

Return to:
City Clerk
435 Ryman St
Missoula, MT 59802

DEVELOPMENT AGREEMENT
[601 West Broadway]

THIS DEVELOPMENT AGREEMENT (the “Agreement”) made effective this _____ day of _____, 2020, is entered into by and between Riverfront LLC, whose address is 430 Ryman, Missoula, MT 59802 (“Developer”); and the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana, having an address of 435 Ryman, Missoula, MT 59802 (the “City”). Each is called a “Party” in this Agreement, and collectively are called “Parties.”

WHEREAS, Developer is the owner of certain real property located in the City of Missoula, Missoula County, Montana (the “Property”) legally described as:

Lots 1-5 and the east half of Lot 6, along with Lot A and Lot B, Block 51, WJ MCCORMICKS ADDITION, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof, and

Lots 48 and 49, Block 56, WJ MCCORMICKS ADDITION, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

Tax Parcel ID#: 497705 and 497609

Recording Reference: Book 927 Page 1098, records of Missoula County, Montana.

WHEREAS, on September 21, 2020, the Missoula City Council approved an application to rezone the Property submitted by Developer, subject to the requirement that Developer and the City enter into a Development Agreement regarding construction of an extension of the Riverfront Trail along the Clark Fork River through the Property; and

WHEREAS, the City Council approval also required the Developer to grant a 20-foot wide public non-motorized access easement to the City for the Riverfront Trail; and

WHEREAS, the City Council required the Developer to construct a 10-foot trail but adopted City plans call for a 14-foot trail in this area, and the City desires to upsize the trail to a 14-foot trail with the additional cost to be borne by the City; and

WHEREAS, the Parties wish to agree on the Parties' respective rights and obligations concerning the construction and maintenance of the portion of the Riverfront Trail at issue in the September 21, 2020, City Council approval;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, Developer and the City agree as follows:

1. Responsibilities and Obligations of the Developer. The Developer agrees to the following:
 - a. Development of the Real Property shall include construction of the Riverfront Trail along the north shore of the Clark Fork River from east to west, connecting to West Broadway on the west end of the Property and continuing to the easterly boundary of the Property, without interruption or detour, within the area shown on the attached Exhibit A (Proposed Easement Exhibit). The Developer shall be responsible for the cost of construction of an AASHTO-compliant 10-foot wide asphalt trail with 1 foot shoulders on either side of the path. However, the Developer shall construct an AASHTO-compliant 14-foot wide hard-surface (concrete or other similar hard surface material, but not including asphalt, with the final material to be approved by the City) trail, with the additional cost to be covered by the City as discussed below.
 - b. Developer shall take all steps necessary to grant the City a 20-foot wide public non-motorized access easement in a form substantially similar to the version attached as Exhibit B (Proposed Access Easement), which shall be filed with the Missoula County Clerk and Recorder. The access easement shall be a minimum of 20 feet wide, unless topography creates issues, and the Missoula Department of Parks and Recreation approves a variation. Developer may reserve the right in such an easement to grant additional easements to public utilities to use the area underlying the easement area for the installation and maintenance of public utilities, so long as the public utilities restore any trail infrastructure that exists in the easement area after any use by such public utility.
 - c. Design and construction of the Riverfront Trail shall meet or exceed all applicable City standards, including but not limited to the Public Works Manual, the AASHTO Guide for the Development of Bicycle Facilities, and the Missoula Parks and Recreation Design Manual, unless a variation from applicable City standards, including easement width, surface width of the trail, lighting, provision for trash receptacles and benches, is approved, in writing, by City Parks and Recreation Department as necessary due to site specific concerns. With the exception of hidden or latent issues discovered during construction, any variation from applicable City standards shall be sought in advance of construction.
 - d. If the trail construction subject to this Agreement is completed before the connecting trail to the east (identified within the Fox Triangle Development agreement) is constructed and open, the Developer and the City shall coordinate to plan for safety, use and maintenance during this period.

- e. The construction of the Riverfront Trail subject to this Agreement shall include the trail lighting called for by the Missoula Parks and Recreation Design Manual on a Primary Commuter Trail.

2. Responsibilities and Obligations of City. City agrees to the following:

- a. The City shall be responsible for the cost of upsizing the Riverfront Trail to be constructed by Developer to an AASHTO-compliant 14-foot wide hard-surfaced (concrete or other similar hard surface, but not including asphalt, with the final material to be approved by the City) trail.
- b. With the exception of mutually agreed to interim management actions addressed by Section 1.d. above, the City shall be responsible for the management of the trail, including routine and cyclical maintenance and replacement of the Riverfront Trail and features associated with the Riverfront Trail once the Trail has been constructed and is accepted by the City.

