

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, 2013, the undersigned, **POPELKA ENTERPRISES, LLC** of the address of P.O. Box 50126, Billings, Montana 59105, hereinafter called "Grantor", hereby grants and conveys unto **THE CITY OF BILLINGS** ("Grantee"), a municipal corporation and political subdivision of the State of Montana, whose mailing address is P.O. Box 1178, Billings, Montana 59103, hereinafter called "GRANTEE", a perpetual easement and right-of-way over, across, under, and through the following described real property in Yellowstone County, Montana:

Lot 3A, Block 1 of the Amended Plat of Lots 3 and 4, Block 1, Popelka Commerce Center Subdivision recorded April 11th, 2005 under Document No. 3328537 in the office of the Clerk and Recorder, Yellowstone County, Montana; more particularly described as follows:

A 60-foot wide strip of land across said Lot 3A, being 30 feet each side of the following described centerline:

Beginning at a point on the westerly right-of-way limit of South Billings Boulevard; said point being N00°16'18"W, 30.00 feet from the northeast corner of Lot 2, Block 1, Popelka Commerce Center Subdivision; thence from said point of beginning, S89°45'07"W, 438.03 feet to the point of terminus, said described easement containing an area of 26,281.6 square feet more or less, as shown on the attached EXHIBIT A.

This perpetual easement to Grantee is for the purpose of public access and constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing sanitary sewers, water lines, and/or storm drains over, across, under, and through the above said real property, together with the free right of ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing said sanitary sewers, water lines, and/or storm drains and appurtenances, and adding additional sanitary sewers, water lines, and or storm drains.

Grantor shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

- A. Grantor and its successor or successors agrees not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape, or form, except as may be licensed by Grantee.
- B. Grantor agrees not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges, nor any other plantings of a similar nature, except as may be licensed by Grantee.

Grantor agrees that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their normal duties at any time, day or night, regardless of outside weather conditions.

- C. Grantor agrees to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers, water lines, and/or storm drains and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City of Billings.
- D. Grantor agrees that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair, or service work to the sanitary sewer, water lines, and/or storm drain by the City of Billings shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.
- E. Hold Harmless Statements :
 - 1. Grantor agrees that the owner or owners of the above-described property shall at all times fully relieve and save harmless the City of Billings and their authorized representatives for any and all damages to any plant material, ground cover, object, material, equipment or property of any kind that may be located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from the easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
 - 2. Grantor agrees the owners of the above-described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations, or responsibilities contained in this agreement.
- F. The Restrictions, Covenants, and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

Grantors warrant and covenant that there are no liens or other encumbrances on the described tract or tracts.

“GRANTOR”

PEPELKA ENTERPRISES, LLC

By: Robert A. Popelka

Title: Managing Member

PEPELKA ENTERPRISES, LLC

By: Patricia D. Sanford

Title: Managing Member

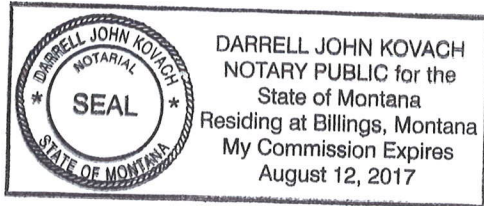
STATE OF MONTANA)

: ss.

County of Yellowstone)

On this 9th day of October, 2013, before me, a Notary Public in and for the State of Montana, personally appeared Robert Popelka, and Patricia Sanford who is the Managing Member and Managing Member of POPELKA ENTERPRISES, LLC, who executed the foregoing instrument and who acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal the day and year hereinabove written.



Darrell John Kovach
 Notary Public in and for the State of Montana
 Printed name: Darrell John Kovach
 Residing at Billings, Montana
 My commission expires: 8/12/17

The Mayor and City Council of the City of Billings acknowledge receipt of this easement and hereby accept the property interest conveyed through this instrument.

“GRANTEE”

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2013, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____