

After Recording Return To:
Chris Johnson
Worden Thane, PC
321 W. Broadway, Ste. 300
Missoula, MT 59802

202301832 B:1086 P:325 Pages:9 Fee:\$72.00
02/21/2023 03:00:23 PM Easement
Tyler R. Gernant, Missoula County Clerk & Recorder



DECLARATION OF ACCESS EASEMENT

THIS DECLARATION is made and entered by HEH, LLC, a Montana limited liability company (Declarant herein), as owner of the Burdened Property and the Benefitted Property, as identified herein. Declarant does hereby declare and set forth these easements, covenants, and conditions to run with the lands described herein, which easements, covenants, and conditions shall be binding upon all parties and persons claiming an interest in any of the property described hereafter, and which easements, covenants, and conditions shall be for the benefit of and limitations upon all future owners, and being for the purpose of providing reasonably necessary access and services and keeping said real estate desirable, uniform, and suitable for the uses and future development as specified herein.

1. Ownership of Real Property

Declarant owns and has some right, title, and interest, both legal and equitable, in the real estate located in Missoula County, Montana, and more particularly described as follows:

Benefitted Property: Tract 2 of Certificate of Survey No. 6817, Records of Missoula County, Montana, situated in the Northeast one-quarter of Section 18, Township 13 North, Range 19 West, P.M.M.

Declarant is also the Declarant under that Declaration of Townhomes, Covenants, Conditions, and Restrictions for Hellgate Village East Townhomes, recorded November 30, 2020,

as instrument TOWN000087, records of Missoula County, Montana. Alleyways were and are generally designated as Common Area (Section 4.a.vii.) and as public access easements in the Site Plan designations. Declarant further reserved the right to allow use of common area by the public (Section 3.g.iv.), and the right to grant licenses, easements, and rights-of-way is reserved to the Declarant until Transition Date. As of the date of this Declaration of Access Easement, the Transition Date has not been met.

The first piece of Burdened Property herein is described as being that certain 20 foot wide Common Area alleyway running West along the South boundary of Hellgate Village East, beginning at the Southeast corner of the Hellgate Village East Property until it turns North, to eventually connect to Killarney Way. The second piece of Burdened Property herein is described as being that certain 20 foot wide Common Area alleyway running West from Killarney Way, a city street, along the South boundary of the Hellgate Village East Property, South of Unit 23, until that alleyway turns North. The Burdened Property, consisting of two portions of Common Area alleyways, is further shown and depicted on the attached Exhibit 'A' constituting a portion of the identified "24' Wide Access Easement." Exhibit 'A' further identifies the first piece of Burdened Property as "Easement 1" and the second piece of Burdened Property as "Easement 2."

2. Purpose

The purpose of declaring, creating, and granting this Access Easement described herein, is to permit the Declarant's Benefitted Property access, ingress and egress, over and across the identified Common Area alleyways, and to allow access to the Benefitted property across such alleyways for connection to a public right-of-way to the East of the first alleyway, and connection to Killarney Way across the second alleyway.

3. Duration

The Easements created and granted herein shall be perpetual, or until such time as the said alleyways may be dedicated or conveyed to the City of Missoula, at which event this easement will terminate and their use shall be subject to such governmental regulation as may exist.

4. Description of Easements

Declarant hereby declares, creates and grants non-exclusive Access Easements for the purpose of unlimited ingress and egress, as described in the above Section 1 description of the Burdened Property, and as more particularly shown and depicted on the attached Exhibit 'A.'

Declarant further declares, creates, and grants non-exclusive Access Easements for the purpose of ingress and egress over and across portions of the North 4 feet of the Benefitted Property, with said portions of the Benefitted Property shown and depicted on the attached Exhibit 'A.' It is the intent of the Easements in this paragraph to provide for a 4 foot widening to the South of the existing alleyway Easements shown on the attached Exhibit A easements. These 4 feet wide easements are for the Benefit of the Burdened Property and the owners within Hellgate Village East Townhomes. Declarant or Declarant's successor in interest to the Benefitted Property shall make best effort to show and depict these 4 foot wide easements adjacent to the existing alleyways on any subsequent recorded map, plat, or document associated with the development of Tract 2 of COS No. 6817.

