

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 1st day of MAY, 2014, the undersigned,

BENNY L. MILKS, TRUSTEE OF THE BENNY L. MILKS TRUST

of the address of 4185 MITCHELL AVE, BILLINGS, MT 59101, hereinafter called "GRANTOR", hereby grants and conveys unto THE CITY OF BILLINGS, a Montana municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "GRANTEE", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

A 10 ft. wide strip easement over, across, under & through a portion of Lot 14, Homecroft Acres Sub., located in Section 9, Township 1 South, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana, also described in the Warranty Deed, Document # 3194585 filed in the Yellowstone County Court House, also referenced by Geocode: 03-0927-09-4-28-02-0000, for the purposes of constructing, accessing, maintaining, and improving a sewer pipeline; and other associated appurtenances; and for any other purposes deemed necessary for the safe operation & maintenance of said facilities, more particularly described as follows:

Beginning at the Southeast corner of above referenced Lot 14, this point also being on the northerly right of way line of Mitchell Ave.; thence a 10 ft. wide strip running N 01° 13' 11" W, to the north line of said lot 14, adjacent to & paralleling the easterly boundary line of said Lot 14, Homecroft Acres Sub..

A diagram, or map, showing the location and route of the easement, is attached to this Easement and is made a part of it by this reference.

GRANTOR grants and conveys this Perpetual easement to GRANTEE for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing sanitary sewers and/or water lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewers and/or water lines and appurtenances, and, if GRANTEE deems it in the best interest of the City of Billings, Montana, adding additional sanitary sewer and/or water lines.

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:

1. GRANTOR agrees not to construct, nor cause or permit to be constructed, any type of building or structure within the easement right-of-way, such as, but not limited to, houses, garages, sheds, kennels, nor any other fixed objects of any kind, shape or form, unless GRANTEE expressly agrees to the construction in writing. GRANTEE agrees to allow fences within the easement right-of-way with the condition that the GRANTOR complies with all the rights, restrictions, obligations or responsibilities contained in this agreement.

2. **GRANTOR** agrees not to plant, nor cause to be planted, any trees, bushes, shrubs, hedges, nor any other plantings of a similar nature within the easement right-of-way, unless **GRANTEE** expressly agrees to the construction in writing
3. **GRANTOR** agrees that authorized representatives of the City of Billings shall be permitted to freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
4. **GRANTOR** shall obtain the permission of the Public Works Department or **GRANTEE** prior to placing or removing any fill dirt, or causing fill dirt to be placed on or removed from the easement right-of-way and, in addition, in the event such permission is granted, the **GRANTOR** agrees to perform any work necessary to modify the existing sanitary sewers and/or water lines 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 **GRANTOR**'s expense and without expense to the City.
5. **GRANTOR** agrees that the sole responsibility of **GRANTEE** for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines 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.
6. **HOLD HARMLESS AGREEMENT:**
 - **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 its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment 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 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.
 - **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.
7. 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.

GRANTOR warrants and covenants that there are no liens or other encumbrances on the described tract or tracts that would impair any rights or privileges granted or conveyed to the **GRANTEE** by this Easement.

IN WITNESS WHEREOF, the GRANTOR and GRANTEE do make and enter into this Easement the day and year first above written.

Benny L. Milks Trustee
**BENNY L. MILKS, TRUSTEE OF THE
BENNY L. MILKS TRUST, GRANTOR**

STATE OF MONTANA)

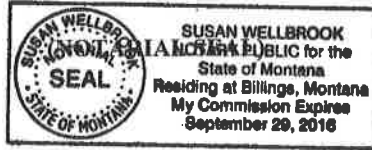
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County of Yellowstone)

On this 1st day of May, 2014, before me, a Notary Public in and for the State of Montana, personally appeared **BENNY L. MILKS, TRUSTEE OF THE BENNY L. MILKS TRUST, GRANTOR**, and acknowledged to me that he duly executed the same.

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

Susan Wellbrook (Signature)



(Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: _____

ACCEPTANCE AND ACKNOWLEDGMENT
by the City of Billings, Montana

THIS EASEMENT INTEREST is hereby accepted and the terms set forth herein are agreed to pursuant to City Council approval on _____, 2014.

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
THOMAS W. HANEL, Mayor

ATTEST:

By: _____
CARI MARTIN, City Clerk

STATE OF MONTANA)
: SS.
County of Yellowstone)

On this _____ day of _____, 2014 before me, a Notary Public for the State of Montana, personally appeared **THOMAS W. HANEL** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

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

(Signature)

(NOTARIAL SEAL)

(Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: _____

