

Instrument # 969662

Bonner County, Sandpoint, Idaho

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Recorded for: JAKE WEIMER

Michael W. Rosedale Fee: \$31.00

Ex-Officio Recorder Deputy

Index to: EASEMENT

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Space Above Reserved for Recorder

DECLARATION OF EASEMENT AND

EASEMENT MAINTENANCE AGREEMENT

THIS DECLARATION OF EASEMENT AND EASEMENT MAINTENANCE AGREEMENT (this "Declaration") is made on this 9th day of November, 2020 ("Effective Date"), by MCGEE I, LLC, an Idaho limited liability company ("Declarant"), whose address is 2737 Eastside Road, Priest River, Idaho 83856.

RECITALS

A. Declarant is the owner of certain real property located in Bonner legally described on Exhibit A attached hereto and incorporated herein by this reference (collectively, "Subject Parcels").

B. Declarant desires to establish a private road easement and maintenance agreement and an easement for public and private utilities for its benefit and for the benefit of its remaining lands.

DECLARATION OF EASEMENT

NOW, THEREFORE, Declarant hereby declares, for its benefit and the benefit of all subsequent owners of the Subject Parcels, that:

1. **Declaration of Easement.** Declarant hereby grants, transfers, establishes and declares a non-exclusive, perpetual easement for ingress and egress, improved or unimproved, and for the installation of underground utilities, over and across and for the benefit of the Subject Parcels. The easement is also to the public for purposes of emergency and other public vehicles and for whatever public utility services are necessary. However, this shall not be a dedication to the public.

2. **Reservation of Easement Rights.** Declarant reserves to itself and its successors and assigns, the easement and the easement rights set forth herein for the benefit of the Subject Parcels, including the right to use said easement and to subsequently convey said easement and easement rights with the Subject Parcels.

3. **Easement Runs with the Land.** The easement described herein shall run with shall run with the land and shall be appurtenant to the Subject Parcels.

4. **Location of Easement.** The easement created by this Declaration of Easement shall be located as described on Exhibit "B" attached hereto and incorporated by this reference.

5. **Maintenance of Easement.** The owner or owners of each parcel, from and after the commencement of any construction of any improvement on such parcel, shall share equally in the cost of maintaining and/or improving the easement. Such share shall be based upon the total number of parcels improved with each parcel having one unit or share.

6. **Normal Maintenance.** Prior to any costs being incurred for normal maintenance of the easement, a simple majority of the improved parcels shall agree to the normal maintenance being performed and the cost of such maintenance.

- a. "Normal maintenance" shall include, but not be limited to, snow removal, grading, re-graveling, and repair as necessary, the cost of which shall not exceed One Thousand Five Hundred (\$1,500.00) Dollars per occurrence.
- b. "Simple majority" shall be determined by the total number of improved parcels, each such parcel having one (1) vote. Multiple improved parcels with single ownership shall have one (1) vote for each parcel; provided, however, that each such vote shall constitute a separate share or unit for purposes of the cost of maintenance.
- c. "Improved parcel" shall include any parcel on which construction of any building, house or other improvement has commenced, and access to such "improved parcel" is gained by the easement and not directly from a public road.

7. **Major Capital Improvements to Easement.** Prior to any costs being incurred for major capital improvements to the easement, 67% of the parcels, improved or unimproved, shall agree to such capital improvement and the cost thereof.

- a. "Major capital improvement" shall include, but not be limited to, grading, regrading, graveling, re-graveling paving repaving and repair the cost of which is in excess of One Thousand Five Hundred (\$1,500.00) Dollars per occurrence. Each parcel shall be liable for one (1) equal share of the total cost of such improvement, such share being based on the total number of parcels having rights in said easement, each such parcel being one unit or share.
- b. "Major capital improvement" does not include the cost of the initial installation of any road or drive constructed to Bonner County standards. The cost of initial installation of any such road or drive shall be at the expense of Declarant or the successors and assigns thereof as the owner of all the Subject Properties.