5. Beneficial Interest and Benefitted Property

The Easements created and granted herein are for the benefit of the owners of all or any portion of the Benefitted Property, as specified herein, inclusive of further subdivision or division of that property. The Benefitted Property is pending further development and/or subdivision as residential property, and the exact nature of such development and its habitable improvements is still to be determined. However, it is the intent of the Declarant that the Easements identified herein shall be for the benefit of only those portions or lots within the Benefitted Property that immediately abut the Easement areas, or in the alternative have buildings or lots that use the alleyways that connect to the Easement areas. By way of example only, lots and buildings on the Benefitted Property may have garages that face the first Burdened Property/Easement and use the same to access those garages, and an alleyway on the Benefitted Property connecting to that same Easement area; and the second Burdened Property/Easement is expected to have an alleyway from

the Benefitted property connecting to that Easement area. The existence of alternative access or road or alleyway to the Benefitted Property does not diminish or preclude use of the Easements herein. Additionally, the 4 foot easement described in the second paragraph of Section 4, above, shall be for the benefit of owners within Hellgate Village East Townhomes, as stated therein.

6. Improvement and Maintenance

No current nor subsequent Owner shall cause the placement of any structures or other physical improvements which in any way obstruct any portion of the said Easements without the prior written consent of all other Owners and/or owners associations. No parking is allowed in the alleyways in Hellgate Village East, nor on the 4 foot portion of the Easements located on the Benefitted Property, and the remedies for illegal parking provided in the Declaration of Townhomes referenced in Section 1, above, shall apply to users of the easements under this instrument.

No use of the Easements by any Owner may materially interfere with the use of the easement any other Owner. All Owners and permitted users of the Easements and alleyways agree to indemnify, hold harmless, and defend other Owners and owners associations from any and all liabilities, causes of action, losses, damages, demands and expenses (including, without limitation, attorneys' fees, court costs, and litigation expenses) of any kind or nature arising from the use of the Easement by such Owner, or any tenant, employee, agent, or independent contractor of such Owner.

The Owner of the Benefitted Property, or subsequent owners association following development, shall be responsible for sharing maintenance expenses with the association responsible for maintenance of the Burdened Property. Such shared expense shall be based on level of use, i.e. assessment for shared maintenance expense by the Hellgate Village Townhome Owners Association shall be to those limited properties or owners on the Benefitted Property as described in Section 5, above, or in the event there is an association of owners created for the Benefitted Property, upon that association, which may then allocate among its owners as it may deem proper. Any improvements to the alleyways that are the Easement areas herein caused or required due to the development of the Benefitted Property shall be at the sole cost and expense of the Owner of the Benefitted Property,

which obligation shall include paving the additional 4 feet alleyway widening contemplated in the easement across the Benefitted property. All improvements to the easement area and maintenance activities shall be done in a good and workmanlike manner. Nothing herein requires the Burdened Property and/or its association to conduct any particular level of maintenance, except as may be further agreed to in writing between the respective owners of the Burdened and Benefitted Property, or their respective associations. The Owners or responsible parties agree to indemnify and hold harmless each other for any liens or liability that may arise from having such maintenance or improvement work done.

7. Enforcement

The Owners, and the respective associations, and their successors and assigns shall have the right to enforce, by proceedings at law or in equity, the covenants, restrictions and easements imposed by this Agreement, against any person or persons who have violated or who are attempting to violate any of the covenants or restrictions of this Agreement, to enjoin or prevent them from doing so, to cause the violations to be remedied, and/or to recover damages for any violations. Any Owner violating any of the covenants or restrictions of this Agreement shall also be liable for attorney's fees to be fixed by the Court in favor of any party successfully bringing action based on such violation.

8. Binding Affect and to Run With the Land

The Easements declared, created, and granted herein are granted for the benefit of the parties and properties stated above, and their heirs, successors, or assigns. In addition, said Easements shall be binding upon the parties hereto, their heirs, successors or assigns, and shall run with the land during their term.

Dated this 17 day of FEBRUARY, 2023.

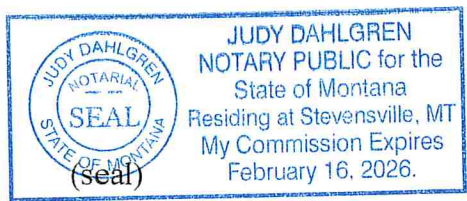
DECLARANT

HEH, LLC

By: Wade D. Hoyt, President of
Hoyt Homes, Inc., the Manager of
HEH, LLC

STATE OF MONTANA)
) ss.
COUNTY OF MISSOULA)

