

After Recording Return To:

City Clerk
City of Missoula
435 Ryman Street
Missoula, MT 59802

PERPETUAL PUBLIC ACCESS TRAIL EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**” or “**Easement Agreement**”) is made as of this ____ day of _____, 2019, by and between Littlefoot Properties, L.L.C., a domestic, limited liability company organized pursuant to the laws of the State of Montana, whose address is 1515 East Broadway, Missoula, Montana (“**Grantor**”), and the CITY OF MISSOULA, a municipal corporation organized pursuant to the laws of the State of Montana, whose address is 435 Ryman Street, Missoula, MT 59801 (“**City**”), (collectively “**Parties**”).

RECITALS:

WHEREAS, Grantor is the owner of certain real property located in the City of Missoula, Missoula County, Montana, legally described as:

Lot 1 of Gateway Gardens No. 2, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof

and

Lot 2 of Gateway Gardens No. 2, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof (the “**Property**”).

WHEREAS, Lot 1 of Gateway Gardens No. 2 is located at 1505 East Broadway, Missoula, Montana, 59802 and Lot 2 of Gateway Gardens No. 2 is located at 1515 East Broadway, Missoula, Montana, 59802;

WHEREAS, Grantor purchased 1505 East Broadway from City, with a condition of closing that Grantor would grant to City a 20’ wide public, non-motorized trail easement across 1505 East Broadway, and grant a new 20’ wide public, non-motorized trail easement across 1515 East Broadway;

WHEREAS, the purpose of this Easement Agreement is allow the City to connect a key section of the riverfront trail system on the north shore of the Clark Fork River, and complete the connection between Missoula College and East Street, and articulate the rights and obligations of the Parties with regards to construction and maintenance of a public, non-motorized trail in the Trail Easement;

WHEREAS, City is acquiring this Trail Easement using 2006 Open Space Bond funds, and the Trail Easement accomplishes the purposes of the bond by providing recreational trails; protecting water quality in the Clark Fork River; managing for growth; and paying non-personnel related transaction costs and other project related costs;

WHEREAS, the Trail Easement is acquired for the purpose of connecting a recreational and commuter trail for recreational purpose and for conservation of open-space land, in accordance with the Open Space Land And Voluntary Conservation Easement Act, section 76-7-104, Mont. Code Ann.;

WHEREAS, with this Easement Agreement, the parties also desire to terminate any existing public pedestrian easements across the Property and replace them in their entirety with this Easement Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor wishes to grant and City wishes to obtain a public non-motorized trail easement, over and across the Property, as depicted on **Exhibit A**, attached hereto and incorporated herein by this reference, according to the terms and conditions outlined in this Easement Agreement.

AGREEMENT:

1. Grant of Easement. Grantor hereby grants and conveys to City, a twenty foot wide (20') Non-exclusive, Perpetual Public Access Trail Easement ("**Trail Easement**"). The Trail Easement is legally described on **Exhibit A**, attached hereto and incorporated herein by reference. The Easement is for the benefit of the City, which intends to extend its rights to the public.

2. Purpose of Easement. The purpose of the Trail Easement is to allow the City and the general public access to the trail easement area for non-motorized recreational purposes including, but not limited to, hiking, biking, trail running and walking. City may also access the Trail Easement using City maintenance equipment and vehicles for construction of the trail and for periodic, routine maintenance activities.

3. Public Use of Easement. Grantor acknowledges that City is contemplating use of the Easement by members of the general public, and hereby expressly consents to public use of the Easement. Grantor consents to the installation of signs or, if needed, fencing along or within the

Easement to inform and direct members of the public, and the use of assistive mobility devices within the Easement.

4. Construction and Maintenance. As set forth herein, City anticipates that the Easement will be used by members of the general public. The following provisions apply to construction and maintenance of the trail in the Easement Area:

- a. Trail Construction. City agrees to construct and maintain, at City's sole expense, a public recreational and commuter trail within the Trail Easement. The trail will initially be unpaved, but upon securing necessary funding the trail may eventually be paved.
- b. Trail Maintenance. City will maintain the trail consistent with other non-motorized trails that are part of the City's bicycle and commuter network. This maintenance may include, but is not limited to, snow plowing, repairing the surface of the trail, managing weeds and installing fences or signs, or reconstructing the trail as needed within the Trail Easement.

