# **RESOLUTION NO. 3779**

A RESOLUTION APPROVING AN EASEMENT FOR ROAD PURPOSES GRANTING ACCESS ACROSS CITY OWNED PROPERTY TO LANDMARK LAND COMPANY, LLC

WHEREAS, Landmark Land Company, LLC, a North Dakota Limited Liability Company registered to do business in Montana, has requested an access easement to certain property owned by them which is separated from a public highway by City owned property;

AND WHEREAS, the City of Miles City finds that granting such easement is appropriate under certain conditions, which are set forth in an Easement for Road Purposes which has been presented to the City for its review and approval and which has been reviewed by the City Attorney;

# NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

- 1. The Easement for Road Purposes, attached hereto as Exhibit "A", is hereby approved by the City of Miles City, and the Mayor of the City of Miles City is hereby authorized and empowered to execute such Easement on behalf of the City.
- 2. Landmark Land Company, LLC, shall be responsible for reimbursing the City for the cost of recording such easement.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 24<sup>th</sup> DAY OF FEBRUARY, 2015.

C. A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk

162926 Fee: \$42.00

Custer County Recorded 4/1/2015 At 10:46 AM

Return to:

City of Miles City
P. O. Box 910
Miles City, Montana 59301

162926 Fee: \$42.00

Custer County Recorded 4/1/2015 At 10:46 AM
Linda Corbett, Clk & Rcdr By
Return to: Clty of Miles City P.O. Box 910
MILES CITY MT 59301

#### **EASEMENT FOR ROAD PURPOSES**

The undersigned, CITY OF MILES CITY, MONTANA, a Montana municipal corporation of 17 S. Eighth Street, Miles City, Montana 59301, hereinafter referred to as "Grantor," for and in consideration of \$1.00 and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants and conveys to LANDMARK LAND COMPANY, LLC, a North Dakota limited liability company registered to do business in Montana, of P.O. Box 1881, Dickinson, ND 58602, its successors and assigns, hereinafter referred to as "Grantee," a perpetual, non-exclusive, and permanent easement and right to use as a means of ingress and egress to and from Grantee's land located in Custer County, Montana, and more particularly described as follows:

Township 8 North, Range 47 East, M.P.M.

Section 32: Lots 3 and 4

With said easement to be forty (40) feet wide over, across, and in the same position as the existing private roadway on the following lands owned by Grantor in the State of Montana, County of Custer, to-wit:

## Township 8 North, Range 46 East, M.P.M.

Section 25: A portion of the land lying in the East Half of the East Half (E½E½), located in the same position as the existing private roadway presently running from north to south along the eastern edge of the above-described lands.

Township 8 North, Range 47 East, M.P.M.

Section 29: A portion of the land lying in the Southwest Quarter of the Southwest Quarter (SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>), located in the same position as

the existing private roadway and trail running from the northwest to southeast of the above-described lands.

Section 30:

A portion of the land lying in the West Half of the West Half (W½W½), and the South Half (S½), located in the same position as the existing private roadway and trail running initially from north to south along the western edge of the above-described lands and then turning and running west to east along the southern half of the above described lands.

Subject to the following terms and conditions:

#### A. Description of Easement Route.

The easement created hereby is forty (40) feet in width and shall follow, include and be located in the same position as the existing private roadways and trails presently crossing the above-described lands, as represented and approximately shown by the cross-hatched portion of the map attached hereto and marked Exhibit "A" and by this reference made a part hereof as if set out in full herein.

#### B. Purpose of Easement.

The purpose of the Easement is for the residential ingress and egress to and from Grantee's lands. This easement is private and is limited to the use of Grantee, its agents, guests, service companies, and the parties' successors and assigns. In no way does this grant of easement create a public right to travel across said lands hereinbefore described.

## C. Repair and Maintenance; Indemnification.

Grantee shall have the right and obligation to repair and maintain in a good and safe condition the Easement route for the purpose for which it was granted.

Grantee, its successors and assigns, shall indemnify, defend and hold Grantor harmless from any and all claims arising out of Grantee's use or maintenance, or failure to maintain, of such roadway, or use by Grantee's guests and invitees, or those of Grantee's successors and assigns.