8. **Lien Right.** Any costs incurred for normal maintenance or major capital improvements of the easement shall be a burden upon the land with a lien against any parcel for which such costs have to be paid by the owner or owners of any such parcel. Any such lien shall attach upon the filing and recording of an affidavit by the owners of any two or more of the remaining parcels which are subject to and liable for such cost. Such affidavit shall set forth the description of the parcel against which the lien is claimed, whether the expenditure is for normal maintenance or for major capital improvement, the total amount of the expenditure, the portion attributable to such parcel, and the date or dates of such expenditures. A copy of such affidavit shall be sent to the owner or owners of such parcel against which the lien is claimed by regular mail, with postage prepaid, at the last known address of such owner or owners.

9. **Extraordinary Use of Easement.** The owner or owners of each parcel shall be separately responsible to repair, and for the costs thereof, of any damage caused to the easement as a result of extraordinary use.

- a. "Extraordinary use" shall include, but not be limited to, movement of construction equipment, moving vans, commercial trucks, or other heavy loads, movement of recreational vehicles or increased usage not ordinarily consistent with normal traffic. The owner or owners of such parcel or parcels, whether improved or unimproved shall not be responsible for such repair or costs until such time as the easement is used by them or construction is commenced on such parcel. In the event that any owner or owners or their agents, employees or invitees cause the type of damage described herein shall fail to make the necessary repairs, the remaining parcel owners may do so after 10 days' notice to such owner or owners, and any costs so expended shall be a burden upon the land of such owner or owners with a lien enforceable as set forth herein.

10. **Use of Easement.** The owners of any and all of the property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guests, invitees, vendors, tradesman, delivery persons, and others bound to or returning from any of the properties and having a need to use the road.

11. **Modification of Easement.** The owner or owners of each parcel shall exclusively be entitled to and obligated equally to maintain, repair and improve the easement area described in the easement description for ingress, egress and private and public utilities. Any modifications to said easement shall be subject to all owners' express written consent.

12. **Purpose of Covenants.** Declarant states and acknowledges that the covenants stated in this Declaration are deed restrictions that are to be applicable to the Subject Parcels and are being granted in part, to avoid future problems between owners.

13. **Agreement and Covenant Runs with the Land.** This agreement and covenant runs with the land and is binding on all future owners, heirs, assigns, and successors in title.

14. **Successor and Assigns.** The common ownership by the Declarant of the dominant and servient or benefited and burdened parcels shall not void this Declaration under the doctrine of merger; and it is the intent of the Declaration to create an easement that shall bind and benefit

the above described Subject Parcels upon the conveyance of any one or all of the Subject Parcels. Except as expressly provided otherwise in this Declaration, (i) the easement granted herein shall run with the land and shall be binding upon all parties having or acquiring any right, title, or interest in the Subject Parcels, or any part thereof, and (ii) the rights and obligations of the Declarant shall inure to the benefit of and be binding upon its successors and assigns. Any reference to "Declarant" or subsequent owners of the Property shall be deemed to refer to such party's successor in interest.

15. **Attorney Fees.** In the event that any party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in this Declaration (or obtain any other remedy in respect to any breach of this Declaration), the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses and court costs.

16. **Governing Law; Venue.** This Declaration shall be governed by and construed in accordance with the laws of the state of Idaho. Venue for any dispute arising out of this Declaration shall be in Bonner County, Idaho.

17. **Entire Agreement.** The above recitals are true and correct and are incorporated herein by reference. This Declaration sets forth the entire agreement with respect to the subject matter hereof and supersedes any prior agreements or understanding.


Signature Page follows on Page 5

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be entered into as of the Effective Date.

"Declarant"

McGee I, LLC, an Idaho limited liability company

By: J.D. Lumber, an Idaho corporation
Its: Member

By: 
Name: Jacob D. Weimer
Its: Vice President

STATE OF IDAHO)
) : ss.
County of Bonner)

On the 9th day of November 2020 before me, the undersigned Notary Public, personally appeared Vice Jacob D. Weimer, known to me or proved to me on the basis of satisfactory evidence to be the President of J.D. Lumber, an Idaho corporation, the member of McGee I, LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.



