

After Recording Return To:

City Clerk
435 Ryman St.
Missoula, MT 59802

DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY

THIS DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY (“Restrictive Covenants”) is made by the City of Missoula (“the City”) as of _____, 2020.

RECITALS

WHEREAS, the City is the owner of certain real property (the “Subject Property”) located in Missoula, Montana, more particularly described as:

A TRACT OF LAND BEING A PORTION OF LOT 3 OF SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY, LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT NORTHWESTERLY-MOST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LOT 3 THE NEXT THREE (3) COURSES: 1) S89°55’01”e, 165.99 FEET; 2) S00°01’06”E, 147.89 Feet; 3) S 89°54’10”E, 512.17 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY AND THE EASTERLY AND SOUTHERLY BOUNDARIES OF SAID LOT 3 THE FOLLOWING FOUR (4) COURSES: 1) S89°54’10”E, 759.96 FEET; 2) S00°07’12”W, 213.08 FEET; 3) S00°07’54”W, 349.15 FEET; 4) N89°55’52”W, 760.00 FEET; THENCE N00°07’54”E, 562.61 FEET TO THE POINT OF BEGINNING; CONTAINING 9.81 ACRES, MORE OR LESS. A survey of this parcel is attached as Exhibit A.

WHEREAS, the Subject Property is within the Missoula White Pine Sash Facility and the Montana Department of Environmental Quality (“DEQ”) has determined that releases or threatened releases of hazardous or deleterious substances that may pose an imminent or substantial endangerment to public health, safety or welfare or the environment exist and that these hazardous or deleterious substances have come to be located upon the Subject Property:

WHEREAS, DEQ, under the authority of the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 et seq., MCA, has selected a remedy to abate the imminent and substantial endangerment posed by the hazardous or deleterious substances.

WHEREAS, the selected remedy requires that the City restrict use of the Subject Property in order to mitigate the risk to the public health, safety or welfare or the environment and DEQ requires that such restrictions be recorded as provided for in § 75-10-727, MCA:

NOW, THEREFORE, the City hereby agrees and declares:

1. No wells may be drilled within the boundaries of the Subject Property without the express prior written approval of DEQ. Groundwater within the Subject Property may not be used for any purpose other than for remediation purposes (including but not limited to monitoring) without the express written approval of DEQ. The integrity of any monitoring wells must be maintained and no seals may be removed on any closed wells.
2. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of hazardous or deleterious substances or a potential hazard to the public health, safety, or welfare or the environment.
3. The City agrees to provide DEQ and its representatives and contractors and all representatives and contractors of any person conducting remedial actions approved by DEQ on the Subject Property access at all reasonable times to the Subject Property.
4. At all times after the City conveys its interest in all or any portion of the Subject Property and no matter what person or entity holds title to or is in possession of all or any portion of the Subject Property, the City and its agents shall retain the right to enter the Subject Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Restrictive Covenants contained herein. In addition, if the City conveys all or any portion of its interest in the Subject Property, the City retains the right and obligation to enforce these Restrictive Covenants as an intended beneficiary.
5. DEQ shall be entitled to enforce these Restrictive Covenants as an intended beneficiary thereof. The City specifically agrees that the remedy of “specific performance” shall be available to DEQ in such proceedings.
6. The provisions of this Declaration governing the use restrictions of the Subject Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of all or any portion of the Subject Property. The Restrictive Covenants apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall include these Restrictive Covenants.

7. The City shall cause the requirements of these Restrictive Covenants to be placed in all instruments that convey an interest in the Subject Property and shall record this document with the county clerk and recorder in Missoula, Montana.
8. The rights provided to DEQ in this Declaration include any successor agencies of DEQ.

IN WITNESS WHEREOF, the City of Missoula has executed this Declaration of Restrictive Covenants on Real Property as of the first date written above.