## D. Rights of Grantor; Restrictions on Grantee.

This Easement runs along the edge of the Miles City Airport. Due to the nature of the land where the Easement is located, the following rights and restrictions apply:

1. The airspace defined by 14 Code of Federal Regulations (CFR) Part 77 will have precedence over the easement and the Grantor retains a right to remove or lower any object, natural or otherwise, from the easement area as necessary to comply with 14 CFR Part 77.

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Easement for Road F Custer County Recorded 4/1/2015 At 10:46 AM

- 2. Grantor retains the right to conduct all airport operations; even if such operations interfere with Grantee's use of easement.
- 3. Grantor retains the right to modify the route of this Easement as necessary for development of the Miles City Airport at Grantee's expense.
- 4. Construction and maintenance of the road excepted, Grantee shall not make improvements to the easement without Grantor's written consent. A notice of proposed construction consistent with the requirements of 14CFR Part 77 shall be filed prior to constructing any facility, structure or other item within the easement area.
- 5. Grantee shall not create electrical interference with communication between the installation on the airport and aircraft, install lights or reflectors that would make it difficult for pilots to distinguish between airport lights and others, impair visibility in the vicinity of the airport, or endanger the landing, take off, or maneuvering of aircraft.
- 6. Grantee shall not develop any of the real property described above in a manner that has potential for attracting birds or other wildlife that may pose a hazard to airport operations.
- 7. The Grantee acknowledges a right of flight for the passage of all types of aircraft over the Grantee's land described above, and further accepts that noise, vibrations, fumes, deposits of fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of Grantees' property or in landing at or taking off from, or operating at or on said Miles City Airport; and Grantee does hereby full waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantor, its successor and assigns, due to such noise vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on said Miles City Airport.
- 8. The Grantee will be responsible for all cost associated with relocating the access road should future development of the Miles City Airport require its relocation.

#### E. Subdivision.

This easement is appurtenant to two lots owned by Grantee. Grantee, its legal representatives and assigns, may only develop one residence per lot and shall not subdivide either lot.

## F. Appurtenant.

This easement shall run with the land and be binding upon the heirs, successors and assigns of all parties.

## G. Headings.

The article and paragraph headings herein contained are for convenience only and do not define, limit or construe the contents of the corresponding article or paragraph.

DATED this 24th day of February, 2015.

CITY OF MILES CITY

By: X. C. J. Stery

STATE OF MONTANA

COUNTY OF CUSTER ) ss

On this Ask day of February, 2015, before me, the undersigned, a Notary Public for the State of Montana, personally appeared C. A. GRENZ, known to me to be the Mayor for the City of Miles City, and acknowledged to me that he executed the same on behalf of the City of Miles City.

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

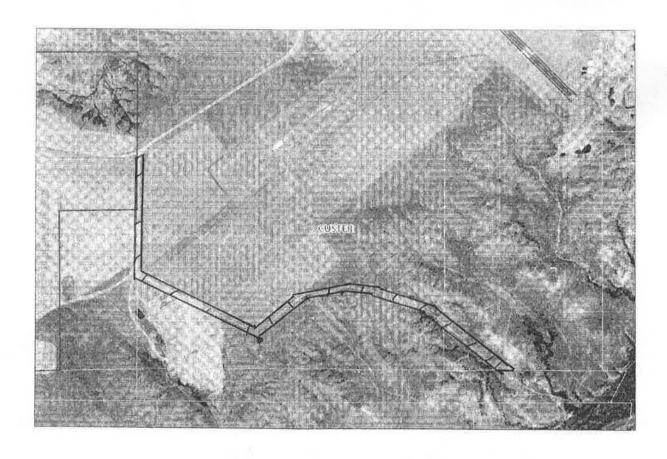
(Notarial Seal)

Connie & Watt

SEAL Res.di

CONN.E.L. WATTS
NOTARY PUBLIC for the
State of Montana
Residing at Miles City, Montana
My Commission Expires
December 22, 2015

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