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Recording Requested By
F.H. Stoltze Land & Lumber Co.
And
City of Whitefish
When Recorded Mail To:
F.H. Stoltze Land & Lumber Co.
PO Box 1429
Columbia Falls, MT 59912



Debbie Pierson, Flathead County MT by NC

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PUBLIC RECREATIONAL TRAIL EASEMENT

THIS EASEMENT, dated this 26th day of Jan, 2016, from F.H. STOLTZE LAND & LUMBER COMPANY, a Montana corporation, whose address is P.O. Box 1429, Columbia Falls, Montana 59912, hereinafter called "Grantor" or "Stoltze," to City of Whitefish, whose address is P.O. Box 158, Whitefish, MT 59937, hereinafter called "Grantee."

WITNESSETH:

Grantor, for and in consideration of \$1.00, and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a non-exclusive easement and right-of-way for the construction, installation, maintenance, repair, improvement and use of a non-motorized recreational trail for the benefit of the general public. The easement is along and across lands located in Flathead County, Montana and described as follows:

A public recreational trail system easement, in Sections 7, 8, 17, 18, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, consisting of:

A 20 foot wide strip of land, 10 feet on either side of the center of the trail with a length of 20,064 feet, more or less, containing 9.10 acres, more or less, as shown on Exhibit "A".



The "Trail System" described herein is located approximately as shown as the solid lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Easement Area"). Parties agree to accept the centerline of the trail as constructed as the true centerline of the easement. The Easement Area shall include any and all improvements.

The above grant and conveyance is subject to all matters of public record as of the date of this Easement.

The parties hereto agree that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Definitions.

a. For the purposes of this Easement, the words and terms "center line," "portion," "segment," "right of way," "trail" and "trail corridor" shall refer to the plural as well as the singular.

b. Maintenance. maintenance shall be construed to mean inspection, repair, construction, reconstruction, replacement, use and maintenance of the Trail System.

c. Trail System. is defined as the trail corridors, trailhead, trail related amenities such as steps, railings, bridges, culverts, benches, and small unlighted trail signs for the use and benefit of the general public.

2. Purpose. The Easement granted herein is for the purpose of constructing, using, maintaining, repairing and improving a non-motorized recreational trail for the use and benefit of the general public.

3. Design, Construction, Maintenance and Management. Grantee is responsible for the design, construction, maintenance and management of the Trail System. Trail design, construction, maintenance and management activities will take place in accordance with the standards and guidelines outlined in the "Haskill Basin Whitefish Trail Management and Operations Plan" (Trail Plan). Parties will develop and execute the Trail Plan concurrently with the execution of this Easement. Such Trail Plan will be periodically reviewed and updated as necessary as agreed to by both parties.

Soil, rock and vegetative resources may be removed, cut or otherwise disturbed only to the extent reasonably necessary to accommodate the purpose of this Easement.

Vehicular access may be required to facilitate trail related activities and to respond in case of emergency in the Easement Area.

Prior to the installation of the trail within the Easement Area, Grantee must (a) provide Grantor with at least 30 days' notice of its intent to install; (b) mark the approximate location of the trail and consider any reasonable adjustment of the trail location suggested by Grantor; (c) obtain and provide copies to Grantor all certificates evidencing liability insurance coverage as provided in



Section 13 herein; and (d) obtain all permits and approvals required for construction or installation activities and provide copies of such to Grantor prior to construction activities.

4. Prohibited Uses. The following shall be prohibited in the Easement Area:

- a. Blocking gates or roadways;
- b. Firewood, bough or tree cutting without prior permission of the Grantor;
- c. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles, except as necessary for the construction and maintenance of the trail, or in case of emergency;
- d. Smoking of tobacco or other substances, or lighting of fires of any kind;
- e. Trapping or hunting with firearms, bow and arrows, or any other form of arms or weapons within the Easement Area;
- f. Discharging of firearms within the Easement Area;
- g. Overnight camping or sleeping;
- h. Dumping or littering; and
- i. Charging a fee for use by the general public.

5. Improvements. The parties acknowledge that Grantor has no obligation to construct any improvements of any type or kind to the Easement Area or assist Grantee in the exercise of any rights granted hereunder except as specifically set forth in this Easement. Grantor may maintain existing roads and other improvements that exist within the Easement Area. Construction of new improvements or roads within the Easement Area by Grantor is allowed upon notice to Grantee and so long as such construction does not unreasonably interfere with Grantee's use of the Easement Area.

