary for exercising rights retained by Landowner under this Easement that are consistent with the MRMP. Any proposed new roads not in accordance with the MRMP require Prior Approval by the Grantees;

c. with Prior Approval from the Grantees, may construct and maintain new roads and bridges within the Streamside Management Zone;

d. shall control and be responsible for road access, maintenance, management, and use regulation, subject to any maintenance, management and access provisions governing "cost-share" roads, as contained in separate agreements among the Landowner and cooperating federal and state agencies;

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 6 of 29

e. may grant to third parties permanent or temporary, non-exclusive access rights to cross the Land on new roads to be constructed or on roads or trails existing at the time of the grant of this Easement. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party. Documentation of roads or trails existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Paragraph II.F. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement;

f. with Prior Notice to the Grantees, may utilize roads existing at the time of the grant of this Easement or construct and maintain new roads across the Land in order to access other nearby or adjoining land owned by Landowner; and

g. may grant to third parties permanent or temporary non-exclusive access rights for recreational purposes across the Land on new trails to be constructed. Prior to issuing any such access rights, Landowner must give Prior Notice to the Grantees and also provide the Grantees with a copy of any access easement or agreement to be granted to such third party.

5. Use of Motorized Vehicles and Equipment. The right to use motor vehicles, forestry machinery and equipment, and to maintain log yards, in the ordinary course of Landowner's timber and resource management activities and in a manner consistent with Paragraph II.B.1.

6. Chemical and Biological Agents. The Landowner reserves the right to utilize agrichemicals, fertilizers, biological agents, or other means for silvicultural purposes and for control of noxious weeds and pests, as defined by the State of Montana or other lawful authority with jurisdiction. Subject to Prior Approval by the Grantees, Landowner may use chemical or biological agents to control other nonnative plants not listed as noxious weeds or to control plants, fish, wildlife, insects, or other life forms that threaten the Conservation Values of the Land. Any such use or application must be in accordance with Applicable Law. Notwithstanding any of the provisions of this Paragraph II.B.6., Prior Approval from the Grantees is required for aerial application of agrichemicals, fertilizers, and biological agents.

7. Habitat Enhancement and Restoration. The Landowner reserves the right to manipulate vegetation, conduct stream restoration projects, or engage in other habitat enhancement or restoration activities, provided that any such activity must be for the primary purpose of enhancing or maintaining fish and wildlife habitat, and such activity must be in accordance with the MRMP. If any such activity is not contained in the MRMP or otherwise specifically allowed herein, then Prior Approval by the Grantees is required.

8. Telecommunications Sites. The right to lease not more than one (1) additional site together no larger than one (1) acre, on the Land for the purpose of the construction and use of radio, television, cell phone or other communication signal transmission or relay facilities. Access roads to these sites must be gated and the sites must be fenced to exclude deer, elk, and bear. Landowner shall provide a copy of the lease to the Grantees. Any road construction

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

necessary for installation and maintenance of the telecommunication facility must be consistent with conditions and restrictions in the MRMP. Grantees acknowledge that the Landowner is already leasing a one-half acre tract to Mountain Digital Enterprise LLC for the purpose of operating and maintaining an existing tower and communications facility located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 31 North, Range 21 West, PMM, Flathead County, Montana.

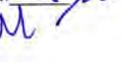
9. Commercial Recreation. The right to allow non-exclusive commercial recreational activities at levels described in the MRMP. "Non-exclusive use" means that the public also has the opportunity for recreational use, consistent with the terms of this Easement and the MRMP. Notwithstanding the foregoing, the Landowner expressly reserves the right to continue leasing a portion of the northern one-third of Section 6, Township 31 North, Range 21 West, PMM, Flathead County, Montana to Winter Sports, Inc. for the use, maintenance and operation of a "Walk Through the Trees" attraction, which involves a trail and rope walk through a forested area, lying adjacent to lands owned by Winter Sports, Inc.

10. Cross Country Ski Trails. The right to lease or enter into license agreements permitting existing roads on the Land to be groomed and used at no cost by the general public for cross country skiing. Grantees acknowledge that the Landowner has already entered into license agreements allowing Iron Horse Golf Club Inc. to groom certain roads in parts of the S $\frac{1}{2}$ of Section 7, the NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 8, the N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 17 and the Glacier Nordic Club, Inc. to groom certain roads in the NE $\frac{1}{4}$ of Section 12, all in Township 31 North, Range 22 West, PMM, Flathead County, Montana.

11. Subdivision and Real Property Conveyance. For the purposes of regulating subdivision and real property conveyance, the Land (as described in Exhibit A) is considered a whole and undivided parcel of land at the time of the grant of this Easement, notwithstanding any section designations, aliquot parts, government lots or other legal or technical divisions or subdivisions that may exist at the time of the grant of this Easement. The following provisions apply to any division and conveyance of the Land, or any portion thereof:

a. The Landowner may sell, convey, exchange, mortgage, quit-claim, devise, gift or otherwise transfer title to the Land in its entirety or in up to three (3) separate parcels designated on the Site Map attached here to as Exhibit B as Parcels A and B and C ("trail corridor" as specified in Paragraph b. below), provided that such parcels be conveyed expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as "transfer").