BY:

John Engen
Mayor

ATTEST:

Marty Rehbein
City Clerk

(SEAL)

**A PLAT AMENDING THE SUPPLEMENTAL PLAT OF THE SCHOOL ADDITION TO THE CITY OF MISSOULA, TRACTS 26, 27, & 31 AND FRACTIONAL TRACTS 25, 30, 1
LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PMM, MISSOULA COUNTY, MONTANA**



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Missoula, MT 59802

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RECITALS

WHEREAS, the City is the owner of certain real property (the “Subject Property”) located in Missoula, Montana, more particularly described as:

A TRACT OF LAND BEING A PORTION OF LOT 3 OF SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY, LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT NORTHWESTERLY-MOST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LOT 3 THE NEXT THREE (3) COURSES: 1) S89°55’01”E, 165.99 FEET; 2) S00°01’06”E, 147.89 Feet; 3) S 89°54’10”E, 512.17 FEET; THENCE S00°07’54”W, 562.61 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 3; THENCE N89°55’52”W ALONG SAID SOUTHERLY LINE, 678.98 FEET TO THE SOUTHWESTERLY-MOST CORNER OF SAID LOT 3; THENCE N00°10’00”E ALONG THE WESTERLY LINE OF SAID LOT 3, 710.79 FEET TO THE POINT OF BEGINNING; CONTAINING 9.33 ACRES, MORE OR LESS. A survey of this parcel is attached as Exhibit A.

WHEREAS, the Subject Property is within the Missoula White Pine Sash Facility and the Montana Department of Environmental Quality (“DEQ”) has determined that releases or threatened releases of hazardous or deleterious substances that may pose an imminent or substantial endangerment to public health, safety or welfare or the environment exist and that these hazardous or deleterious substances have come to be located upon the subject property:

WHEREAS, DEQ, under the authority of the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 et seq., MCA, has selected a remedy to abate the imminent and substantial endangerment posed by the hazardous or deleterious substances.

WHEREAS, the selected remedy includes construction, operation, and maintenance of a land treatment unit to treat contaminated soil and that treatment unit is or will be located on the Subject Property.

WHEREAS, the selected remedy requires that the City restrict use of the Subject Property, in order to mitigate the risk to the public health, safety or welfare or the environment and DEQ requires that such restrictions be recorded as provided for in § 75-10-727, MCA:

NOW, THEREFORE, the City hereby agrees and declares:

1. No wells may be drilled within the boundaries of the Subject Property without the express prior written approval of DEQ. Groundwater within the Subject Property may not be used for any purpose other than for remediation purposes (including but not limited to monitoring) without the express written approval of DEQ. The integrity of any monitoring wells must be maintained and no seals may be removed on any closed wells.
2. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of hazardous or deleterious substances or a potential hazard to the public health, safety, or welfare or the environment.
3. No residential development shall occur on the Subject Property, including but not limited to construction of homes; accommodations for caretakers, watchmen, or custodians; any permanent or temporary structures which allow overnight use; any temporary or permanent mobile home or camper; or children's day care centers, group homes, family homes, friend, family and neighbor care arrangements, before school programs, drop-in programs, after school programs, preschool programs, and any and all licensed or unlicensed child care arrangements. It is the City's intention that this restriction be interpreted as broadly as possible to prohibit any type of residential use and any type of licensed or unlicensed child care arrangements on the Subject Property whatsoever.
4. A land treatment unit has been constructed on the Subject Property to treat soils impacted by pentachlorophenol and other hazardous or deleterious substances. The portion of the Subject Property containing the land treatment unit (referred to as the "Land Treatment Unit Area" has been surveyed and is more particularly described as follows:

A TRACT OF LAND BEING A PORTION OF LOT 3 OF SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY, LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL

MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT NORTHWESTERLY-MOST CORNER OF SAID LOT 3; THENCE S00°10'00"W ALONG THE WESTERLY LINE OF SAID LOT 3, 410.79 FEET TO THE POINT OF BEGINNING, THENCE S89°55'52"E, 678.80 FEET; THENCE S00°07'54"W, 300.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 3; THENCE N89°55'52"W ALONG SAID SOUTHERLY LINE 678.98 FEET TO THE SOUTHWESTERLY-MOST LINE OF SAID LOT 3; THENCE N00°10'00"E ALONG THE WESTERLY LINE OF SAID LOT 3, 300.00 FEET TO THE POINT OF BEGINNING; CONTAINING 4.67 ACRES, MORE OR LESS. A survey of this parcel is attached as Exhibit B.

