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- Accommodation -

Instrument # 877412
BONNER COUNTY, SANDPOINT, IDAHO
8-7-2015 12:38:44 PM No. of Pages: 9
Recorded for: FIRST AMERICAN TITLE AND
Michael W Rosedale Fee: \$0.00
Ex-Officio Recorder Deputy *Randi Fletcher*
Index to: MISC

When recorded return ORIGINAL to:
Idaho Department of Lands
Attn: Real Estate Services Bureau
PO Box 83720
Boise, Idaho 83720-0050

[***THIS INSTRUMENT IS RECORDED TO CORRECT AND CLARIFY INSTRUMENT No. 865295 RECORDED IN BONNER COUNTY, IDAHO, THAT ALL LOTS WITHIN THE SUBJECT SUBDIVISION ARE GRANTED AN EASEMENT FOR INGRESS AND EGRESS AND FOR UTILITIES OVER, UNDER AND ACROSS ALL ROADS WITHIN THE SUBDIVISION.]

STATE OF IDAHO
DECLARATION OF DRIVEWAY AND UTILITY EASEMENT
STATE SUBDIVISION – CLAMBAKE POINT
NO. ES100056

THIS DECLARATION ("Declaration"), is made this 10th day of August, 2015, by the STATE BOARD OF LAND COMMISSIONERS, 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050 ("State").

WHEREAS, the State desires to establish a non-exclusive easement for the benefit of all Lots within the subdivision for ingress and egress and for utilities over, across and under all roads within the subdivision, and an easement for the benefit of any Dominant Lot for ingress and egress and for utilities over, across and under any Driveway located upon any Servient Lot to a subdivision road as described in the Exhibits attached hereto and incorporated herein by reference in STATE SUBDIVISION – CLAMBAKE POINT, according to the official plat thereof, filed in Book 10 of Plats at Page 165 Instrument No. 840162, Official Records of Bonner County, Idaho, and to set forth the maintenance responsibilities of the Owners of the Lots.

NOW THEREFORE, the State hereby grants to and for the benefit of all Lots a non-exclusive easement for ingress and egress and for utilities over, under and across all roads within the subdivision, and further grants to and for the benefit of any Dominant Lot an easement for ingress and egress and for utilities over, under and across any Driveway located upon any Servient Lot to a subdivision road, as set forth herein.

A. Definitions:

1. "Declaration" shall mean this Declaration of Driveway and Utility Easement.
2. "Dominant Lot" shall mean any identified Lot which has the right of access and utilities over, across and under any other Lot as identified herein.
3. "Driveway" or "Driveways" shall mean the thirty foot (30') wide private driveway(s), or any other private driveway(s) of lesser width identified herein, located upon any Lot (Servient Lot) to provide any other Lot (Dominant Lot) with access and utilities over, across and under said Lot to a subdivision road and are described or visually shown by an Exhibit or Map attached hereto.
4. "Easement" shall mean the perpetual, nonexclusive easement over, across and under the roads within the subdivision and the Driveways for access and utilities created by this Declaration.
5. "Emergency" shall mean a situation that demands unusual or immediate action for the preservation of life or property.
6. "Exhibit" or "Exhibits" shall mean and include any and all attachments to this Declaration, which shall by reference be incorporated herein as if set forth herein in full.

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4. "Easement" shall mean the perpetual, nonexclusive easement over, across and under the roads within the subdivision and the Driveways for access and utilities created by this Declaration.
5. "Emergency" shall mean a situation that demands unusual or immediate action for the preservation of life or property.
6. "Exhibit" or "Exhibits" shall mean and include any and all attachments to this Declaration, which shall by reference be incorporated herein as if set forth herein in full.

7. "Lot" or "Lots" shall mean each Lot separately or all Lots as the context requires located in any Block of STATE SUBDIVISION – CLAMBAKE POINT, according to the official plat thereof, filed in Book 10 of Plats at Page 165 Instrument No. 840162, Official Records of Bonner County, Idaho. A Lot designation not followed by a specific Block designation shall refer to said Lot in Block 1. In the event that a Lot the subject of this Declaration is not located in Block 1 of the subdivision, then any such Lot in any other Block of the subdivision shall be identified by Lot number and by Block number in the following manner by way of example: Lot 1 Block 3.

8. "Map" or "Maps" shall mean each visual depiction or representation of the Driveway and any of the Lots via map, picture, drawing, or other such visual representation included as part of any Exhibit attached hereto that is intended to show the location of the Driveway.

9. "Owner" or "Owners" shall mean the record holder of title to any of the Lots described herein. The State shall not be considered an Owner as that term is defined herein for purposes of having any obligation herein with regard to any maintenance or costs of any kind associated with the Driveway upon any of the Lots.

10. "Servient Lot" or "Servient Lots" shall mean each and every identified Lot over which any other Lot has the right of access and utilities over, across and under for the benefit of the Dominant Lot.