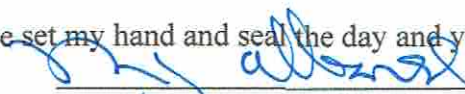

Notary Public for Idaho
Residing at Sandpoint
Commission Expires: 1-31-2023

EXHIBIT "A"

Subject Parcels

Parcel A

A parcel of land lying in Section 10, Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho more fully described as follows:

The South 25 acres of the Southeast Quarter of the Southwest quarter of said Section 10 Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho.

Together with and subject to all easements for ingress and egress and utility purposes, and all other matters of record including an easement for ingress, egress, and utilities, over, across, under and through the East 25.00 feet of that portion of the West half of the Northwest quarter of said Section 10 lying South of the centerline of Kelso Lake Road.

Containing 25 Acres more or less.

Parcel B

A parcel of land lying in Section 10, Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho more fully described as follows:

The East half of the Southwest quarter of the Southwest quarter of said Section 10 Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho.

Together with and subject to all easements for ingress and egress and utility purposes, and all other matters of record including an easement for ingress, egress, and utilities, over, across, under and through the East 25.00 feet of that portion of the West half of the Northwest quarter of said Section 10 lying South of the centerline of Kelso Lake Road.

Containing 20 Acres more or less.

Parcel C

A parcel of land lying in Section 10, Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho more fully described as follows:

The West half of the Southwest quarter of the Southwest quarter of said Section 10 Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho.

Together with and subject to all easements for ingress and egress and utility purposes, and all other matters of record including an easement for ingress, egress, and utilities, over, across, under and through the East 25.00 feet of that portion of the West half of the Northwest quarter of said Section 10 lying South of the centerline of Kelso Lake Road.

Containing 20 Acres more or less.

Parcel D

A parcel of land lying in Section 10, Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho more fully described as follows:

The East half of the Northwest quarter of the Southwest quarter of said Section 10 Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho.

Together with and subject to all easements for ingress and egress and utility purposes, and all other matters of record including an easement for ingress, egress, and utilities, over, across, under and through the East 25.00 feet of that portion of the West half of the Northwest quarter of said Section 10 lying South of the centerline of Kelso Lake Road.

Containing 20 Acres more or less.

Parcel E

A parcel of land lying in Section 10, Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho more fully described as follows:

The West half of the Northwest quarter of the Southwest quarter of said Section 10 Township 54 North, Range 4 West of the Boise Meridian, Bonner County, Idaho.

Together with and subject to all easements for ingress and egress and utility purposes, and all other matters of record including an easement for ingress, egress, and utilities, over, across, under and through the East 25.00 feet of that portion of the West half of the Northwest quarter of said Section 10 lying South of the centerline of Kelso Lake Road.

Containing 20 Acres more or less.

Exhibit "B"

Description of Location of Easement

LEGAL DESCRIPTION OF INGRESS, EGRESS AND UTILITIES EASEMENT

September 25, 2020

Being a strip of land 60.00 feet in width situated in the West Half of the Southwest Quarter of Section 10, Township 54 North, Range 4 West, B.M., Bonner County, Idaho, the centerline of which is more particularly described as follows:

Commencing at the northeast corner of said west half;

Thence S0°56'00"W along the east line of said west half a distance of 30.00 feet to a point on a line parallel with and 30.00 feet southerly of (as measured perpendicularly to) the north line of said west half, said point being the True Point of Beginning of this centerline description;

Thence N89°20'47"W along said parallel line a distance of 663.92 feet to the west line of the East Half of the Northwest Quarter of the Southwest Quarter of said section;

Thence S0°53'32"W along said west line a distance of 1296.28 feet to the southwest corner of said east half of the northwest quarter of the southwest quarter;

Thence S0°53'08"W along the west line of the East Half of the Southwest Quarter of the Southwest Quarter of said section a distance of 994.53 feet;

Thence S89°26'04"E, 662.36 feet to a point on said east line of the west half of the southwest quarter, said point being the Terminus of this centerline description.

The sidelines of the above described strip of land are to be lengthened or shortened as necessary to intercept said east line at the beginning and at the terminus thereof.