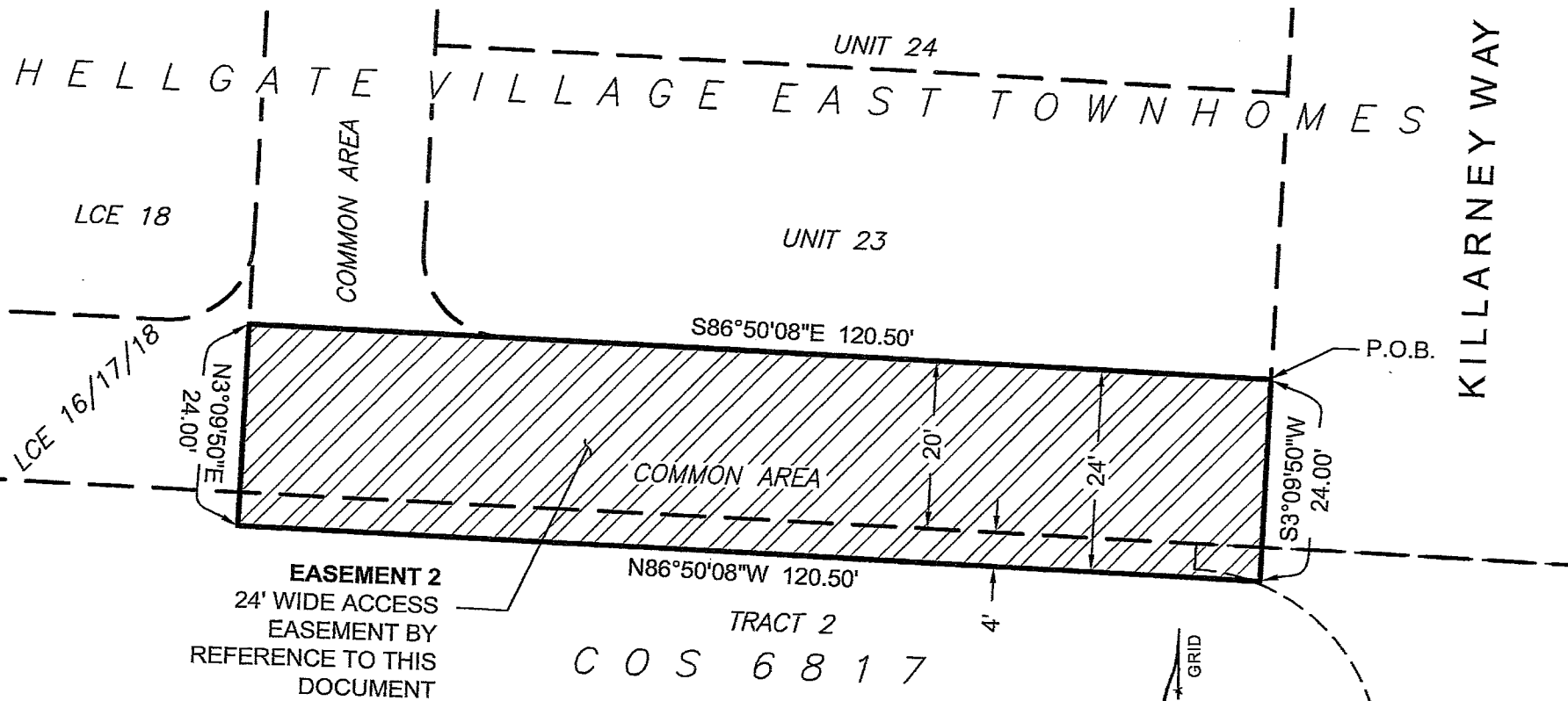
This instrument was acknowledged before me on the 17th day of February, 2023,
by Wade D. Hoyt, as President of Hoyt Homes, Inc., the Manager of HEH, LLC.



Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____ 20____
Name Printed: _____

EXHIBIT 'A'

LOCATED IN THE NW1/4 OF SEC. 18, T.13N., R.19W., P.M.M., CITY OF MISSOULA, MISSOULA COUNTY, MONTANA

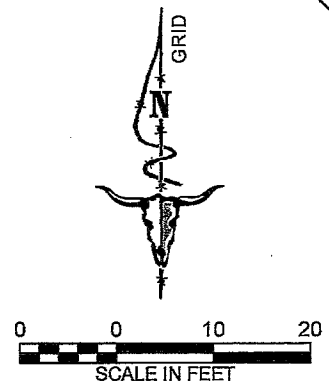


EASEMENT 2
24' WIDE ACCESS
EASEMENT BY
REFERENCE TO THIS
DOCUMENT

TRACT 2
COS 6817

LEGEND

- U.E. = UTILITY EASEMENT
- LCE = LIMITED COMMON ELEMENT
- P.O.B. = POINT OF BEGINNING



BASIS OF BEARING
MONTANA STATE PLANE - ZONE 2500
GROUND (TRUE) DISTANCES
GRID NORTH

PREPARED BY:



1817 SOUTH AVE. W. STE. A PH: 406.721.0142
MISSOULA, MT FAX: 406.721.5224
59801 www.imegcorp.com

IMEG PROJECT NO. 22000700

SHEET 2 OF 3

PLOT DATE: 2/19/2008 8:04 PM DWG LOCATION: G:\22000700\DWG\DESIGN\CONV\CALC\DWG\ENR\22000700 EASEMENT EXHIBIT.DWG

PLT DATE: 2/13/2023 5:18 PM

EXHIBIT 'A'