b. The Landowner shall grant to the City a permanent easement for a non-motorized public recreational trail corridor twenty (20) feet wide along the west boundary of the Land with such additional width as is necessary to accommodate and protect cuts and fills in accordance with the terms and conditions of a mutually acceptable easement agreement to be entered into between the City and the Landowner. The approximate location of the trail corridor is depicted as points A to B on the Site map. In the future, Landowner reserves the right to convey, quit-claim, or otherwise transfer title to the trail corridor to the City. Such grant, conveyance, quit-claim, or transfer of the trail corridor

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

to the City is expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement (such actions all termed as “transfer”).

c. The Landowner shall provide Prior Notice to Grantees of any pending real property transfer, and such transfer must be affected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Grantees may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

d. In the event that the Land is divided into separate ownerships as provided for in this Paragraph II.B.11, Landowner shall furnish the Grantees with a copy of the conveyance document utilized to effect the transfer of the Land within thirty (30) days of the execution of said document, and the Grantees shall record in the Public Records of Flathead County a “Notice of Exercise of Reserved Subdivision Right Under Deed of Conservation Easement “ to document the exercise of such rights for the benefit and information of the Landowner, the Grantees, and the public.

e. Subsurface mineral rights severed prior to the grant of this Easement do not constitute a prohibited or restricted division or subdivision for purposes of this Paragraph.

f. The restrictions on land division and subdivision contained in this Paragraph do not apply to the right to sell stumpage, as long as the timber rights are not permanently severed.

g. The Land may not be used as open or natural space or park land for any subdivision or development purposes or requirements on land not covered by this Easement, nor may Landowner transfer any development rights on or to the Land separate from the Land. For purposes of this Easement, development rights include, without limitation, any and all rights, however designated, now or hereafter associated with the Land or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the Land or any other property.

12. Utility Installation and Pipelines. The right to construct or permit utility equipment, lines and pipelines and other utility facilities for any lawful purpose that may be necessary in or across the Land, provided that:

a. At Landowner’s sole discretion, underground utility installation and pipelines shall be allowed within existing road prisms; and,

b. Prior Approval is required for any new utility or pipeline installation within or across the Land outside of existing road prisms; and,

c. Any utility or pipeline installation must be constructed in a manner that protects the Land.

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 9 of 29

If Landowner has received notice of a pending condemnation action from an appropriate authority, the provisions of Paragraph II.J. apply.

13. Grazing. With Prior Approval by the Grantees, Landowner may use livestock on the Land to control noxious weeds or other invasive nonnative plants, or for other land management purposes consistent with the protection and maintenance of the Land.

14. Fences. The right to construct, remove, maintain, repair, and replace fences on the Land for the purposes of livestock management or property protection; provided, however, that such activities and fences do not significantly impact wildlife habitat or wildlife migration on and through the Land.

15. Extraction of Sand, Gravel, and Rock. With Prior Notice, the right to establish one or more locations on the Land to extract sand, gravel, and rock through surface mining techniques in accordance with Applicable Law, provided that:

- a. Each excavation site is not within a 100-year flood plain area or less than eighty (80) feet from the boundary of any Streamside Management Zone;
- b. Any material extracted may only be used on the Land for purposes consistent with Landowner's reserved rights;
- c. Landowner shall control noxious weeds at the site; and
- d. The Landowner shall not disturb or affect the City's utility improvements, including water intake and diversion structures, piping, and other ancillary structures.

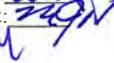
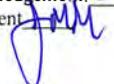
C. GRANTEES' RIGHTS; COOPERATION BETWEEN GRANTEES

The rights conveyed to the Grantees by this Easement are:

1. Subject to the terms hereof, including but not limited to Landowner's Rights set forth in Paragraph II.B. of this Easement, and consistent with the Purposes of this Easement, the right to preserve and protect in perpetuity the Conservation Values of the Land.

2. The right to enter the Land to monitor Landowner's compliance hereof and to enforce the specific restrictions on the Landowner's activities and rights granted to the Grantees by this Easement; and to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems. In addition, the Grantees have the right to establish and maintain vegetation monitoring transects and enclosures upon prior written notice to Landowner, and in a manner that will not unreasonably interfere with the Landowner's rights under this Easement.

3. The right of the City to inspect, repair, renovate, remove, maintain, or replace the utility improvements including, water intake and diversion structures, piping, and other ancillary structures that the City owns and maintains under separate easement agreements with Landowner on 1st Creek (located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, Township 31 North, Range 22 West), 2nd Creek (located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 31 North, Range 21 West), and

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

3rd Creek (located in the SE¹/₄NE¹/₄ of Section 12, Township 31 North, Range 22 West) as well as the existing buried piping and other ancillary structures needed to deliver water to the City's water treatment plant currently located in the NW¹/₄S¹/₂NW¹/₄ of Section 8 and in the S¹/₂ of Section 7, Township 31 North, Range 33 West. Such right also includes the right of the City to install automated water supply gate valves, powered by electricity (including solar or hydro-electric appurtenances) at any of the intakes of 1st Creek, 2nd Creek or 3rd Creek; the right to monitor for water quality and quantity, and the right to extract sand and gravel in accordance with applicable state and federal law solely as necessary to maintain the City's water intake equipment and systems.

