



Missoula County Vickie M Zeier E

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**After recording return to:**

**Zane K. Sullivan  
Sullivan, Tabaracci & Rhoades, PC  
1821 South Ave. West  
Missoula, MT 59801  
(406) 721-9700**

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**AVIGATION EASEMENT**

**N & E VENTURES I, LLC**, a Montana Limited Liability Company, hereafter Grantor, is the owner of Phase 3 of Hellgate Meadows, a platted subdivision in Missoula County, Montana according to the official plat there, the same being a parcel of property located in the NW 1/4 NE 1/4 of Section 18, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana (hereafter Property or Grantors Property), which real property is within the adopted Airport Influence Area, and hereby grants unto the MISSOULA COUNTY AIRPORT AUTHORITY (Authority), 5225 Highway 10 West, Missoula, Montana 59808-9399 the following easement:

1. An easement and right-of-way for the use and benefit of the public, for the free and unobstructed passage of aircraft in, through, and across all of the airspace above Grantors property at or above an elevation of 3,247 feet mean sea level. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements.
2. The permanent right of flight for the passage of aircraft for the use and benefit of the public in the airspace above Grantors property, together with the continuing right to cause in said airspace such noise, vibration, dust, fumes, smoke, vapor, and other effects as may be inherent for navigation of or flight in air, using said airspace, or landing at, taking off from, or operating on Johnson Bell Field.
3. The full waiver and release by Grantor of any right or cause of action which it now has or may have in the future against the Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor, and other effects heretofore and hereafter caused by the operation of aircraft in said airspace and/or by



any operations at the airport.

- 4. The covenant and agreement that from and after the execution of this document, the Grantor shall not erect any structure or object or allow any tree or other vegetation to exceed the height of 3,247 feet mean sea level or encroach upon or extend in any way into this easement and right-of-way. If federal and/or state laws or regulations place lower height restrictions on the property, then Grantor must comply with the more stringent federal or state requirements in structures to be built.
- 5. The continuing right of the Authority to clear and keep clear Grantor's property of any and all obstructions that encroach upon or extend in any way into this easement and right-of-way above an elevation of 3,247 feet mean sea level, and for such purpose to enter upon the surface of Grantors property and cut and remove any tree or other vegetation, or to remove, raze, or destroy those portions of buildings or other structures that would infringe upon or extend into said elevation. Such right includes the right of ingress to and egress from, and passage over Grantors property for the purpose of effecting and maintaining such clearances as aforesaid.
- 6. The covenant and agreement that from and after the execution of this document, Grantor shall not put its property to any of the following uses which would:
  - A. Create an unreasonable interference with (1) radio communication for aircraft using the airport and (2) electronic navigational aids or devices such as instrument landing systems, generators, motors, and artificial lighting devices which create excessive static are examples of equipment that can cause interference.
  - B. Create a hazard to flying by materially reducing visibility, such as incinerators, rock crushers, smelters, chemical manufacturing, and similar uses.
  - C. Make it difficult for fliers to distinguish between airport or other navigational lights or markers and other lights; or cause glare to fliers using the airport, such as any arrangement and use of lights which resemble a layout or color of a landing area, or search lights or flash-type advertising signs.
  - D. Result in any business, structure, tree, occupation or use which is dangerous or hazardous to the safety of aircraft using Johnson Bell Field or to property or persons using Johnson Bell Field or flying in the vicinity thereof. Towers, poles, smokestacks, advertising balloons, above-ground bulk storage of petroleum products, and fireworks manufacturing are examples of potentially dangerous uses, structures, and activities.
  - E. Result in a land use or activity that is not ordinarily considered to be compatible with aircraft operations because of aircraft noise. Such land uses and activities include, but shall not be limited to, all types of schools, hospitals, religious facilities, and other uses whereby the aircraft noise could interfere with speech, sleep, or the uses normally associated with structures. In this regard, residential development in areas not exceeding 64 db sound levels need to comply with the IBC Construction Standards or the construction standards applied by Missoula County or the governmental entity



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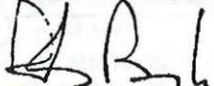
having jurisdiction of the area at the time of construction. Residential development in areas greater than 64db noise level must be sound attenuated as required by FAA Standards.