3. Indemnification. Developer, and its heirs, successors, and assigns shall indemnify, defend, and hold harmless the City from any and all actions, claims, damages, losses, liabilities, and expenses (collectively “Claims”) arising out of any act, or failure to act, on the part of Developer or his agents or employees, associated with the performance or nonperformance of this Agreement. The City is not an agent or employee of Developer.

The City shall indemnify, defend, and hold harmless Developer, its heirs, successors and assigns from any and all Claims arising out of any act, or failure to act, on the part of the City, its agents or employees, associated with the performance or nonperformance of this Agreement. Developer is not an agent or employee of the City.

4. Effective Date. This Agreement will be in force and effect on the date signed by the Mayor of the City and by Developer (the “Effective Date”).

5. Notices. All notices shall be addressed as follows, or addressed in such other manner as the Party being notified shall have requested by written notice to the other Party. Refusal to accept delivery of notice shall be deemed to be receipt. Any notice in writing required to be given shall be complete when personally delivered, delivered by courier or expedited delivery service such as Federal Express, or when deposited in the United States Mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other Party at the following addresses:

Developer:

Riverfront LLC
430 Ryman
Missoula MT 59802

City:

Office of the Mayor
City of Missoula
435 Ryman Street
Missoula, Montana 59802

With a copy to:

Parks and Recreation Director
City of Missoula
600 Cregg Lane
Missoula, MT 59801

The Parties, by notice given under this section, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

6. Compliance With Applicable Ordinances. Except as provided in this Section, nothing contained in this Agreement shall be interpreted to authorize or permit Developer to violate any law, ordinance, or regulation relating to building codes, fire codes, building materials, zoning, construction methods, or use. In the event of any conflict between any law, ordinance, or regulation and the terms of this Agreement, the law, ordinance, or regulation shall prevail and Developer shall promptly notify City of the conflict. City shall cooperate with Developer to accommodate the purposes of both this Agreement and such law, ordinance, or regulation.
7. Force Majeure. A Party shall not be held responsible if the fulfillment of the Party's obligations under this Agreement is delayed or prevented by revolutions, wars, acts of enemies, strikes, fires, global pandemics, floods, other natural disasters, acts of God, or without limiting the foregoing, by any other cause not within the control of the Party whose performance is interfered with, and which by the exercise of reasonable diligence, the Party is unable to prevent, whether of the class of causes hereinbefore enumerated or not.
8. Binding Effect. This Agreement touches and concerns the use of land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, and shall run with the land. This Agreement will be filed with the official records of the Property at the Missoula County Clerk and Recorder's Office.
9. Additional Provisions.
 - a. Modification and Amendment. This Agreement may be amended or modified by written agreement signed by the Parties.
 - b. Time. Time is of the essence in this Agreement. Any deadline falling on a Saturday, Sunday, or Montana State or United States legal holiday shall be extended to the next business day.

- c. Binding Effect. This Agreement is binding upon the heirs, successors, and assigns of the Parties.
 - d. Default and Remedies. In the event of any breach of this Agreement by a Party, the non-breaching Party shall give the breaching Party written notice describing the breach and thirty (30) days in which to cure. In the event the default is not cured timely, or in the event work required to cure a default is not commenced, the Parties may seek such remedies as are available under law.
 - e. Attorneys' Fees. In the event suit is brought for the enforcement of this Agreement or as a result of an alleged default, each Party shall pay their own attorney fees.
 - f. Governing Law and Venue. The law governing the interpretation or enforcement of the terms and condition of the Agreement shall be the laws of the State of Montana. The venue for any action brought pursuant to this Agreement shall be in the Fourth Judicial District of Montana, unless the issue involves a federal claim, in which case the venue shall be in the District of Montana.
 - g. Severability. If a part of this Agreement is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
 - h. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.
 - i. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.
 - j. Drafting of Agreement. Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.
10. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original hereof, but all of which shall constitute one and the same document. Signatures transmitted electronically shall be treated and accepted as original signatures. The parties agree to communicate regarding this Agreement by electronic means as allowed by the Montana Uniform Electronic Transactions Act, Mont. Code Ann. § 30-18-101, et seq. (2019). After this Agreement is executed, any written document made under this Agreement may be created in original or may be an electronic record; any signature may be in original, or by electronic signature.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year in this certificate written below.

