

After Recording;
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Trinity Apartments LLLP

Missoula, MT 59802

IRRIGATION DITCH AGREEMENT

This IRRIGATION DITCH AGREEMENT (“Agreement”) is made effective this _____ day of _____, 20__ by and between Trinity Apartments LLLP., a Montana corporation (herein “Trinity Apartments”), of 1535 Liberty Lane, Suite 116A Missoula, MT 59808 and Hellgate Valley Irrigation Company. 4646 Buckhouse Lane. Missoula, MT 59804 (herein Hellgate Valley Irrigation”).

RECITALS:

WHEREAS, Trinity Apartments, as real property owners and developers, have developed a subdivision in Missoula County known as Trinity Mullan Subdivision; and

WHEREAS, Hellgate Valley Irrigation Company has an open water ditch (“Hellgate Valley Irrigation Ditch”) running through the Trinity Apartments Property; and

WHEREAS, Trinity Apartments desires to modify the Hellgate Valley Irrigation Ditch from an open ditch water delivery to a partially enclosed pipe system of delivery of water through the area where the access drive for the Trinity Apartments Property (Lot 1 of Trinity Mullan Subdivision) crosses the Hellgate Valley Irrigation Ditch to meet the public interest of affording security to life, property and safety of the traveling public while maintaining and not diminishing the delivery of water to the parties entitled to it from the Hellgate Valley Irrigation Ditch; and

WHEREAS, Hellgate Valley Irrigation and Trinity Apartments have reached an agreement to modify the Hellgate Valley Irrigation Ditch from an open ditch water delivery system to an enclosed pipe system of delivery of water through the area of where the access drive for the Trinity Apartments Property crosses the ditch for maintenance of the enclosed pipe system and appurtenant features as provided herein.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, mutual

covenants and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are incorporated herein and made a part of this Agreement.
2. Trinity Apartments hereby grant and convey to Hellgate Valley Irrigation, its successors and assigns, a 35 foot (35') easement for the purpose of operation and maintenance of an enclosed pipe system for the delivery of water, as described herein, in the locations adjacent to Mullan Road as described on Exhibits A and B, attached hereto and incorporated herein ("Pipe Easement"). Trinity Apartments and Hellgate Valley Irrigation agree to and consents to the enclosing of the Hellgate Valley Irrigation Ditch within a pipe located within the Pipe Easement for the delivery of water through the area on the Trinity Apartments Property where the access drive for Trinity Apartments crosses the Hellgate Valley Irrigation Ditch. This agreement does not modify the permanent irrigation ditch easement as described in BK 536 Micro, PAGE 1193.
3. Upon the completion of the construction and installation of the enclosed pipe system for the delivery of water through the Pipe Easement as provided in this Agreement, Hellgate Valley Irrigation hereby release, terminate and abandon all rights and interest to an open ditch for the delivery of water through the area of the Pipe Easement.
4. Trinity Apartments, as developers of Trinity Mullan Subdivision, agree, at their sole expense and cost, to install the enclosed pipe system of delivery of water through the access drive and within the area of the Pipe Easement pursuant to the plans and specifications as described in Exhibit C, attached hereto and incorporated herein ("Enclosed Water Pipe"). Upon completion of installation, the Enclosed Water Pipe shall be the property of the Trinity Apartments.
5. Trinity Apartments agrees that all work done under the terms of this Agreement for the installation of the Enclosed Water Pipe shall be performed in a good and workmanlike manner consistent with the recognized local construction practices. Trinity Apartments agree that the construction work necessary to install the Enclosed Water Pipe as described in this Agreement shall be performed at such times as will cause minimum interference or disruption of the irrigation waters in the Hellgate Valley Irrigation Ditch and shall notify Hellgate Valley Irrigation fifteen (15) days prior to the commencement of the work to be performed in accordance with the terms of this Agreement. Trinity Apartments warrants that the work done under this Agreement shall be free from defects or deficiencies.
6. Trinity Apartments agrees that upon completion of the construction of the Enclosed Water Pipe, and acceptance thereof by the City, Trinity Apartments shall assume all responsibility for the maintenance of the Enclosed Water Pipe as provided herein. Trinity Apartments maintenance shall be limited to pumping, flushing, hazard elimination, debris removal as necessary, and cleaning of the Enclosed Water Pipe as necessary to maintain the required flow of water through the Enclosed Water Pipe. Annually at the end of the irrigation season, or, if the irrigation facility within these geographic limits accumulates three (3) inches of sediment in the pipe, the sediment shall be removed. In all other ways, Trinity Apartments shall keep said pipe and appurtenances in good general repair

and condition for the purpose of protecting persons and property from injury or damage.

7. Trinity Apartments agrees not to interfere with the ability of Hellgate Valley Irrigation, their successors and assigns, ability to have water flow through the Enclosed Water Pipe. Trinity Apartments agrees to monitor and periodically review the safety and efficiency of the new water delivery system provided for hereinafter the completion of construction. Trinity Apartments responsibility to cure any defects and deficiencies related to the modification work within the Pipe Easement, as defined herein this Agreement, shall continue for so long as the Enclosed Water Pipe exists.

8. Trinity Apartments agrees that all plantings along the ditch easement shall be reviewed and approved by Hellgate Valley Irrigation prior to planting.

9. Trinity Apartments agrees that Hellgate Valley Irrigation may access the irrigation ditch through the Trinity Apartments Property. Hellgate Valley Irrigation shall assume all responsibility for the maintenance of walkways and landscaping if damaged by Hellgate Valley Irrigation.

10. The Parties acknowledge and agree that the limitations of liability as provided in §85-7-2212 M.C.A. apply to Hellgate Valley Irrigation and any other irrigation district or private person or entity owning or operating the Hellgate Valley Irrigation Ditch and modifications thereto as provided in this Agreement.

11. This Agreement shall be recorded at Missoula County Clerk and Recorder's office and shall run with the lands described herein. The terms and conditions of this Agreement shall apply to and bind the respective parties, their successors, affiliates and assigns.

12. Indemnity. Trinity Apartments shall indemnify and hold Hellgate Valley Irrigation harmless from any and all claims or losses, including reasonable attorney fees and costs, asserted against Hellgate Valley Irrigation arising out of or relating to the work, maintenance, and obligations required of Trinity Apartments under the terms of this Agreement.

13. This Agreement contains the entire understanding of the parties and such understanding may not be modified except in writing signed by all parties.

14. This Agreement will be governed by and construed in accordance with the laws of the State of Montana.

15. **Arbitration.** The terms of this Agreement and any disputes or controversy arising out of the Agreement shall be submitted to arbitration in accordance with the rules of the Montana Uniform Arbitration Act, Sections 27-5-111, et. seq., Montana Code Annotated. This Arbitration Policy ("Policy") requires all such disputes to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial. Such disputes include without limitation any disputes arising out of or relating to interpretation or application of this Policy. A neutral arbitrator shall be selected by mutual agreement of the parties. If for any reason the parties

Printed Name: Notary Public for the State of Montana
Residing at: Missoula, Montana
My Commission expires: _____, 20__

DRAFT

HELL GATE VALLEY IRRIGATION COMPANY

By: _____
 Rollett A. Pruyn

Its: President

State of Montana)
 ss.
County of Missoula)

This instrument was signed before me on the _____ day of _____,
20__, by
 Rollett A. Pruyn, as President of Hellgate Valley Irrigation Company.

(Notarial Seal)

Printed

Name:

Notary Public for the State of Montana
Residing at: Missoula, Montana
My Commission expires: _____, 20__