The parties agree to and acknowledge the following:

- (1) Subject to the restrictions and limitations set forth in this Avigation Easement, and so long as the development meets the requirements of this easement, the Authority will not oppose or attempt to prevent residential development on Grantors Property. In addition, the Authority will not oppose the use of that portion of Lot 13 A, located outside of the 1,000 foot (500 feet either side of the extended centerline of the runway) safety zone, and all of Lot 13 B, for nursing homes and other residential care facilities.
- (2) Grantor acknowledges receipt of a copy of the most recent Missoula International Airport noise contour map dated 1995 ("DNL Noise Contours: 1995" from the Missoula International Airport, Airport Master Plan Update, September, 1996) showing the various aircraft noise overlay zones. Grantor further acknowledges that the Airport is currently in the process of updating its FAR Part 150 Noise Compatibility Program, including the noise contour maps and that the updated materials may change the aircraft noise overlay zones.
- (3) The Airport Authority makes no representations about the present or future impact of airport operations on present or future uses of Grantors Property.
- (4) Grantor shall comply with the restrictions on airport hazards as set forth in Montana Code Annotated, Title 67, Chapter 5, as well as any federal and/or state laws or regulations that place height and/or hazard restrictions on Grantors Property.
- (5) Grantor agrees that the declaration of covenants, conditions and restrictions to be placed on Grantors Property shall include disclosure of the existence of the Airport Influence Area and this Avigation Easement in the form set forth on Exhibit A hereto. Such disclosure shall not be revised without the written consent of the Authority. Grantor further agrees to place a reference to the Airport Influence Area and this Avigation Easement on the plat map for Grantors Property in the form set forth on Exhibit A.

These covenants, conditions, and restrictions shall run with the land and shall be binding upon the successors and assigns of all the parties signing below.

**N & E VENTURES I, LLC**  
By NEIGHBORHOODS BY DESIGN, LLC, Member

By:   
Robert G. Brugh, Manager/ Member

STATE OF MONTANA )  
 ) : ss  
County of Missoula )

This instrument was acknowledged before me this 19 day of March, 2004, by Robert G. Brugh, known to me to be the Managing Member of NEIGHBORHOOD DESIGN, LLC, the Managing Member of N & E Ventures I, LLC, a Montana Limited Liability Company.

Catherine L. Tortorelli  
Print Name: CATHERINE L. TORTORELLI

NOTARY PUBLIC FOR THE STATE OF MONTANA  
Residing at Missoula, Montana  
My Commission expires: 5-6-2006



ACCEPTED BY:

MISSOULA COUNTY AIRPORT AUTHORITY

By: John P. Seymour  
John P. Seymour, Director of Airports

STATE OF MONTANA )  
 ) : ss.  
County of Missoula )

This instrument was acknowledged before me this 19 day of March, 2004, by John P. Seymour, known to me to be the Director of Airports of MISSOULA COUNTY AIRPORT AUTHORITY.

Catherine L. Tortorelli  
Print Name: CATHERINE L. TORTORELLI

NOTARY PUBLIC FOR THE STATE OF MONTANA  
Residing at Missoula, Montana  
My Commission expires: 5-6-2006





**EXHIBIT A TO HELLGATE MEADOWS TRADITIONAL  
NEIGHBORHOOD SUBDIVISION AVIGATION EASEMENT**

**Airport Influence Area disclosure for declaration of covenants, restrictions and conditions for the Hellgate Meadows Traditional Neighborhood Subdivision:**