11. "Utility", "Utilities" or "utilities" shall mean any and all utility lines, appurtenances, and facilities including without limitation, gas, electricity, telephone service, water service, sewer service, and television receiving.

B. Access and Utility Easement:

1. Each Dominant Lot and all Servient Lots are specifically set forth in Exhibit "A".

C. Maintenance:

1. All Driveway and Utility construction, reconstruction, and maintenance work shall comply with all applicable federal, state, and local laws, rules and regulations.

2. The Owners shall share in the costs of maintaining, repairing, replacing, and improving the Driveway, with all decisions as to the incurring of such costs to be made by the unanimous consent of the Owners over any relevant shared portion of the Driveway. If unanimous consent is not reached, the Owner desiring to perform the work shall pay for it.

3. The Easement shall also be for the installation, operation, repair, maintenance, and replacement of such normal and reasonable Utilities as may be necessary to service any Lot; provided however, that all such lines and facilities shall be installed and maintained below ground level at a safe depth as determined by applicable code and marked for easy identification. All costs of operating, maintaining, repairing, and replacing the lines and facilities benefitting any applicable Lot shall be borne by the Owner of any such Lot so benefitted, and the Owner of any other Lot not benefitting therefrom, shall have no obligation to maintain or repair or to contribute to the maintenance or repair of any such lines and facilities benefitting any other Lot. Maintenance of any Utilities that benefit more than one Lot shall be shared equally by all equally benefited Lots.

4. Notwithstanding the foregoing, in the event of an Emergency, the Owner of any Lot may perform emergency maintenance without the consent of any other Lot Owner. The Owner of the Lot paying for such Emergency maintenance shall be entitled to reimbursement of any portion of such reasonable costs from the Owner of any other Lot benefited by the emergency maintenance for the reasonable share of the cost of such emergency maintenance, repair, replacement, or improvement.

5. WHETHER OR NOT THE STATE CONTINUES TO OWN ANY OF THE LOTS OR AFTER ANY OF THE LOTS HAVE BEEN CONVEYED, THE STATE SHALL HAVE NO OBLIGATION TO PERFORM MAINTENANCE OF THE DRIVEWAY OR UTILITIES OR TO CONTRIBUTE TO ANY OF THE COSTS OF MAINTENANCE OF THE DRIVEWAY OR UTILITIES IN THE EVENT OF AN EMERGENCY OR OTHERWISE. ALL SUCH COSTS SHALL BE PAID BY THE OWNERS AS PROVIDED HEREIN. HOWEVER, IF THE STATE EFFECTS EMERGENCY OR OTHER REASONABLY NECESSARY REPAIRS OR MAINTENANCE, THEN THE STATE SHALL HAVE A RIGHT OF CONTRIBUTION AGAINST ANY OTHER OWNER OF ANY OTHER LOT BENEFITED BY SUCH REPAIR OR MAINTENANCE.

D. Restrictions on Improvements:

1. Other than the Driveway and Utilities, no structures or other improvements may be constructed or placed on or within the Driveway. Existing structures and/or improvements encroaching within the Driveway may remain, but shall not be replaced within the Driveway if destroyed or removed. No existing structures and/or improvements may be enlarged to encroach within the Driveway.

E. Perpetual Easement:

1. This Declaration, the Easement established herein, and the obligations, covenants and restrictions set forth herein shall be perpetual in duration.

F. No Merger:

1. Notwithstanding that the State currently owns all or a majority of the Lots, it is recognized that the interests in the Endowment Land and Lots are separate and distinct, and that the State intends that the provisions hereof shall be of full force and effect, and that the Easement provided herein shall not be deemed merged or extinguished.

G. Default:

1. If the Owner of any Lot shall fail to timely pay its share of the costs as provided herein or shall otherwise fail to perform any of its obligations under this Declaration, the State or any other affected Owner shall have the right to pursue any right or remedy available at law or in equity to collect the sum due to it. THE STATE SHALL HAVE NO LIABILITY FOR A DEFAULT BY ANY OWNER, AND THE OWNERS WAIVE ALL CLAIMS AGAINST THE STATE.

H. Governing Law:

1. The interpretation and enforcement of this Declaration shall be according to the laws of the State of Idaho.

I. Severability:

1. The invalidity or unenforceability of any provision hereof shall not limit or affect the validity or enforceability of any other provision.

J. Runs with Land; Amendment:

1. The obligations, covenants, easements and restrictions contained in this Declaration shall be binding upon the Lots; shall inure to the benefit of the Lots, the Dominant Lot, the Owners and the State (as long as the State owns any of the Lots, or any portion thereof); shall constitute covenants that run with the land; and shall be amended, modified, or terminated, if at all, only by the written agreement of the Owners of any affected Lot and the State (as long as the State owns any of the Lots).