FOR the Developer:

_____ Date: _____
Printed Name:
Manager
Riverfront LLC

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____,
2020 by _____, as the Manager of Riverfront LLC.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

FOR the City of Missoula

APPROVED:

_____ Date: _____
John Engen, Mayor

ATTEST:

_____ Date: _____
Marty Rehbein, City Clerk

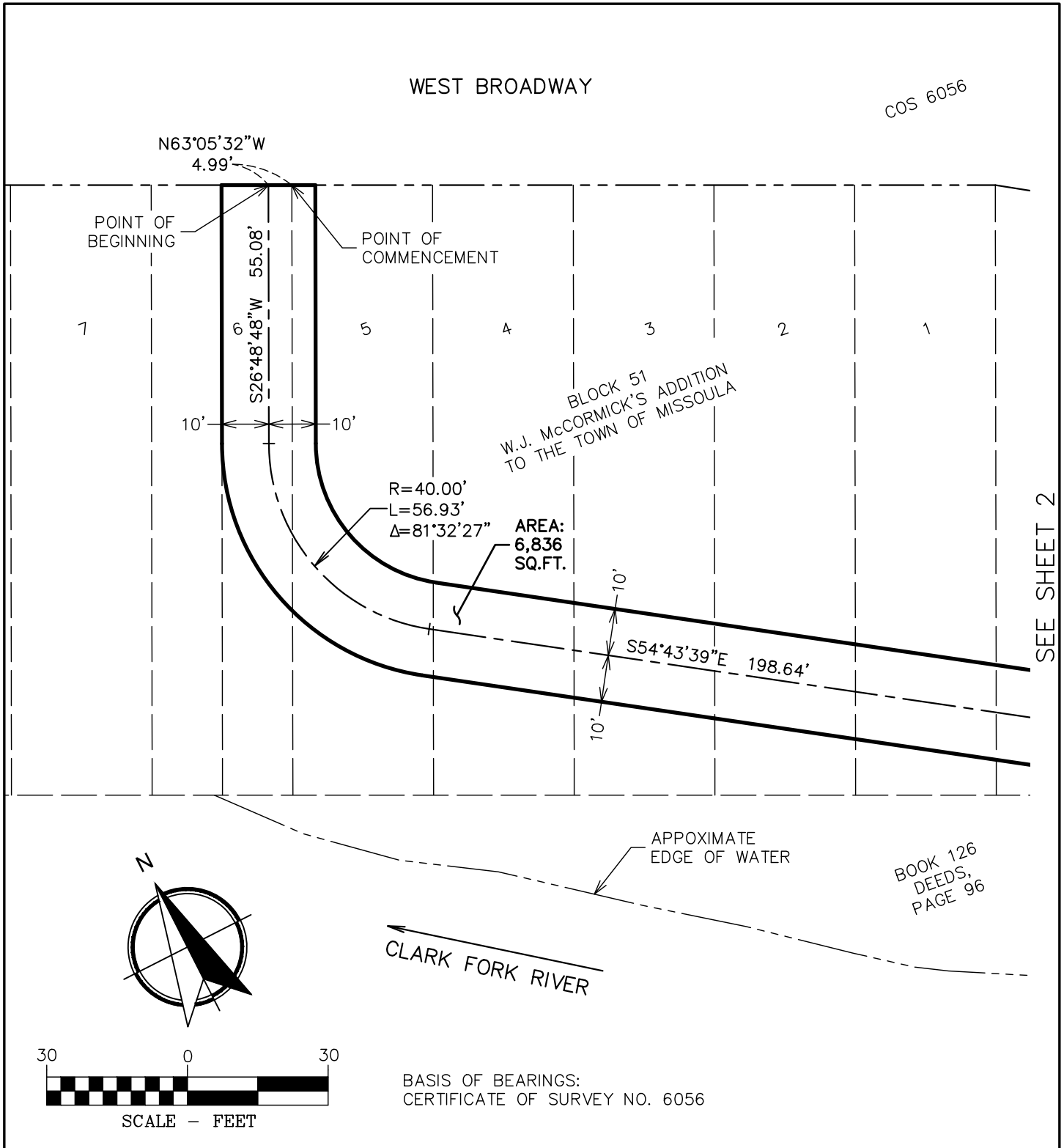


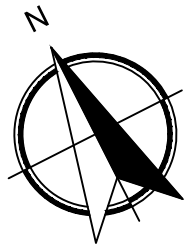
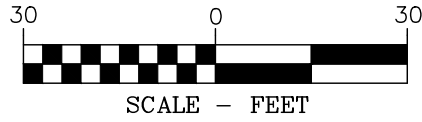
EXHIBIT "A"
LOCATED IN THE NE 1/4 OF SECTION 21,
T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