Airport Influence Area. A portion of the Real Property is located within the Missoula County Airport Influence Area and is subject to the requirements of the Missoula County Airport Influence Area Resolutions. The resolutions that created the Airport Influence Area were adopted by the Board of County Commissioners for Missoula County pursuant to Resolution No. 78-96 and amended by Resolution No. 78-187 dated July 5, 1978 and December 6, 1978, respectively, and recorded in Book 121 of Micro Records, page 1319 (Resolution 78-96) and Book 135 of Micro Records, page 474 (Amendment by Resolution 78-187). A portion of the real property is further subject to an Avigation Easement entered between the Declarant and the Missoula County Airport Authority, dated the 3rd day of March, 2004 and recorded on the records of the Missoula County Clerk and Recorder in Book 731, Micro Records at Page 663, all of which limit and restrict the rights of the Owners of Lots within Hellgate Meadows Subdivision, now and into the future. The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots. The Avigation Easement includes a map attachment Exhibit A(B) which depicts a portion of Phases 1, 2 and 3 of Hellgate Meadows Subdivision subject to the Avigation Easement, and a legal description Exhibit A(C) which describes the portion of Phases 1, 2 and 3 of Hellgate Meadows Subdivision subject to the Avigation Easement. Prospective purchasers and Owners are advised that the operations at the airport may change and/or expand in the future, thereby changing and/or expanding the impacts felt on the portion of the Real Property subject to the Avigation Easement. Prospective purchasers and Owners are advised and should consider before purchasing a Lot that noise, vibration, dust, fumes, smoke, vapor and other effects from aircraft may occur, which may cause inconvenience or annoyance that may vary from Lot to Lot and that may affect people in different ways or extent. Federal funding for soundproofing, other mitigation of these impacts, or for acquisition of these properties is not available at present, nor in the future. The provisions of paragraph 3 of the above-described Avigation Easement executed by the Owner/Declarant provides for a full waiver and release by Owner/Declarant of any right or cause of action which it now has or may have in the future against the Missoula County Airport Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other effects heretofore or hereafter caused by the operation of aircraft in said air space and/or by operations at the Missoula County Airport. The acquisition of a Lot or Lots in Hellgate Meadows Subdivision subject to the Avigation Easement and the aforementioned Resolutions by a prospective purchaser shall constitute an express acknowledgment and agreement by such prospective purchaser on behalf of prospective purchaser, its heirs, personal representatives, successors and assigns, that prospective purchaser fully waives and releases Owner/Declarant, N & E Ventures I, LLC, a Montana limited liability company, and its successors and assigns, as well as the Missoula County Airport Authority and its