6. Temporary Closure. Grantor has the right to temporarily restrict public access on limited portions of the Easement Area in case of emergency, including extreme fire danger and for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users. Unless otherwise agreed by the parties, such period of closure shall not exceed 5 days. Requests for longer term closures should be accompanied with alternative routes for trail users. Prior to closure, Grantor must provide 30 days' advance notice to Grantee and an opportunity to comment, except in case of emergency, in which case notice shall be provided to Grantee as soon thereafter as possible.

7. Relocation by Grantor. Upon prior notice to Grantee, Grantor reserves unto itself, its successors and assigns, the right at its expense to relocate the easement and right-of-way granted herein subject to the condition that Grantor will allow Grantee to design



and construct an alternate route that provides a similar type and quality of recreational experience as existed prior to such relocation and does not change the point of interconnection on the boundaries of the parties' respective properties.

8. Relocation By Grantee: If the Grantee loses the right to use roads or easements over private property as shown in Exhibit A, Grantor and Grantee agree to work together to find or build an alternative or re-routed road and easement to provide the Grantee similar access that it enjoyed prior to such loss of road or easement access, with Grantee being responsible for the expenses of road and easement relocation and reconstruction.

9. Right of Way Crossing. Grantor reserves for itself and its successors and assigns, the right to use, cross and recross the easement and right of way for any and all purposes, in any manner that will provide for the safety of Trail System users and will not unreasonably interfere with the rights granted to Grantee hereunder. Grantor agrees (a) to plan such crossings in a manner that have a minimal interference with trail use (b) to provide prior notice to Grantee of its plan; and (c) to restore any damage to the Trail System promptly after each crossing at its own expense. At all locations where the easement crosses Grantor's roads Grantee shall appropriately sign trail and provide trail design elements that recognize that road users have right of way over trail users.

10. Third Parties. Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights granted hereunder.

11. Right-of-Way Timber. Grantor reserves to itself all timber now on or hereafter growing within said easement and right-of-way. Grantee shall have the right to cut timber growing within the easement and right of way herein granted to the extent necessary for constructing, reconstructing, and maintaining the right of ways. Timber so cut, unless otherwise agreed, shall be cut into logs of lengths specified by Grantor and decked along the right of ways for disposal by Grantor.

12. Organized or Commercial Use. Grantee agrees to notify Grantor 30 days prior to all organized or commercial uses of the Easement Area. Grantee shall provide proof of adequate insurance coverage equal to, but not limited to the insurance requirements described in Section 14, protecting Grantor from liability that may arise from such uses.

13. Exercise of Rights. Grantee may permit its contractors, licensees, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein provided that all terms and conditions of this easement shall apply to all "Permittees."

14. Insurance. Prior to any use of the easement and right of way granted herein, Grantee, if available to Grantee, and each of its Permittees shall obtain and, during the term of such use, maintain a policy of liability insurance in a form and by an insurance company



acceptable to Grantor and providing the coverages set forth hereinafter in this Section 13. Grantor acknowledges that some of the following coverages may not be available to Grantee as a public entity, and agrees that Grantee shall not be in breach or default of this Easement by virtue of such non-availability. However, the following coverages shall apply to all other Permittees using the Easement Area.

A. Commercial General Liability Insurance to include minimum limits of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include, Products and Completed Operations, , Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. Additionally, the policy shall not exclude X.C.U. (Explosion, Collapse, or Underground).

B. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles (only in excess of existing insurance for a non-owned, hired and other vehicles), with a combined single limit of \$1,000,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

C. Employer's Liability Insurance, for employee bodily injuries and death, with a minimum limit of \$500,000 each occurrence. In the event the party obtaining the insurance has no employees, then such party shall not be required to carry Employer's Liability Insurance.

D. Contractors (or Loggers) Broad Form B Property Damage Liability Insurance with a limit of \$2,000,000 per occurrence.

E. Worker's Compensation Insurance, with statutory limits as are required by the Workers' Compensation Law in the State in which work is being performed hereunder. No state exemption from workers' compensation insurance as an "owner/executive/partner" is allowed. Grantee and Permittees shall obtain and maintain during the term and any extension hereof, workers' compensation insurance in an amount of not less than statutory limits for any and all of their employees. If the insuring party fails to comply with applicable workers' compensation law during the term of this agreement, then such party shall refrain from exercising its rights under this agreement until the required workers' compensation insurance is obtained. For Permittees that are non-public entities, Workers Compensation and General Liability policy shall have a waiver of subrogation endorsement in favor of Grantor et al, and proof of such endorsement shall be provided to Grantor.