WGM GROUP
WWW.WGMGROUP.COM

PROJECT: 19-04-07
FILE No: 190407_trail ease.dwg
FILE PATH
W:\Projects\190407\CAD Data\Exhibits
LAYOUT: Sht1
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: JAD
DATE: NOVEMBER 3, 2020
SHEET 1 OF 3 SHEETS

COS 6056



FRONT STREET

1
BLOCK 51

B

A

49

48

47

46

W.J. McCORMICK'S ADDITION
TO THE TOWN OF MISSOULA

PARCEL 1
COS 5265

BLOCK 56
W.J. McCORMICK'S ADDITION
TO THE TOWN OF MISSOULA

SEE SHEET 1

10'
S54°43'39"E 198.64'
10'

R=102.00'
L=34.24'
Δ=19°13'56"

POINT OF
TERMINUS

BOOK 126
DEEDS,
PAGE 96

APPOXIMATE
EDGE OF WATER

BOOK 126
DEEDS,
PAGE 97

CLARK FORK RIVER

EXHIBIT "A"
LOCATED IN THE NE 1/4 OF SECTION 21,
T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



WGM GROUP
WWW.WGMGROUP.COM

PROJECT: 19-04-07
FILE No: 190407_trail ease.dwg
FILE PATH
W:\Projects\190407\CAD Data\Exhibits
LAYOUT: Sh12
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: JAD
DATE: NOVEMBER 3, 2020
SHEET 2 OF 3 SHEETS


L E G A L D E S C R I P T I O N * * * * *

A STRIP OF LAND 20.00 FEET WIDE BEING PORTIONS OF LOTS 1, 2, 3, 4, 5, AND 6 OF BLOCK 51, LOTS 48 AND 49 OF BLOCK 56, AND LOTS A AND B, ALL OF W.J. McCORMICK'S ADDITION TO THE TOWN OF MISSOULA, A RECORDED SUBDIVISION OF MISSOULA COUNTY, MONTANA; LOCATED IN THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; SAID STRIP OF LAND LYING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

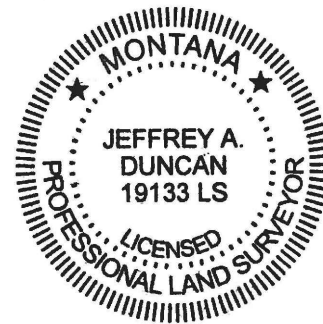
COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 6; THENCE N 63°05'32" W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF WEST BROADWAY, 4.99 FEET TO THE POINT OF BEGINNING; THENCE S 26°48'48" W, 55.08 FEET TO A POINT ON A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHWESTERLY, SOUTHERLY, AND SOUTHEASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 81°32'27", AN ARC LENGTH OF 56.93 FEET; THENCE S 54°43'39" E, 198.64 FEET TO A POINT ON A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 102.00 FEET; THENCE SOUTHEASTERLY ALONG LAST SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 19°13'56", AN ARC LENGTH OF 34.24 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 48, SAID POINT BEING THE POINT OF TERMINUS OF SAID CENTERLINE; THE SIDELINES OF SAID STRIP OF LAND TO BE LENGTHENED OR SHORTENED AS NECESSARY TO INTERSECT THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF WEST BROADWAY AND THE SOUTHEASTERLY LINE OF SAID LOT 48; CONTAINING 6,836 SQUARE FEET, MORE OR LESS.

S U R V E Y O R ' S S T A T E M E N T * * * * *

THIS EXHIBIT WAS PREPARED UNDER MY SUPERVISION.


JEFFREY A. DUNCAN, P.L.S.
MONTANA LICENSE NO. 19133LS
FOR WGM GROUP, INC.

11/03/2020
DATE



UNLESS SIGNED, SEALED, AND DATED, THIS IS A PRELIMINARY OR UNOFFICIAL DOCUMENT AND CANNOT BE RELIED UPON IN WHOLE OR PART.

EXHIBIT "A"
LOCATED IN THE NE 1/4 OF SECTION 21,
T. 13 N., R. 19 W., P.M., M.
MISSOULA, MONTANA



WGM GROUP
WWW.WGMGROUP.COM

PROJECT: 19-04-07
FILE No: 190407_trail ease.dwg
FILE PATH
W:\Projects\190407\CAD Data\Exhibits
LAYOUT: Sht3
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: JAD
DATE: NOVEMBER 3, 2020
SHEET 3 OF 3 SHEETS

Exhibit B

Return to: City of Missoula
435 Ryman Street
Missoula, MT 59802

PUBLIC ACCESS EASEMENT

Parcel Numbers: 04-2200-21-1-13-11-0000 and 04-2200-21-1-13-10-0000

THIS CONVEYANCE, made this _____ day of _____, 2020, by and between Riverfront LLC, whose principal address is 430 Ryman, Missoula, MT 59802, as property owner ("Grantor"), and the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana, located at 435 Ryman, Missoula, MT 59802 ("Grantee").