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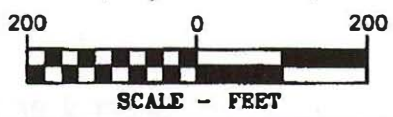
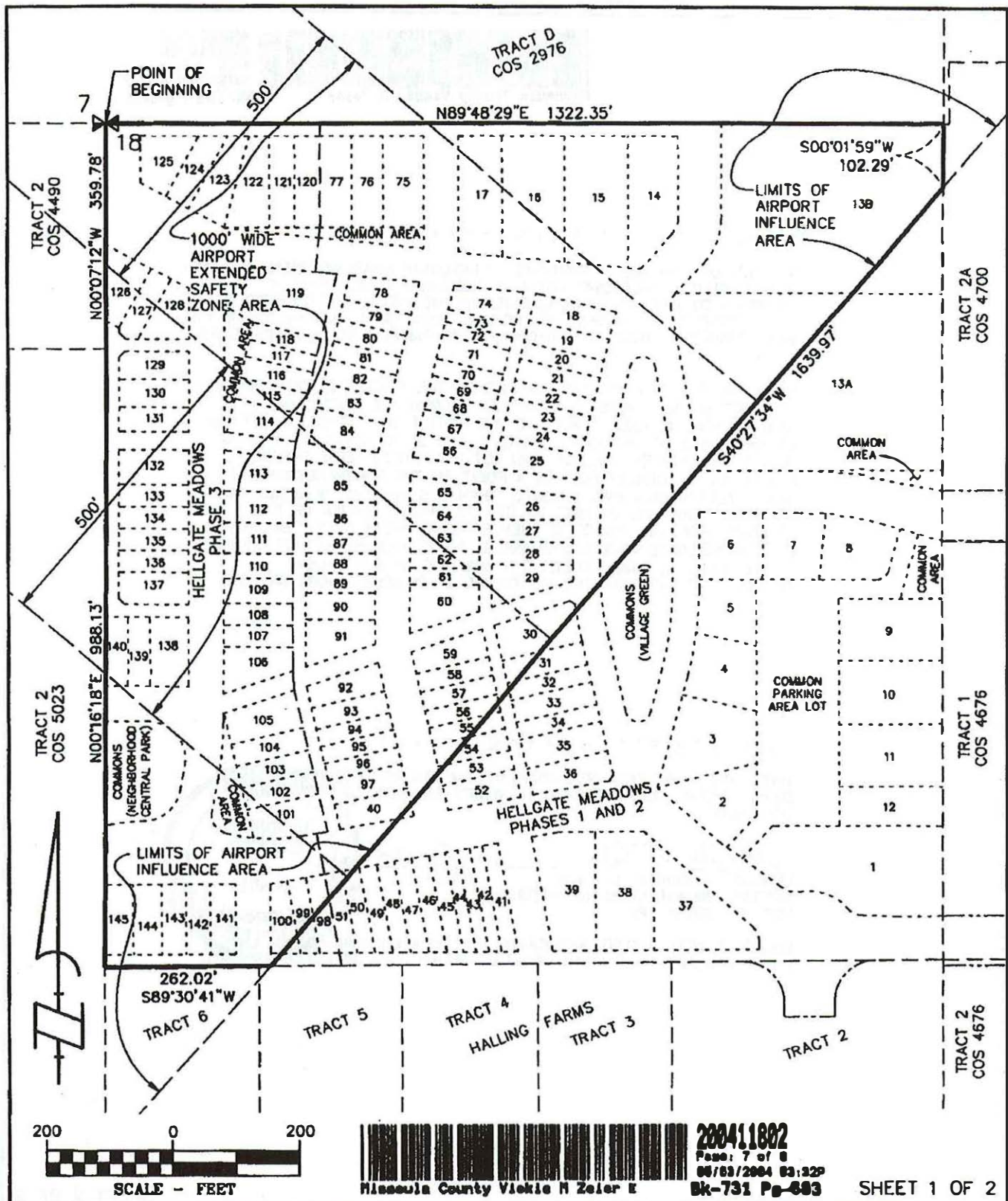
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successors and assigns, of any right or cause of action which prospective purchaser now has or may have in the future as the purchaser and occupant of a Lot or Lots in Hellgate Meadows Subdivision against N & E Ventures I, LLC, a Montana limited liability company, and/or the Missoula County Airport Authority and their respective successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other effects heretofore or hereafter caused by the operation of aircraft in the air space and/or by the operations at the Missoula County Airport within the Missoula County Airport Influence Area. This paragraph may not be revised without the written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