4. The right to prevent any activity on or use of the Land by the Landowner that is inconsistent with this Easement and not allowed hereby, and, to the extent practicable, to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by Landowner not allowed herein.

5. The right, on behalf of the general public, of access for the purpose of noncommercial dispersed recreation on the Land as described in the MRMP. Use of the Land by the public is subject to Landowner's right to restrict such public access pursuant to Paragraph II.B.2. of this Easement and to any limitations or restrictions contained in the MRMP.

6. In the event that either (a) the Landowner reasonably demonstrates that its risk of landowner-based liability has materially increased as a result of the public's access to or use of the Land due to a change in statutory or common law or (b) the Landowner is unable to continue to obtain commercially available liability insurance covering the Lands at prevailing market rates insuring the Landowner against liability for death, personal injury and/or property damage coverage comparable to that available on the date of this Easement, then, in either such event, the following provisions shall apply:

a. The Landowner shall have the right to temporarily suspend public recreational access to the Land for a period of up to three years.

b. During any period of suspension, the Parties shall negotiate in good faith and commit to finding and implementing a mutually acceptable solution that allows public recreational access to be continued on the Land, while also protecting the Landowner against increased liability, or increased liability protection cost for such public recreational access and use. This obligation to use "good faith" is binding on all Parties and may be independently enforced by any Party against any other Party until such agreement is achieved. Such agreement, when reached, shall be memorialized through revision of the MRMP and, if necessary, amendment to this Easement.

c. After the three year period, the Grantees, either individually or jointly, shall have the right to purchase the Land subject to the Easement on the following terms and conditions:

i. the Landowner shall retain the perpetual right to harvest all timber on the Land, subject to all applicable provisions of the MRMP;

ii. public recreational access shall remain suspended until Grantees close on their purchase of the Land;

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iii. the purchase price for the Land shall be the fair market value thereof (subject to all easements then encumbering the Land including this Easement) determined by an applicable appraisal obtained within six (6) months of the closing on Grantees' purchase;

iv. the Grantees and the Landowner shall attempt to agree on the appraiser and, if the Grantees and the Landowner come to agreement on the appraiser, the fair market value determined by such appraiser shall be binding on all parties;

v. if the Grantees and the Landowner do not come to agreement on the appraiser within thirty (30) days, the Grantees and the Landowner shall each obtain their own appraisal of the fair market value of the Land. In the event that the difference between such appraisals is 10% or less, the fair market value determined by such appraisals shall be averaged and such averaged fair market value shall be binding on all parties. In the event that the difference between such appraisals is more than 10%, a third appraisal shall be obtained by an appraiser selected by the first two appraisers and the fair market value determined by the two closest appraisals shall be averaged and such averaged fair market value shall be binding on all parties;

vi. the purchase price for the Land shall be paid in cash by wire transfer to Landowner on the date of closing; and,

vii. Landowner shall transfer its rights in the Land subject to all easements, covenants, conditions, laws, rules and restrictions then in effect, and subject to Landowner's retained timber harvesting rights.

d. The non-motorized public recreational trail corridor mentioned in Paragraph II.B.11.b. will not be subject to the terms of the temporary suspension of public recreational access described above.

7. The rights granted to Grantees under this Easement are enforceable by both the City and the Department acting independently or by either of them acting on behalf of both Grantees. It is anticipated that the Department will take the primary and lead role in monitoring and enforcing the terms and condition of this Easement and will be the primary contact for the Landowner. It is also anticipated that the Department will work cooperatively with the City and keep the City informed of all developments on the Land that might affect this easement and the rights conveyed under this Easement. The City and the Department may enter into a Memorandum of Agreement in which they formalize their respective roles and understandings regarding the monitoring and enforcement of the Easement; and shall provide a copy thereof to Landowner within 30 days of execution. For any matter requiring the approval or consent of Grantees, or Notice to the Grantees, under this Easement, Landowner will provide any required notice to the Department, and may rely on the Department to share such notice with the City and to have reached an agreement with the City on how to respond to Landowner prior to providing any formal response to Landowner. Landowner may rely on a written response from the Department when requesting Grantees' written consent or approval.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

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The following activities and uses are expressly prohibited or restricted.

1. Timber Harvest in Streamside Management Zones. Timber harvest, use of mechanical equipment off of established roads, or conducting timber-management activities within the Streamside Management Zone (SMZ) along the following drainages: 1st, 2nd, 3rd, 4th and 5th Creeks and main stem Haskill Creek will be conducted in compliance with the Montana SMZ law with such additional provisions as outlined in the MRMP.

2. Wetland Areas. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited except as provided for in Paragraph II.B. and in compliance with the provisions of the MRMP.

3. Subdivision. The partition, division, subdivision or de facto subdivision of the Land is prohibited, except as specifically provided for in Paragraph II.B.11.

4. Residential Use. Residential use of the Land and the construction or placement of any residential building or structure on the Land is prohibited.

5. Water Use and Water Rights. The use or withdrawal of surface or ground water in any manner that would adversely affect the Conservation Values is prohibited, provided, however, that such prohibition shall not be deemed to apply to Landowner's lawful use of surface or ground water in connection with any of Landowner's permitted commercial forestry, silvicultural and/or resource management activities. The transfer, encumbrance, sale, lease, or other separation of water rights from the Land is prohibited unless such transfer, sale, lease or other separation specifically provides for the protection of the City's access to and source of water for its citizens and provides for protection of the Land's use as a commercial forest operation.