5. The Land Treatment Unit Area is or will be fenced, locked, and contain warning signs that are required to be maintained while the land treatment unit is in place, until site-specific cleanup levels are met. Until DEQ determines that site-specific cleanup levels are met, DEQ will require maintenance of the fence with locking access gates and warning signs on the access controlled fence. Until DEQ determines that site-specific cleanup levels are met, neither the locked fence nor the warning signs may be removed without the express prior written approval of DEQ.
6. During the time that the land treatment unit is operating, no building, excavation (except excavation associated with tilling and/or removing a lift of soil), or any development whatsoever may occur within the Land Treatment Unit Area. Activity within the Land Treatment Unit Area is limited to those activities necessary for the operation and maintenance of the land treatment unit. It is the City's intent that this prohibition be applied as broadly as possible to ensure that there is no use or development of the Land Treatment Unit Area whatsoever in order to ensure the integrity and effectiveness of the remedy during the time that the land treatment unit is in place. This includes but is not limited to a prohibition on the installation of utilities to the greatest extent allowed by law and any excavation within the Land treatment Unit Area (except for excavation associated with operation or maintenance of the land treatment unit) during the time that the land treatment unit is operating. It is the City's intention that this restriction be interpreted as broadly as possible to prohibit any operation within or development of the Land Treatment Unit Area whatsoever, except for those activities necessary for operation and maintenance of the land treatment unit.
7. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of hazardous or deleterious substances or a potential hazard to public health, safety, or welfare or the environment. This includes, but is not limited to, not interfering or allowing any interference with the operation and maintenance of the land treatment unit.

8. The City agrees to provide DEQ and its representatives and contractors and all representatives and contractors of any person conducting remedial actions approved by the DEQ on the Subject Property access at all reasonable times to the Subject Property.
9. The City agrees that it may not transfer any portion of its interest in the Land Treatment Unit Area of the Subject Property during the time that the land treatment unit is operating. Once treatment of the impacted soil is complete and DEQ-approved closure of the land treatment unit is complete, the City may transfer its interest in all or any portion of the Land Treatment Unit Area of the Subject Property.
10. At all times after the City conveys its interest in all or any portion of the Subject Property and no matter what person or entity holds title to or is in possession of all or any portion of the Subject Property, the City and its agents shall retain the right to enter the Subject Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Restrictive Covenants contained herein. In addition, if the City conveys all or any portion of its interest in the Subject Property, the City retains the right and obligation to enforce these Restrictive Covenants as an intended beneficiary.
11. DEQ shall be entitled to enforce these covenants as an intended beneficiary thereof. The City specifically agrees that the remedy of “specific performance” shall be available to DEQ in such proceedings.
12. The provisions of this Declaration governing the use restrictions of the Subject Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of all or any portion of the Subject Property. The Restrictive Covenants apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall include these Restrictive Covenants.
13. The City shall cause the requirements of these Restrictive Covenants to be placed in all instruments that convey an interest in the Subject Property and shall record this document with the county clerk and recorder in Missoula, Montana.
14. The rights provided to DEQ in this Declaration include any successor agencies of DEQ.

IN WITNESS WHEREOF, the City of Missoula has executed this Declaration of Restrictive Covenants on Real Property as of the first date written above.

BY:

John Engen
Mayor

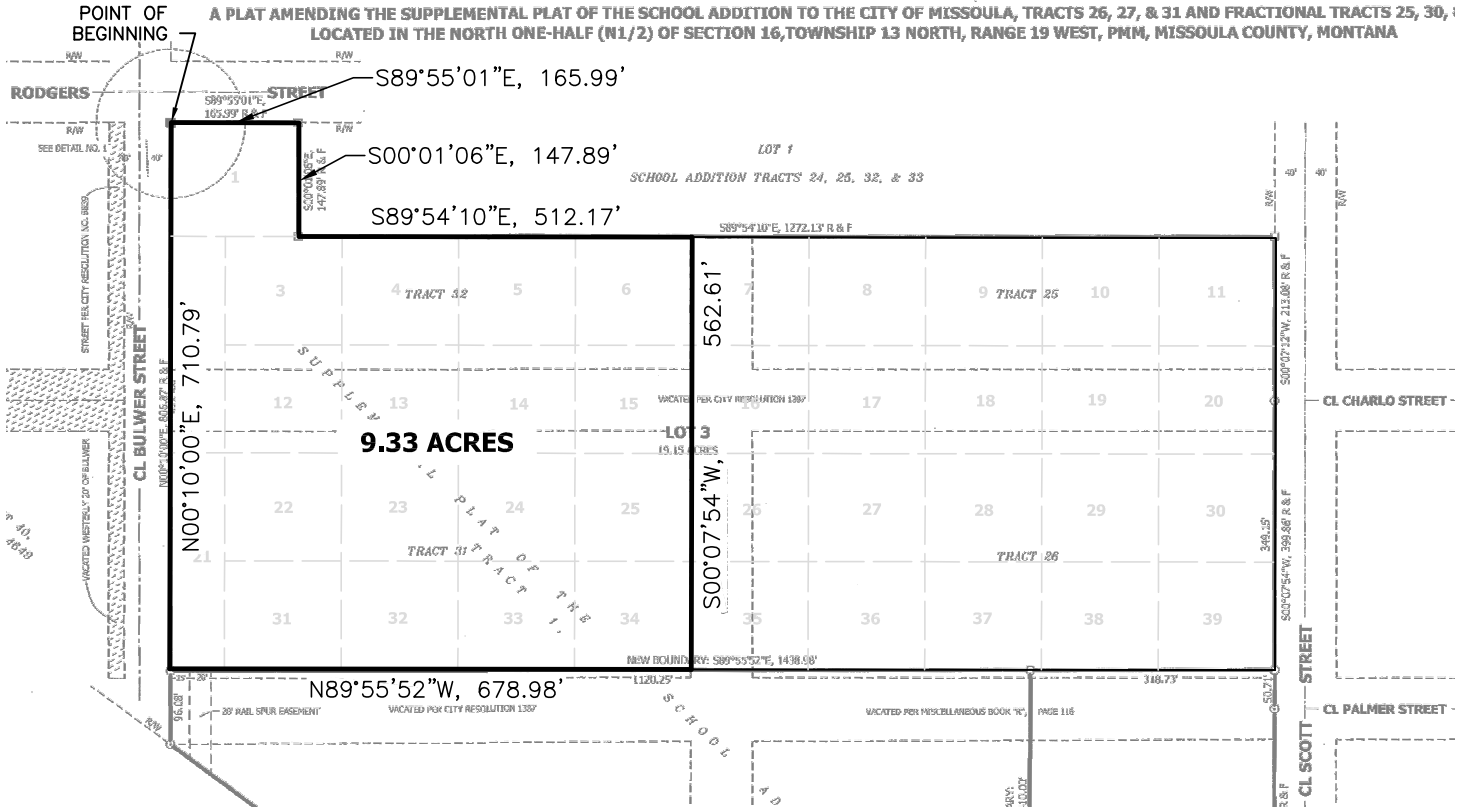
ATTEST: _____
Marty Rehbein
City Clerk

(SEAL)

EXHIBIT A

PLAT OF SCOTT STREET LOTS

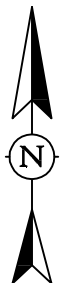
A PLAT AMENDING THE SUPPLEMENTAL PLAT OF THE SCHOOL ADDITION TO THE CITY OF MISSOULA, TRACTS 26, 27, & 31 AND FRACTIONAL TRACTS 25, 30, & 33, LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PMM, MISSOULA COUNTY, MONTANA



LEGAL DESCRIPTION:

A TRACT OF LAND BEING A PORTION OF LOT 3 OF SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY, LOCATED IN THE NORTH ONE-HALF (N1/2) OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN MONTANA, MISSOULA COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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SCALE IN FEET
0 125 250

BASIS OF BEARINGS:
SCOTT STREET LOTS

LEGAL EXHIBIT FOR A PORTION OF LOT 3,
SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY
N1/2, S16, T13N, R19W, PMM, MISSOULA COUNTY, MONTANA
ELI PROJECT NO. 19-7757 DRAWN: MARCH 26, 2019
PREPARED FOR: DOUGLASS, INC.