F. Grantor shall be named as an additional insured on all General Liability, Property Damage Liability and Comprehensive Automobile Liability policies both of Grantee for the entire duration of this Easement, and any and all Permittees for as long as they are on or in the Easement Area. The policies specified above shall include endorsements which shall name Grantor, as an additional insured for the duration of the Easement Term. The additional insured endorsements must be ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or other forms with like wording. Copy of such policies and all endorsements (Additionally Insured (2 forms)) shall be provided to Grantor prior to



execution of any activities authorized under this easement. The endorsements shall be stapled to the Certificate of Insurance and shall be provided to Grantor.

G. The policies specified above shall include an endorsement which shall provide that Grantor, at the addresses above, will be given a 30-day written notice prior to cancellation, coverage modification or other material change in the policy. No such cancellation, modification or change shall affect Grantee's obligation to maintain the insurance coverages required by this agreement.

H. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

I. Prior to commencement of commercial operations, Grantee or Permittees shall furnish to Grantor a certificate of insurance, dated and signed by the stated, authorized agent for the insuring company or companies, containing a representation that coverage of the types listed above is provided with the required limits and the stated endorsements.

J. In addition to the above requirement for commercial operations, Grantee and all Permittees shall obtain and maintain a policy of Automobile Liability Insurance in a form generally acceptable in the State of Montana and customary in the area of said right-of-way.

K. Any Permittee working for Grantee shall be required to maintain the insurance coverages required of Grantee set forth in this Section 13. Any such Permittee shall be required to provide Grantor with a Certificate of Insurance meeting the requirements of this Section 13 prior to commencing any work on or in the Easement Area.

L. The parties agree to meet as needed to review and revise the limits of insurance coverage set forth in this Section 13 to provide at least the level of coverage as is provided on the date this Easement is granted taking into account inflation and any increase in risk levels or exposures.

15. Rights and Immunities. In consideration of the terms and conditions of this Easement, Grantor and Grantee rely upon all of the rights and immunities against liability to the full extent of applicable state law, and any other applicable provisions of law, including but not limited to Montana Code Annotated Title 2, Chapter 9.

16. Liens. Grantee shall keep Grantor's property free from liens arising out of the activities of Grantee and shall promptly discharge any such liens that are asserted.

17. Taxes. Grantee shall pay all taxes and/or assessments that may become chargeable against the easement granted herein, arising from Grantee's activities, use, and improvements, if separately assessed by statute.

18. Spill Prevention: Grantee agrees to adhere to all state and federal laws governing the reporting and cleanup of fuel, oil, and hazardous waste spill. Additionally, the Grantee is required to report all spills to Grantor and, during any work by Grantee or its subcontractors on or in the Easement Area, is required to have spill kits on site and available for clean-up. Spill kits



shall be of size and scope to be sufficient to handle all types and volumes of fuel, oil or hazardous waste as may be present on the site during operations. Spill kits must be maintained in a functional state at all times. The Grantee shall be trained in fuel spill clean-up and reporting requirements of Montana.

19. Fire Suppression/Control: Each time it enters upon the Easement Area for such purposes as allowed under this Easement, Grantee agrees to prevent and suppress fires on or in the vicinity of the Easement Area and agrees to immediately notify Grantor of any fires occurring on or near the Easement Area. Grantee further agrees to comply with all state and federal fire laws and restrictions. During the period of any work by the Grantee or its subcontractors on or in the Easement Area, Grantee agrees to maintain adequate fire suppression equipment and personnel on site to control fires resulting from Grantee activities. Grantor shall have the right at any time and, in its sole discretion, to suspend or condition certain access by Grantee and others because of fire, fire risk or other emergency reasons.

20. Compliance with applicable laws and regulations: Grantee agrees to comply with all applicable laws, regulations, rules and secure such permits, license or authorizations which now exist or hereafter may be required as a result of exercise of any or all rights granted herein.

21. Termination. If Grantee decides this Easement or a portion thereof, is no longer needed for public recreational purposes, Grantee shall furnish a release in recordable form to Grantor evidencing termination of Grantee's rights to utilize such right of ways or right of way segments.

22. Recreational Use. This Agreement is intended to be interpreted so as to convey to Grantor and Grantee all of the protections from liability provided by the Montana Recreational Use Statute, §§ 70-16-301, -302, MCA, or any other applicable law that provides immunity or limitation of liability.