6. Soil Cultivation. Cultivation of the Land is prohibited, except as provided in Paragraph II.B.7. or in the MRMP.

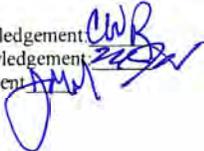
7. Lease or Sale of Access. Except as specifically provided for in Paragraph II.B.4, II.B.9 and II.B.10, (including Landowner's "Walk in the Tree Tops" attraction), the rent, lease, sale, or charging of fees for exclusive access to the Land to others for hunting, fishing, skiing, snowmobiling, or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited without Prior Approval of the Grantees. The Landowner may not sell, assign, convey, or otherwise transfer any interest in the Land or in itself for the purpose of providing exclusive access to the Land in contravention of this Easement.

8. Utility Installation and Pipelines. Subject to existing utility and pipeline easements and except as provided for in Paragraph II.B.12 and II.C.3. the installation of utility lines upon or under the Land is prohibited.

9. Structures and Improvements.

a. The construction or placement of a structure or improvement of any kind is prohibited, other than as expressly allowed in Paragraph II.B.3 and Paragraph II.B.12.

Landowner Acknowledgement
Department Acknowledgement
City Acknowledgement



Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 13 of 29

- b. The Landowner may not construct or place any residential building on the Land.
- c. The Landowner may not construct or place any permanent building on the Land.
- d. The Landowner may not construct or place a timber processing mill on the Land.

10. Grazing. Grazing of livestock is prohibited except as provided for in Paragraph II.B.13.

11. Alternative Livestock Ranch and other Animal Confinement. The use of the Land in connection with an alternative livestock ranch, game bird farm, feedlot, shooting preserve, fur farm, beehive or apiary, zoo or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic, or amphibian wildlife, whether or not indigenous to Montana, is prohibited.

12. Mineral Development.

a. Except for the surface extraction of sand, gravel, and rock, all as provided for in Paragraph II.B.15., the Landowner is prohibited from exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources on or under the surface of the Land. Landowner is also prohibited from conveying any interest in mineral rights to another party for purposes of mineral exploration, development, production or extraction.

b. In the event that Landowner becomes aware of a third-party exercising or proposing to exercise mineral rights (including sand and gravel operations) on the Land, Landowner shall inform the Grantees as soon as possible. Grantees may each represent their interests in protecting its rights under this Easement in any proceeding related to mineral exploration or development. If Grantees rights are adversely impacted by the mining activities of third-party mineral owners, Landowner and Grantees shall be entitled to share in any compensation for damages in accordance with Paragraph II.J. of this Easement, provided that the Grantees must apply their respective shares of any such compensation as required by the terms and conditions of the grants or appropriations used by such Party to acquire their interest in the Easement.

13. Other Commercial and Industrial Use. Any commercial or industrial use of or activity on the Land is prohibited, other than (i) commercial recreational uses or activities that do not unreasonably interfere with the public access rights provided for in this Easement and are consistent with the Purposes of this Easement and (ii) those commercial uses or activities specifically allowed in this Easement. For purposes of this Easement, trapping of furbearing wildlife as regulated by the Department is considered a recreational activity and is not a commercial use.

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City Acknowledgement: 

14. Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry best management practices and the Montana Streamside Management Zone law, provided that such disposal does not adversely impact the Conservation Values.

E. MULTI-RESOURCE MANAGEMENT PLAN AND LIAISON TEAM

Concurrently with the execution of this Easement, the Landowner and the Grantees shall enter into the MRMP that, among other things, identifies Landowner's objectives and actions the Landowner will take to protect and manage water, soil, range, aesthetic quality, recreation and public access, timber, and fish and wildlife habitat and resources. The MRMP is not incorporated into this Easement, but must be in writing and signed and acknowledged by representatives of Landowner and the Grantees who have authority to commit the respective parties to compliance with the plan. The Landowner and Grantees will comply with the MRMP.

The Landowner's resource management and timber harvesting practices that comply with the MRMP are consistent with the terms, conditions, Conservation Values, and Purposes of this Easement.

Landowner and the Grantees shall form a joint liaison team (the "Liaison Team") consisting of four total members comprised of two representatives of Landowner(s) and two representatives of the Grantees. The Liaison Team will provide a forum to review issues related to this Easement and will prepare and, as agreed upon, revise the MRMP. The Liaison Team shall meet not less than once a year as the members shall determine. If the Land is held in two ownerships, as provided for in Paragraph II.B.11, each Landowner shall appoint its own Liaison Team members. Liaison Team meetings shall include the Landowner's and the Grantees' respective representatives, unless other arrangements are mutually agreed upon.

The Liaison Team shall review and, when appropriate, amend the MRMP. Any amendment to the MRMP must be in writing and must have the signed consent and acknowledgment of the Parties. If there is any conflict or inconsistency between the terms of the MRMP and the terms of this Easement, the terms of this Easement control.