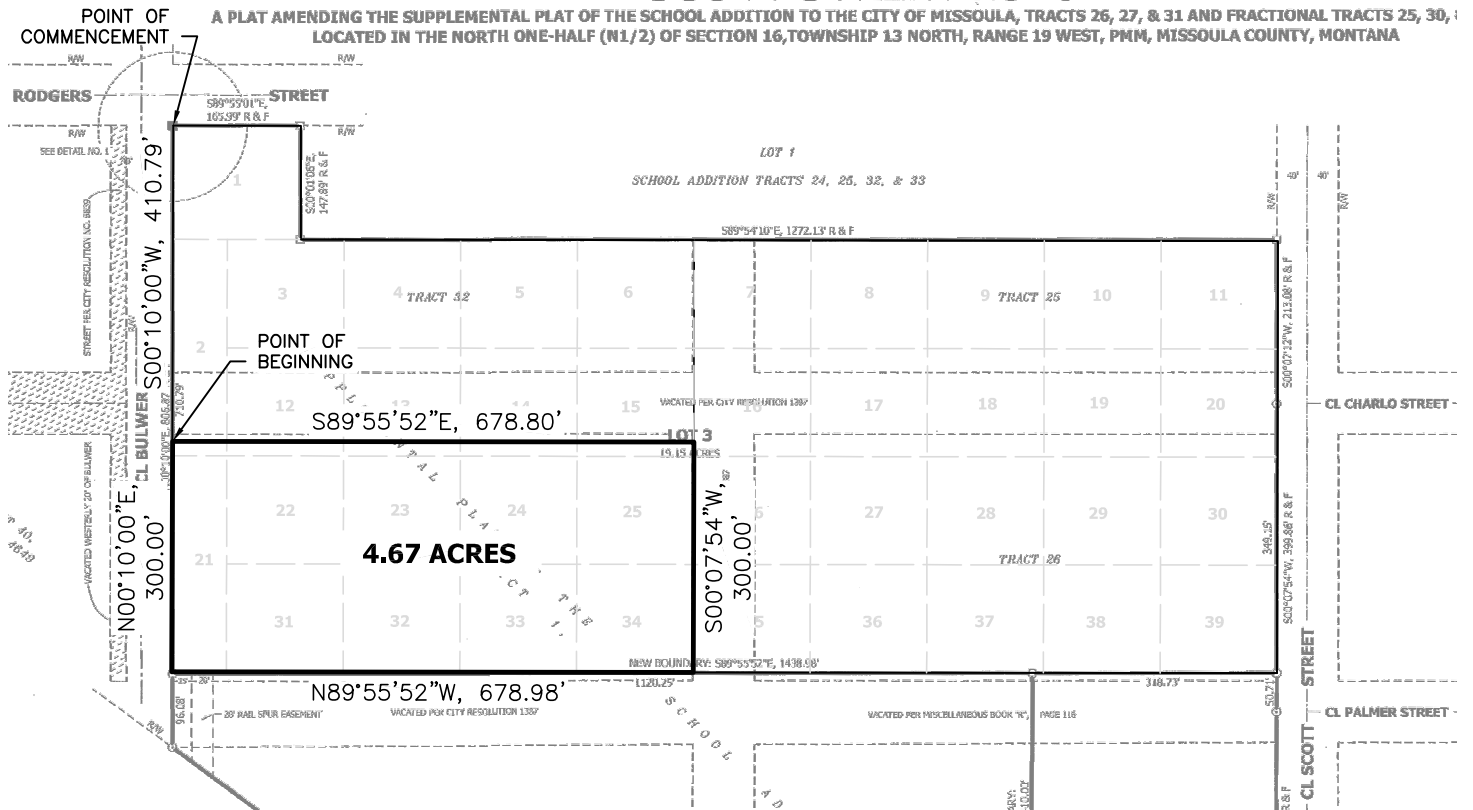


Eli & Associates, Inc.

www.elisurvey.com
P.O. Box 16462 Missoula, Montana 59808 (406) 549-5022

EXHIBIT B

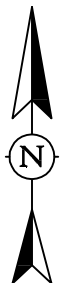
PLAT OF SCOTT STREET LOTS



LEGAL DESCRIPTION:

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SCALE IN FEET
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BASIS OF BEARINGS:
SCOTT STREET LOTS

LEGAL EXHIBIT FOR A PORTION OF LOT 3,
SCOTT STREET LOTS, A RECORDED SUBDIVISION OF MISSOULA COUNTY
N1/2, S16, T13N, R19W, PMM, MISSOULA COUNTY, MONTANA
ELI PROJECT NO. 19-7757 DRAWN: APRIL 10, 2019
PREPARED FOR: DOUGLASS, INC.



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P.O. Box 16462 Missoula, Montana 59808 (406) 549-5022