5. Termination of Existing Public Pedestrian Easements. To the extent that any public pedestrian easements exist across the Property, City hereby terminates and extinguishes all right, title and interest it has in and to existing public pedestrian easements, and replaces those public pedestrian easements with this Easement Agreement. This termination does not impact any existing public utility easements on or across the Property.

6. Survey Acknowledgment. The parties to this Agreement acknowledge that the location of the Trail Easement will be surveyed as a 20' wide easement corridor, located generally over the existing trail across the Property.

7. Prohibition against Permanent Structures. No permanent structure or building shall be allowed to encroach into or sit upon the Easement. In this regard, the Easement shall remain unobstructed and accessible at all times. Notwithstanding the foregoing, the parties acknowledge the City's right to cover the areas of the Easement with grass, landscaping, trees, asphalt, concrete or other similar covering provided said covering is not a building or other permanent structure and is done in accordance with this Agreement and does not prevent or inhibit the purpose and use of, or access to the Easement.

8. Legal Effect; Successors and Assigns. Each covenant contained in this Agreement binds and inures to the benefit of the Grantor and the City and their respective heirs, successors and assigns (including but not limited to occupants and mortgagees).

9. Liabilities.

- a. Grantor shall enjoy the limitations on legal liability involving recreational use of the Trail Easement or Parking Area Easement, as provided for in §§ 70-16-301 and 302, Montana Code Annotated.

- b. Notwithstanding the foregoing sentence, City shall indemnify, defend, and hold harmless Grantor from any and all actions, claims, damages, losses, liabilities, and expenses arising out of any negligent act or failure to act on the part of City, its agents, employees or contractors, associated with City's use of Grantor's property within the Easement.
- c. Grantor shall indemnify, defend, and hold harmless City from any and all actions, claims, damages, losses, liabilities, and expenses arising out of any negligent act, or failure to act on the part of Grantor, its agents or employees, associated with Grantor's use of its property.

10. Remedies. In the event of a breach of the terms of this Easement by any party, the non-breaching party may give the breaching party written notice describing the breach and thirty (30) days in which to cure. Should the breaching party fail to cure such breach within the thirty (30) day cure period, the non-breaching party may enforce all the remedies available to them at law or in equity, including the availability of injunctive relief. In the event suit is brought to enforce the terms of this Easement Agreement or as the result of an alleged default of this Easement, each party shall be responsible to pay their or its own attorney's fees.

11. Notices. All notices, demands and requests required or desired to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such writing is (i) delivered to the party intended, (ii) delivered to the then current address of the party intended, or (iii) rejected at the then current address of the party intended, provided such writing was sent prepaid.

- a. Any notices to City shall be sent to the City's address listed above and copied to the Conservation Lands Manager, whose address is 600 Cregg Lane, Missoula, MT 59802.
- b. Any notices to Northwestern Energy shall be sent to the address listed above and copied to: Joe Sample, 1515 East Broadway, Missoula, Montana 59802.

12. Binding on Successors. This Agreement shall be binding on the heirs, successors, administrators, executors and assigns of all parties hereto.

13. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.

14. Counterparts. This Agreement may be executed in counterparts, each part being considered an original document, all parts being but one document.

15. Invalidity. If any provision of this Easement Agreement 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 Agreement and will not affect the validity, legality, or enforceability of the other provisions of this Agreement, and this Agreement will be

interpreted as if it never contained the provision.

16. Pre-Existing Easements. Except for the termination language contained in Section 5, the Easement herein granted is subject to all previously granted easements and rights-of-way on or affecting Grantor's land, including any existing mortgages, deeds of trusts or other encumbrances.

17. Recording. This Easement Agreement shall be recorded with the Clerk and Recorder's Office in Missoula County, Montana.

DRAFT

EXHIBIT A

[INSERT SURVEYED EASEMENT EXHIBIT]

DRAFT

CITY ACCEPTANCE:

The City of Missoula, a Municipal Corporation, located in Missoula County, Montana, hereby accepts the grant of real property described herein.

APPROVED:

John Engen, Mayor

ATTEST:

Martha L. Rehbein, CMC
City Clerk

(seal)

State of Montana

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)ss.

County of Missoula

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