The Landowner may not convey the Land or any portion thereof unless the successor in interest has executed with the Grantees a MRMP that will come into effect upon the conveyance. The successor in interest may sign and acknowledge the MRMP that is in effect at the time of the transfer of ownership or, upon agreement with the Grantees, may sign and acknowledge a revised MRMP.

F. EASEMENT BASELINE REPORT

The Parties agree that an Easement Baseline Report (the "Report") will be completed by a natural resource professional familiar with the area and acceptable to the Grantees and the Landowner, reviewed by the Grantees, and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. In the event a controversy

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arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy.

G. NOTICES AND PRIOR APPROVAL

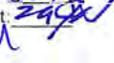
1. The purpose of requiring the Landowner to notify the Grantees prior to undertaking certain permitted activities described herein is to afford the Grantees an opportunity to ensure that activities are designed and carried out in a manner consistent with the Purposes of this Easement and pursuant to the terms hereof. Whenever Prior Notice only is required under this Easement, Landowner must notify the Grantees as provided for herein in writing not less than thirty (30) days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances.

2. Whenever Prior Approval is required, such approval may not be unreasonably withheld. Landowner must notify the Grantees in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantees to make an informed judgment as to its consistency with the Purposes of this Easement and the other terms and provisions hereof. The Grantees have sixty (60) days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms hereof, the Grantees shall inform the Landowner of the manner in which the proposed activity may thereafter be conducted. The Grantee's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. In the event the Grantees deny the activity the Landowner wishes to undertake, the Grantees must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

3. If the Grantees fail to respond to Landowner's notice of Prior Approval within sixty (60) days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement, and the Grantees shall have no further right to object to the activity identified by such notice. The Landowner shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Grantees of any such damage as soon as practicable.

4. Whenever mutual written consent is required, the initiating party must follow the Prior Approval procedures set forth above.

5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or

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sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service addressed as follows:

To Landowner: F.H. Stoltze Land & Lumber Company
Attention: General Manager
600 Halfmoon Road
Columbia Falls, MT 59912

With a copy to: F.H. Stoltze Land & Lumber Company
Attention: President
2497 Seventh Avenue East, Suite 105
North St. Paul, MN 55109

To Department: Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to: Department of Fish, Wildlife & Parks
Attention: Regional Supervisor
490 North Meridian Road
Kalispell, MT 59901

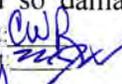
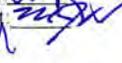
To City: City of Whitefish
Attention: City Manager
1005 Baker Avenue, P.O. Box 158
Whitefish, Montana 59937-0158

With a copy to: City of Whitefish
Attention: Mayor
1005 Baker Avenue, P.O. Box 158
Whitefish, Montana 59937-0158

or to such other address as the parties from time to time shall designate by written notice to the others. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five (5) business days after deposit thereof with a courier or mail service, return receipt requested.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

I. If the Grantees determine, acting individually or jointly, that the Landowner has violated the terms of this Easement, the Grantees shall give written notice to the Landowner of the specifics of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity prohibited by the terms of this Easement and inconsistent with the Purposes of this Easement, to restore the portion of the Land so damaged where practicable. If the land cannot be restored because

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City Acknowledgement: 

physical conditions have been changed to the extent that such restoration is not reasonably practicable, the Grantees and the Landowner may consider other remedies to the Land or compensation due to the Grantees; provided, however, that any such damages may not exceed the fair market value of this Easement at the time the damage occurs, prorated for the portion of the Land adversely affected by the applicable Landowner violation based upon impact to the Conservation Values. The fair market value of this Easement for the purpose of calculating remedies will be determined as provided in Paragraph II.J.

2. If the Landowner fails to cure the violation within thirty (30) days after receipt of notice from Grantees, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally correct, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Land to the condition that existed prior to the injury.

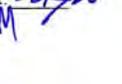
3. If Grantees determine that a violation of the terms of this Easement is threatened, Grantees shall give written notice to the Landowner of the specifics of such threatened violation. Landowner shall have thirty (30) days to respond to such notice of threatened violation. If the Landowner fails to respond to such notice within thirty (30) days after its receipt of such notice, and Grantees determine that such threatened violation still exists, Grantees may bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to enjoin the threatened violation, by temporary or permanent injunction.

4. If Grantees, in their reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Land, Grantees may pursue their remedies under this paragraph without Prior Notice to the Landowner or without waiting for the period provided for cure to expire.

5. Grantee's rights under this provision apply in the event of actual or threatened violation of the terms of this Easement, and the Landowner agrees that if Grantees' remedies for any threatened or actual violation of the terms of this Easement are inadequate, Grantees shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement. Grantees' remedies described in this section shall be cumulative and in addition to all equitable remedies consistent with the foregoing. No party is entitled to punitive, indirect, special, consequential or incidental damages.

6. Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Landowner for any injury to or change in the Land resulting from the actions of third parties, the public, or other causes beyond Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

7. In any action in law or equity to enforce the terms of this Easement, all Parties shall bear their own costs and attorney's fees.

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8. Enforcement of the terms of this Easement is at the discretion of Grantees, and any forbearance by Grantees to exercise its rights under this Easement in the event of any breach of any term of this Easement by Landowner shall not be deemed or construed to be a waiver by Grantees of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Landowner shall impair the right or remedy or be construed as a waiver, nor shall any forbearance or delay give rise to a claim of laches or prescription.