23. Transfer of Fee Ownership.

Grantor may transfer the underlying fee title to the Easement Area to Grantee at any time from the date of this Agreement to the date four years from the date of this Agreement upon the following terms and conditions:

a. Grantor shall notify Grantee of its intent to transfer the underlying fee title to the Easement Area by delivery of written notice to Grantee;

b. The transfer of the underlying fee title shall be a donation from Grantor to Grantee and Grantee shall pay no consideration for such transfer;

c. Grantee shall be solely responsible for obtaining all governmental approvals of the transfer of the Easement Area (including any subdivision approvals);

d. Grantee shall be solely responsible for all costs and expenses of both Grantor and Grantee in connection with transfer of the Easement Area including transfer taxes, survey expenses, document preparation costs and title company charges. Each party



shall pay its own respective attorney fees incurred in connection with the transfer of the Easement Area;

e. All documents related to the transfer of the Easement Area must be acceptable to both Grantor and Grantee;

f. The deed transferring title to the Easement Area:

i. shall be subject to all easements, covenants, conditions, laws, rules and restrictions then in effect;

ii. shall reserve the following rights to the Grantor and/or any of its assigns:

A. The right to cross the Easement Area at any place desired by Grantor including the right to maintain, improve, repair, replace and relocate roads and rights of way for crossings. Provided, however, that such right does not unreasonably interfere with Grantee's use of the Easement Area.

B. The right to temporarily close the Easement Area for safety during timber harvesting and other forest management activities as set forth in Section 6 of this easement.

C. The first right of refusal for any timber to be harvested in the Easement Area.

D. The right to require the Grantee to enforce the prohibitions on use of the Easement Area set forth in Section 4 of the Easement, which prohibitions shall continue as restrictions on the use of the Easement Area.

iii. shall contain a reversionary clause providing that title to the Easement Area shall automatically revert to the Grantor in the event that Grantee acknowledges in writing that it abandons use of the Easement Area as a non-motorized recreational trail for the benefit of the general public.

If Grantor has not transferred the underlying fee title to the Easement Area at the expiration of the four year period set forth above, the fee title shall automatically transfer to the Grantee upon all of the terms and conditions contained in Section 23 hereinabove. The parties agree to cooperate to effectuate the transfer and to execute any and all necessary documents.

Upon the closing of the transfer of the underlying fee title to the Easement Area, this Easement shall be terminated and extinguished except the provisions in Section 4 specifically incorporated by reference in the deed and except for any claims or liabilities that may arise based upon actions or events occurring prior to closing.



incorporated by reference in the deed and except for any claims or liabilities that may arise based upon actions or events occurring prior to closing.

24. Default. If Grantor determines Grantee has violated the terms of this Easement, Grantor shall give written notice to Grantee of the specific violation and demand corrective action sufficient to cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice from Grantor, or under circumstances where the violation cannot reasonably be cured within a thirty (30) period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, Grantor may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and for any other relief to which Grantor may be entitled, including monetary damages.

25. Rights and Obligations. This grant of Easement shall be recorded at the Flathead County Clerk and Recorder's office, is binding upon the heirs, executors, personal representatives, assigns and successors of the parties hereto and shall run with the land.

26. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Montana. Venue shall be Flathead County, Montana.

27. Amendment. Any amendment of this Agreement must be in writing, signed by Grantor and Grantee, and recorded at the Flathead County Clerk and Recorder's Office.

28. Severability. If any provision of this Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Easement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Easement invalid, illegal, or unenforceable in any respect.

29. Acknowledgement of Conservation Easement. The parties acknowledge that this Easement has been entered into pursuant to the Haskill Basin Watershed Deed of Conservation Easement between Grantor, Grantee, and the Montana Department of Fish, Wildlife and Parks and in the event of any inconsistency between the Conservation Easement and this Easement, the Conservation Easement shall control. In case of inconsistency between the Trail Plan and this Easement, this Easement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, as of the day and year first above written.

GRANTOR:

F.H. STOLTZE LAND & LUMBER COMPANY

By: *Charles W. Ready*
Name: Charles W. Ready
Title: VICE PRESIDENT

GRANTEE:

CITY OF WHITEFISH

By: *John M. Muhlfeld*
Name: John M. Muhlfeld
Title: Mayor

HASKILL BASIN PROJECT AREA PROPOSED WT RECREATION CORRIDOR