KNOW ALL PERSONS BY THESE PRESENTS THAT Grantor, owner of the property legally described as

Lots 1-5 and the east half of Lot 6, along with Lot A and Lot B, Block 51, WJ MCCORMICKS ADDITION, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof, and

Lots 48 and 49, Block 56, WJ MCCORMICKS ADDITION, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof.

Recording Reference: Book 927 Page 1098, records of Missoula County, Montana.

does hereby grant and convey, subject to the conditions and limitations herein set forth, to the Grantee a Public Access Easement over, upon and across the herein below described real estate. Said Easement location being that tract of land as shown on Exhibit "A" attached hereto.

TO HAVE AND TO HOLD, the same unto the said Grantee, together with all the rights and privileges incident to the use and enjoyment thereof.

The Easement is conveyed to Grantee, its successors and assigns, in perpetuity to use in common with Grantor, and its successors and assigns, subject to the terms, provisions, and conditions described below:

1. Purpose. The Easement is for the construction, reconstruction, repair, maintenance, and public use of a paved public pedestrian and bicycle trail, and such additional use as needed for: accessibility under the Americans with Disabilities Act, emergency access, maintenance, or other applicable laws and regulations.
2. Use. Grantor reserves the right to use at all times and for any purpose, and to go over, upon, under, and across the land encumbered by the Easement and to construct, maintain,

improve, repair, replace, and remove (collectively “construct”) improvements thereon in a manner that will not unreasonably interfere with the rights granted hereunder. All use shall be in compliance with applicable statutes, ordinances, and regulations, including, without limitation, applicable zoning. Grantor shall restore the Easement Area to the condition it was in prior to any use by Grantor of the Easement Area.

3. Additional Easements. Grantor reserves the right to grant additional easements, licenses, and /or permits to others for the use and occupancy of the land encumbered by the Easement and for construction of improvements thereon, in a manner that will not unreasonably interfere with the rights granted hereunder. Grantor shall include a provision in any such easements requiring the grantee of those easements to restore the Easement Area to the condition it was in prior to any use of the Easement Area by any grantee.
4. Additional Provisions.
 - a. Binding on Successors. This Easement shall be recorded in the official records of Missoula County, Montana, and shall be binding on the heirs, successors, administrators, executors and assigns of the Parties hereto, and shall run with the land.
 - b. Governing Law. It is agreed that this Easement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.
 - c. Invalidity. If any provision of this Easement is declared or becomes invalid, unenforceable or contrary to law, the Parties agree that the provision will be considered severed from the remaining provisions of this Easement and will not affect the validity, legality, or enforceability of the other provisions of this Easement, and this Easement will be interpreted as if it never contained the provision.
 - d. Existing Encumbrances. The Easement is subject to all existing easements, agreements, restrictions, conditions, and encumbrances apparent or of record as of the date of this Easement.
 - e. Attorneys’ Fees. In the event suit is brought for the enforcement of this Easement or as a result of an alleged default, each Party shall pay their own attorney fees.
 - f. Recording. This Easement shall be effective upon the recording of the Easement in the Clerk and Recorder’s Office in Missoula County, Montana.
 - g. Modification and Amendment. This Easement may be amended or modified by written agreement signed by the Parties and placed of record in the Clerk and Recorder’s Office in Missoula County, Montana.
5. Counterparts. This Easement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original hereof, but all of which shall constitute one and the same document. Signatures transmitted electronically shall be treated and accepted as original signatures. The parties agree to communicate regarding this Easement by electronic means as allowed by the Montana Uniform Electronic Transactions Act, Mont. Code Ann. § 30-18-101, et seq. (2019). After this Easement is executed, any

written document made under this Easement may be created in original or may be an electronic record; any signature may be in original, or by electronic signature.

The Grantor acknowledges that they are the lawful owner(s) and seized of the real property over which and upon the easement described herein are granted, and that they have good and lawful right and authority to grant said easement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year in this certificate written above.

GRANTOR

Printed Name:
Manager
Riverfront LLC

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____,
2020 by _____, as the Manager of Riverfront LLC.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

CITY OF MISSOULA ACCEPTANCE

ATTEST:

APPROVED:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(SEAL)