I. RIGHTS AND IMMUNITIES

In consideration of the terms and conditions of this Easement, Landowner and Grantees rely upon all of the rights and immunities against liability to the full extent of state law, as amended, and any successor provisions, and any other applicable provisions of law, including, but not limited to, Mont. Code Ann. Title 27, Chapter 1, Part 7; Mont. Code Ann. Title 70, Chapter 16, Part 3 (Restriction on Liability of Landowner for Recreation), and Mont. Code Ann. Title 2, Chapter 9 (Montana Tort Claims Act).

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION

1. The Parties agree that the Land includes important species, habitat, and other important ecosystem attributes, including water supply, quality, quantity, and habitat. Conservation Values and the public benefits that are provided by this Easement may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions. In response to such changes, one or more of the purposes of this Easement may not be able to be fully accomplished, or one or more of the Conservation Values of this Easement may not be able to be fully protected or achieved. If one or more of the purposes of this Easement can no longer be fully accomplished, or if one or more of the Conservation Values of the Land cannot be fully achieved, such failure shall not be deemed sufficient cause to terminate this Easement so long as any of the other purposes of the Easement may be accomplished and any of the Conservation Values may be achieved.

This Easement constitutes a real property interest immediately vested in Grantees. It is the unequivocal intention of Grantees and the Landowner that the conservation purpose of this Easement be carried out in perpetuity. If circumstances arise in the future that render all purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantees and the Landowner agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement. If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Approval of the Grantees, Grantees are entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and Grantees shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled. For the purposes of this Paragraph, the ratio of the value of this Easement to the value of the Land unencumbered by this Easement remains

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City Acknowledgement: 

constant as determined as of the date of this grant. Grantees and the Landowner agree that the Department's proportional interest in the value of the Easement is Forty Five (45%) percent, the City's proportional interest is Thirty Nine (39%) percent, and the Landowner's donated proportional interest is Sixteen (16%) percent. The value of any future interest will not include any value attributable to authorized improvements to the Land made after the date of this grant, except as to improvements made by or at the expense of Grantees, unless evidence at any condemnation hearing or proceeding demonstrates actual damages to the Landowner and Grantees which vary in favor of Grantees from the proportional interest established above.

This Easement was acquired, in part, using funds provided to the Department by the USFWS, as a grant under its Endangered Species Act, Section 6 Habitat Conservation Plan Land Acquisition Grants Program. Additionally, a portion of the value of this Easement was donated by the Landowner and is being used as part of the required non-federal share to match the USFWS grant. USFWS regulations require that the Land covered by this Easement be managed in accordance with the terms and conditions of this Easement in perpetuity, unless otherwise approved by the USFWS regional director. The Easement may not be encumbered, disposed of in any manner, or used for purposes inconsistent with the Endangered Species Act Section 6 Grant without the prior written approval of the Regional Director of the USFWS. In the event of judicial termination or extinguishment of this Easement for circumstances as described under this Paragraph, the Department shall coordinate with USFWS and shall apply any funds received in settlement for such termination or extinguishment to habitat conservation as approved by USFWS.

2. This Easement was acquired, in part, with federal funds under the Forest Legacy Program (P.L.101-624; 104 Stat. 3359) and that the interest acquired may not be sold, exchanged, or otherwise disposed, unless the United States is reimbursed for the market value at the time of the disposal in proportion to the original Federal investment. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the Department's tender of equal value consideration acceptable to the Secretary.

K. ASSIGNMENT

This Easement is transferable, but Grantees or either of them may assign this Easement only to a local or state agency. As a condition of such transfer, Grantees or either of them: (1) shall require that the conservation purposes that this grant continue to be carried out into perpetuity; and (2) shall provide ninety (90) days prior notice to Landowner of such transfer or assignment.

L. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowner and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including §76-6-101, et seq., MCA, and any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration.

M. RECORDATION

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

Grantees shall record this Easement in the official records of Flathead County, Montana. Grantees may re-record this Easement at any time as may be required.

N. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of Mont. Code Ann. §76-6-101, *et seq.*. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, the Parties to the Easement hereby acknowledge the rights retained by Landowner herein are consistent with the purposes of the Easement, the Conservation Values, and Mont. Code Ann. § 76-6-101, *et seq.* .

3. Entire Agreement. Except with respect to matters set forth in the Baseline Report and the MRMP, this instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.

4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

5. Successors. This Easement shall be binding upon, and inure to the benefit of the parties, their heirs, administrators, successors and assigns, and shall continue as a servitude running in perpetuity with the Land.

6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.

TO HAVE AND TO HOLD unto Grantees, their successors, and assigns forever.

[SIGNATURE PAGES TO FOLLOW]

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

IN WITNESS WHEREOF, Landowner and Grantees have set their hands on the day and year first above written.

LANDOWNER:

F.H. STOLTZE LAND AND LUMBER CO.

By: Charles W. Roady
Charles W. Roady
Vice President

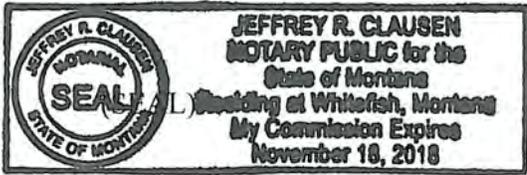
ACKNOWLEDGMENT

State of Montana)

: ss.