**Disclosure language for Hellgate Meadows Subdivision plat map:**

Some of the Lots within this subdivision are located within the Missoula County Airport Influence Area, and are subject to the provisions of the Missoula County Airport Influence Area resolutions that created the Airport Influence Area and which were adopted by the Board of Commissioners for Missoula County pursuant to Resolution No. 78-96 and amended by Resolution No. 78-187, dated July 5, 1978 and December 6, 1978, respectively, and recorded in Book 121 of Micro Records, page 1319 (Resolution 78-96) and Book 135 of Micro Records, page 474 (Amendment by Resolution 78-187). An Avigation Easement has been executed by the Owner in favor of the Missoula County Airport Authority for that portion of Phases 1, 2 and 3 of Hellgate Meadows Subdivision which is within the Airport Influence Area, and said Avigation Easement and all of the terms hereof are incorporated herein by reference as a real estate disclosure statement. The Avigation Easement entered into between the Owner and the Missoula County Airport Authority is dated the 3<sup>rd</sup> day of March, 2004 and recorded in the records of the Missoula County Clerk and Recorder in Book 781 of Micro Records at page 663. Potential buyers of property within this subdivision should carefully review each of the referenced documents prior to purchasing the property. The Avigation Easement includes a map attachment Exhibit AB@ which depicts the portion of Hellgate Meadows Subdivision subject to the Avigation Easement and a legal description Exhibit AC@ which describes the portion of Hellgate Meadows Subdivision subject to the Avigation Easement.

After recording, please return to Grantee Missoula County Airport Authority at the above address.



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SHEET 1 OF 2

EXHIBIT "B"  
 LOCATED IN THE NW 1/4 NE 1/4 OF SECTION 18,  
 T. 13 N., R. 19 W., P.M., M.  
 MISSOULA, MONTANA

DRAFT: CEG

**WGM GROUP, INC.**  
 ENGINEERING • SURVEYING • PLANNING  
 3621 Pullman • (406) 726-4811  
 P.O. Box 18027 • Missoula, MT 59806

DATE: 06/22/03  
 PROJECT: 03-02-03

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LEGAL DESCRIPTION\*\*\*\*\*

A TRACT OF LAND BEING PORTIONS OF HELLGATE MEADOWS, PHASES 1 AND 2 AND HELLGATE MEADOWS, PHASE 3, RECORDED SUBDIVISIONS OF MISSOULA COUNTY, MONTANA, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 18; THENCE N 89°48'29" E ALONG THE NORTH LINE OF SAID SECTION 18, 1322.35 FEET TO THE NORTHEAST CORNER OF LOT 13B OF SAID HELLGATE MEADOWS, PHASES 1 AND 2; THENCE S 00°01'59" W ALONG THE EASTERLY LINE OF SAID LOT 13B, 102.29 FEET; THENCE S 40°27'34" W, 1639.97 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID HELLGATE MEADOWS, PHASE 3; THENCE S 89°30'41" W ALONG SAID SOUTHERLY LINE, 262.02 FEET TO THE SOUTHWEST CORNER OF SAID HELLGATE MEADOWS, PHASE 3; THENCE ALONG THE WESTERLY BOUNDARY OF SAID HELLGATE MEADOWS, PHASE 3, THE FOLLOWING TWO (2) COURSES: 1) N 00°16'18" E, 988.13 FEET; 2) N 00°07'12" W, 359.78 FEET TO THE POINT OF BEGINNING; CONTAINING 25.71 ACRES, MORE OR LESS.

SURVEYOR'S STATEMENT\*\*\*\*\*

THIS EXHIBIT WAS PREPARED USING DOCUMENTS OF RECORD. SURVEY WORK WAS PERFORMED TO VERIFY THE ACCURACY OF SAID DOCUMENTS.

*Leonides J. Sandoval*  
LEONIDES J. SANDOVAL, P.L.S.  
MONTANA REGISTRATION NO. 14519LS  
FOR WGM GROUP, INC.

5-3-2003  
DATE



UNLESS SIGNED, SEALED, AND DATED, THIS IS A PRELIMINARY UNOFFICIAL DOCUMENT AND CANNOT BE RELIED UPON IN WHOLE OR IN PART.

SHEET 2 OF 2

EXHIBIT "C"  
LOCATED IN THE NW 1/4 NE 1/4 OF SECTION 18,  
T. 13 N., R. 19 W., P.M., M.  
MISSOULA, MONTANA



DRAFT: CEG

DATE: 08/22/03  
PROJECT: 03-02-03