LOCATED IN THE NW1/4 OF SEC. 18, T.13N., R.19W., P.M.M., CITY OF MISSOULA, MISSOULA COUNTY, MONTANA

LEGAL DESCRIPTION (EASEMENT 1)

A TWENTY-FOUR FOOT WIDE STRIP OF LAND BEING A PORTION OF TRACT 2 OF CERTIFICATE OF SURVEY NO. 6817, RECORDS OF MISSOULA COUNTY, AND A PORTION OF HELLGATE VILLAGE EAST TOWNHOMES, RECORDED AS DOCUMENT NO. TOWN000087 IN THE OFFICE OF THE CLERK AND RECORDER OF MISSOULA COUNTY, LOCATED IN THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 18, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT 2, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE EAST BOUNDARY OF SAID TRACT 2, S3°38'09"W 4.00 FEET; THENCE ALONG A LINE LYING PARALLEL WITH AND 4.00 FEET SOUTHERLY OF THE NORTH BOUNDARY OF SAID TRACT 2, N86°50'08"W 209.68 FEET TO THE INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EAST BOUNDARY OF UNIT 15 OF HELLGATE VILLAGE EAST TOWNHOMES; THENCE ALONG SAID EAST BOUNDARY AND IT'S PROLONGATION, N3°10'05"E 24.00 FEET; THENCE ALONG A LINE LYING PARALLEL WITH AND 20.00 FEET NORTHERLY OF THE SOUTH BOUNDARY OF HELLGATE VILLAGE EAST TOWNHOMES, S86°50'08"E 209.74 FEET TO THE INTERSECTION WITH THE EAST BOUNDARY OF SAID HELLGATE VILLAGE EAST TOWNHOMES; THENCE ALONG SAID EAST BOUNDARY, S3°15'18"W 20.00 FEET TO THE POINT OF BEGINNING.

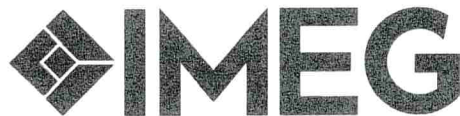
LEGAL DESCRIPTION (EASEMENT 2)

A TWENTY-FOUR FOOT WIDE STRIP OF LAND BEING A PORTION OF TRACT 2 OF CERTIFICATE OF SURVEY NO. 6817, RECORDS OF MISSOULA COUNTY, AND A PORTION OF HELLGATE VILLAGE EAST TOWNHOMES, RECORDED AS DOCUMENT NO. TOWN000087 IN THE OFFICE OF THE CLERK AND RECORDER OF MISSOULA COUNTY, LOCATED IN THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 18, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF UNIT 23 OF SAID HELLGATE VILLAGE EAST TOWNHOMES, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE WEST RIGHT-OF-WAY OF KILLARNEY WAY AND IT'S SOUTHERLY PROLONGATION, S3°09'50"W 24.00 FEET TO THE INTERSECTION WITH A LINE LYING PARALLEL WITH AND 4.00 FEET SOUTHERLY OF THE SOUTH BOUNDARY OF HELLGATE VILLAGE EAST TOWNHOMES; THENCE ALONG SAID LINE, N86°50'08"W 120.50 FEET TO THE INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EAST BOUNDARY OF LIMITED COMMON ELEMENT 16/17/18 AS SHOWN ON HELLGATE VILLAGE EAST TOWNHOMES; THENCE ALONG SAID EAST BOUNDARY AND IT'S PROLONGATION, N3°09'50"E 24.00 FEET TO THE INTERSECTION WITH A LINE LYING PARALLEL WITH AND 20.00 FEET NORTHERLY OF THE SOUTH BOUNDARY OF HELLGATE VILLAGE EAST TOWNHOMES; THENCE ALONG SAID LINE, S86°50'08"E 120.50 FEET TO THE POINT OF BEGINNING.

DWG LOCATION: G:\2022\22000700\00\DESIGN\NOV\11\CD\31\SURVEY\22000700 EASEMENT EXH.DWG

PREPARED BY:



1817 SOUTH AVE. W. STE. A PH: 406.721.0142
MISSOULA, MT FAX: 406.721.5224
59801 www.imegcorp.com

IMEG PROJECT NO. 22000700

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE ATTACHED EXHIBITS AND LEGAL DESCRIPTIONS WERE MADE UNDER MY SUPERVISION

SS

JOSHUA LUCAS HILLING, PROFESSIONAL LAND SURVEYOR
MONTANA LICENSE NO. 49193LS

2/13/2023

DATE