County of Flathead)

This instrument was signed before me on 1/28/2016 by Charles W. Roady.



Jeffrey R. Clausen
Notary Public

Landowner Acknowledgement CWR
Department Acknowledgement [Signature]
City Acknowledgement [Signature]

DEPARTMENT:

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: M. Jeff Hagener
M. Jeff Hagener, Director

ACKNOWLEDGMENT

State of Montana)

: ss.

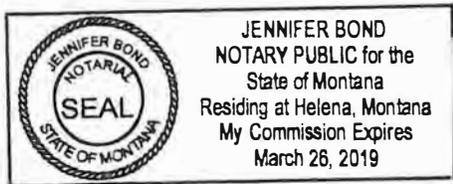
County of ~~Flathead~~)

Lewis & Clark

This instrument was signed before me on 1 February 2016 by M. Jeff Hagener.

(SEAL)

Jennifer Bond
Notary Public



Landowner Acknowledgement [Signature]
Department Acknowledgement [Signature]
City Acknowledgement [Signature]

CITY:

THE CITY OF WHITEFISH

By:

John M. Muhlfeld
John M. Muhlfeld, Mayor

ACKNOWLEDGMENT

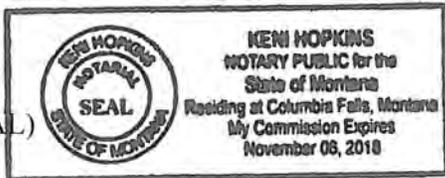
State of Montana)

: ss.

County of Flathead)

This instrument was signed before me on January 28, 2016 by John M. Muhlfeld.

(SEAL)



Keni Hopkins
Notary Public

Landowner Acknowledgement: CMR
Department Acknowledgement: [Signature]
City Acknowledgement: JM

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

GOVERNMENT LOT 1, THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA. EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 17142. ALSO EXCEPTING THEREFROM TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 2:

THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, AND THE NORTH ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 1 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 3:

THAT PORTION OF THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
TRACT 2 OF CERTIFICATE OF SURVEY NO. 18188.

PARCEL 4:

GOVERNMENT LOTS 1 AND 2; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 5:

GOVERNMENT LOTS 1, 2, 3 AND 4 OF SECTION 6, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 6:

GOVERNMENT LOT 4 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM LOT 205 OF IRON HORSE, PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 7:

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 8:

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 9:

GOVERNMENT LOTS 1, 2 AND 3 OF SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 10:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE WEST HALF OF THE SOUTHEAST QUARTER; THE EAST HALF OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF WHITEFISH IN WARRANTY DEED RECORDED AUGUST 6, 1929 IN BOOK 201, PAGE 607 AS INSTRUMENT NO. 3047, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 11:

THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; THE SOUTH HALF OF THE NORTHWEST QUARTER; THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 12:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 13:

GOVERNMENT LOT 1 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

EXCEPTING THEREFROM LOTS 205, 206, 207, 208 AND 209 OF IRON HORSE PHASE 4.

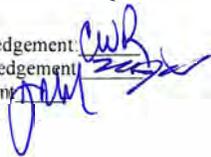
PARCEL 14:

GOVERNMENT LOT 4 OF SECTION 18, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 15:

THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHEAST

Landowner Acknowledgement
Department Acknowledgement
City Acknowledgement



Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 26 of 29

AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 16:

GOVERNMENT LOT 3 OF SECTION 19, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 17:

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO FLATHEAD COUNTY BY DEED RECORDED NOVEMBER 8, 1976 IN BOOK 604, PAGE 806 AS INSTRUMENT NO. 12589.

PARCEL 18:

THE SOUTHWEST QUARTER; THE NORTHEAST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 31 NORTH, RANGE 21, P.M.M., FLATHEAD COUNTY, MONTANA.

PARCEL 19:

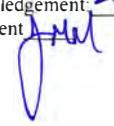
THE NORTH HALF OF THE NORTHWEST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM THAT PORTION LYING WITHIN IRON HORSE PHASE 4, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 20:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.
EXCEPTING THEREFROM A TRACT OF LAND SHOWN AS "PORTION A" ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 21:

A TRACT OF LAND SHOWN AS "PORTION B" ON THE AMENDED PLAT OF LOT 2 OF THE RESUBDIVISION OF LOT 12 OF NORTHWOODS NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF FLATHEAD COUNTY, MONTANA.

Landowner Acknowledgement: 
Department Acknowledgement: 
City Acknowledgement: 

PARCEL 22:

THE WEST HALF OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 22, DESCRIBED AS FOLLOWS:

TRACT B OF CERTIFICATE OF SURVEY NO. 13505.

PARCEL 23:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, DESCRIBED AS FOLLOWS, TO WIT:

TRACT 2A AS ~~SHOWN ON CERTIFICATE OF SURVEY NO. 16877.~~

DESCRIBED IN PARCEL 23 EXHIBIT A BELOW

PARCEL 24:

A TRACT OF LAND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, THENCE RUNNING EAST FORTY RODS; THENCE NORTH EIGHT RODS; THENCE WEST FORTY RODS AND THENCE SOUTH EIGHT RODS TO THE POINT OF BEGINNING.

Parcel 23 Exhibit A

Beginning at a point in the northeast quarter of the southeast quarter of Section 12, Township 31 North, Range 22 West, Montana Meridian, bearing south eighty-four degrees thirty-seven minutes west, one thousand one hundred twenty and five tenths feet from the quarter corner on the ease line of said section twelve; running thence south forty-seven degrees one minute west, fifty feet to the northwest corner; thence south forty-two degrees fifty-nine minutes east two hundred forty-eight feet to the southwest corner; thence north forty-seven degrees one minute east one hundred feet to the southeast corner; thence north forty-two degrees fifty-nine minutes west two hundred forty-eight feet to the northeast corner; thence south forty-seven degrees one minute, west, fifty feet to the place of beginning.

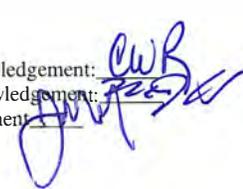
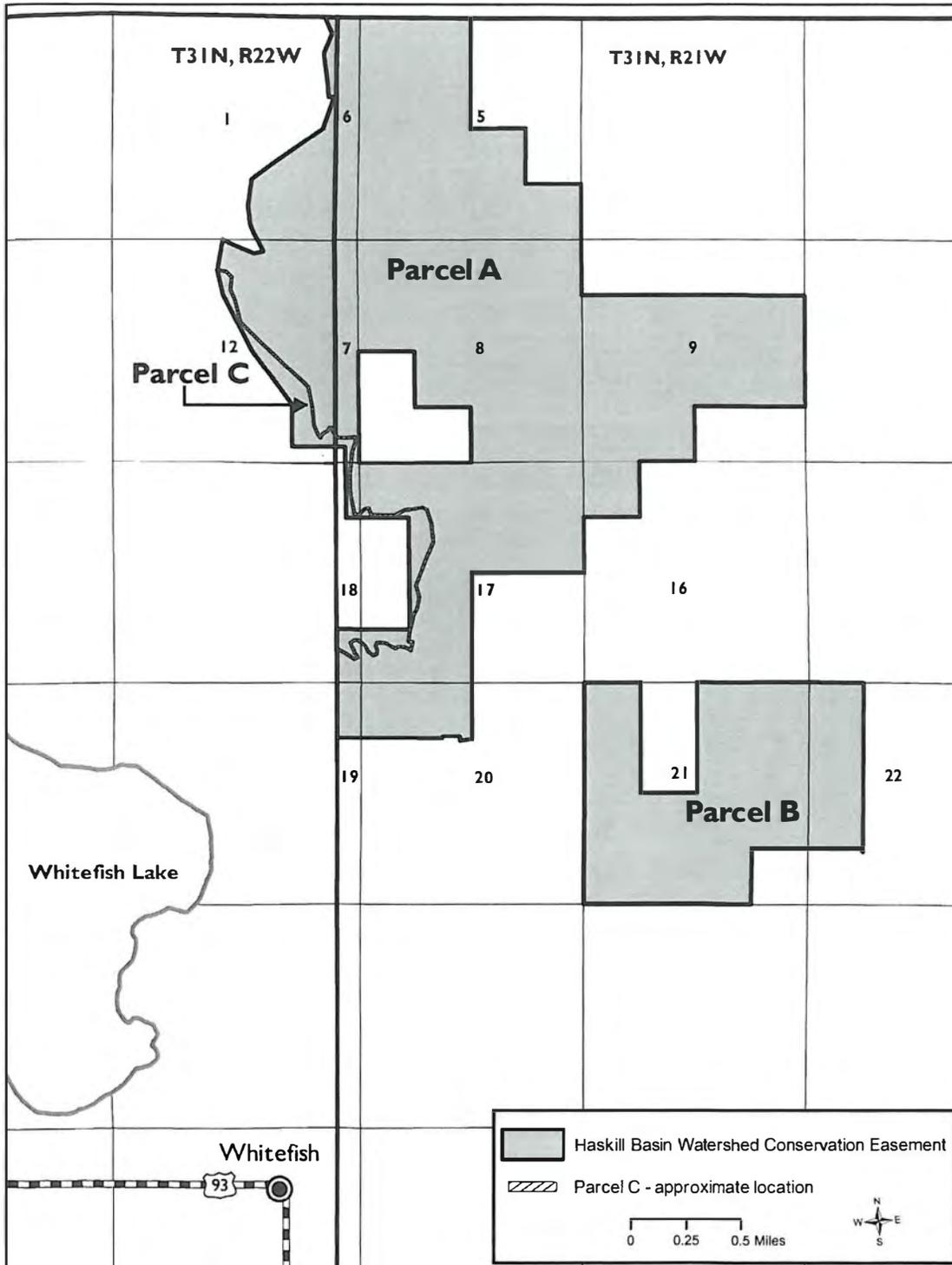
Landowner Acknowledgement: 
Department Acknowledgement: _____
City Acknowledgement: _____

EXHIBIT B

Map of the Land



Landowner Acknowledgement: *CWR*
Department Acknowledgement: *[Signature]*
City Acknowledgement: *[Signature]*

Haskill Basin Watershed Deed of Conservation Easement
January 20, 2015
Page 29 of 29