K. Owners' Covenants:

1. Owners shall comply with all applicable federal, state, and local laws, rules and regulations.

2. Each Owner shall defend, indemnify, and hold harmless the State (as long as the State owns any Lot, or portion thereof), and its officers, agents, and employees, and the other Owners of other affected Lots against and from any and all demands, claims, liabilities, expenses, attorneys' fees, and losses, of every nature whatsoever, arising directly or indirectly, or claimed to arise from or in any way connected to any use of any Driveway or portion thereon, except to the extent any of the same result from the State's or any other Owner's gross negligence or breach of obligations under this Declaration. **Nothing herein shall be deemed a waiver of sovereign immunity, which immunity is hereby reserved to the State.** No Owner shall install any gate on, in or across, or fence the Driveway, or any portion thereof, without the prior written authorization from all other affected Owner(s) of any affected Lot and the State (as long as the State owns any affected Lot).

L. Authority:

1. This Easement is issued by the authority of the Idaho Const. Article IX, §§ 7 and 8, and Idaho Code Title 58 Chapter 6.

M. Acceptance:

1. Each Owner of any Lot by acceptance of a deed or lease therefor, whether or not it shall be so expressed in such deed or lease, shall be deemed to covenant and agree to the terms of this Declaration.

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director of the Idaho Department of Lands.

THE STATE BOARD OF LAND COMMISSIONERS


Governor of the State of Idaho and President
of the State Board of Land Commissioners

Countersigned:


Secretary of the State

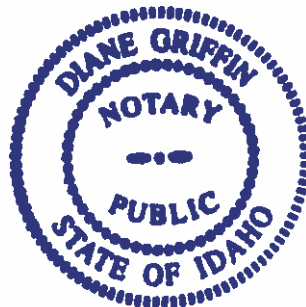

Director, Idaho Department of Lands



THE STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 6th day of August, 2015, before me, a Notary Public in and for said State, personally appeared C.L. "BUTCH" OTTER, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; LAWRENCE E. DENNEY, known to me to be the Secretary of State for the State of Idaho; and THOMAS M. SCHULTZ, JR., known to me to be the Director of Department of Lands of the State of Idaho, that executed the same instrument and acknowledged to me that such State of Idaho and the State Board of Land Commissioners executed same.

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





NOTARY PUBLIC for Idaho
Residing at Boise, Idaho
My Commission expires:
February 27, 2021

EXHIBIT "A"

CLAMBAKE POINT SUBDIVISION

Lot 13, as the Dominant Lot, shall have the right of access and utilities over, across and under the Driveway on Lot 12, as the Servient Lot, to Clambake Road as described on the attached Exhibit 1.

EXHIBIT 1
LEGAL DESCRIPTION
of
ACCESS AND UTILITY EASEMENT
for
LOT 13, BLOCK 1 of STATE SUBDIVISION-CLAMBAKE POINT

IDAHO DEPT. OF LANDS

A strip of land 30 feet in width, across Lot 12, Block 1 of STATE SUBDIVISION-CLAMBAKE POINT, according to the plat thereof, recorded as Instrument No. 840162, dated February 22, 2013, records of Bonner County, Idaho being situated in the SW 1/4 of Section 22, Township 60 North, Range 4 West, B.M., Bonner County, Idaho, lying 15 feet on each side of the following described centerline:

COMMENCING at the northerly most corner of said Lot 12; thence along the northeasterly line of said Lot 12, 103.28 feet along the arc of a non-tangent curve to the right, having a radius of 320.00 feet, through a central angle of 18°29'34", said curve having a long chord which bears South 55°41'36" East a chord distance of 102.84 feet, more or less, to the POINT OF BEGINNING.

thence leaving said northeasterly line of Lot 12, and along said centerline the following five (5) courses:

1. 96.10 feet long the arc of a non-tangent curve to the left, having a radius of 120.00 feet, through a central angle of 45°53'06", said curve having a long chord which bears South 22°56'34" West a chord distance of 93.55 feet;
2. South 0°00'01" West, 146.70 feet;
3. 35.41 feet along the arc of a curve to the right, having a radius of 50.00 feet, through a central angle of 40°34'46", said curve having a long chord which bears South 20°17'24" West a chord distance of 34.68 feet;
4. 46.31 feet along the arc of a reverse curve to the left, having a radius of 50.00 feet, through a central angle of 53°03'58", said curve having a long chord which bears South 14°02'48" West a chord distance of 44.67 feet;
5. South 12°29'11" East, 9.98 feet, more or less, to the south line of said Lot 12 and the POINT OF TERMINUS, lengthening and shortening the sidelines of said strip to terminate on the northeasterly and south lines of said Lot 12.

SUBJECT TO: Existing rights-of-way and easements of record on above described parcel.



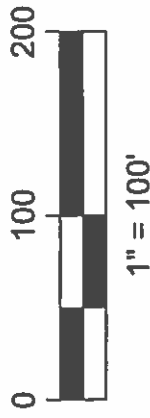
Digitally signed on:
August 15, 2013





Jeremy Russell

Digitally signed on:
Apr 17, 2014



LEGEND



ACCESS AND UTILITY EASEMENT

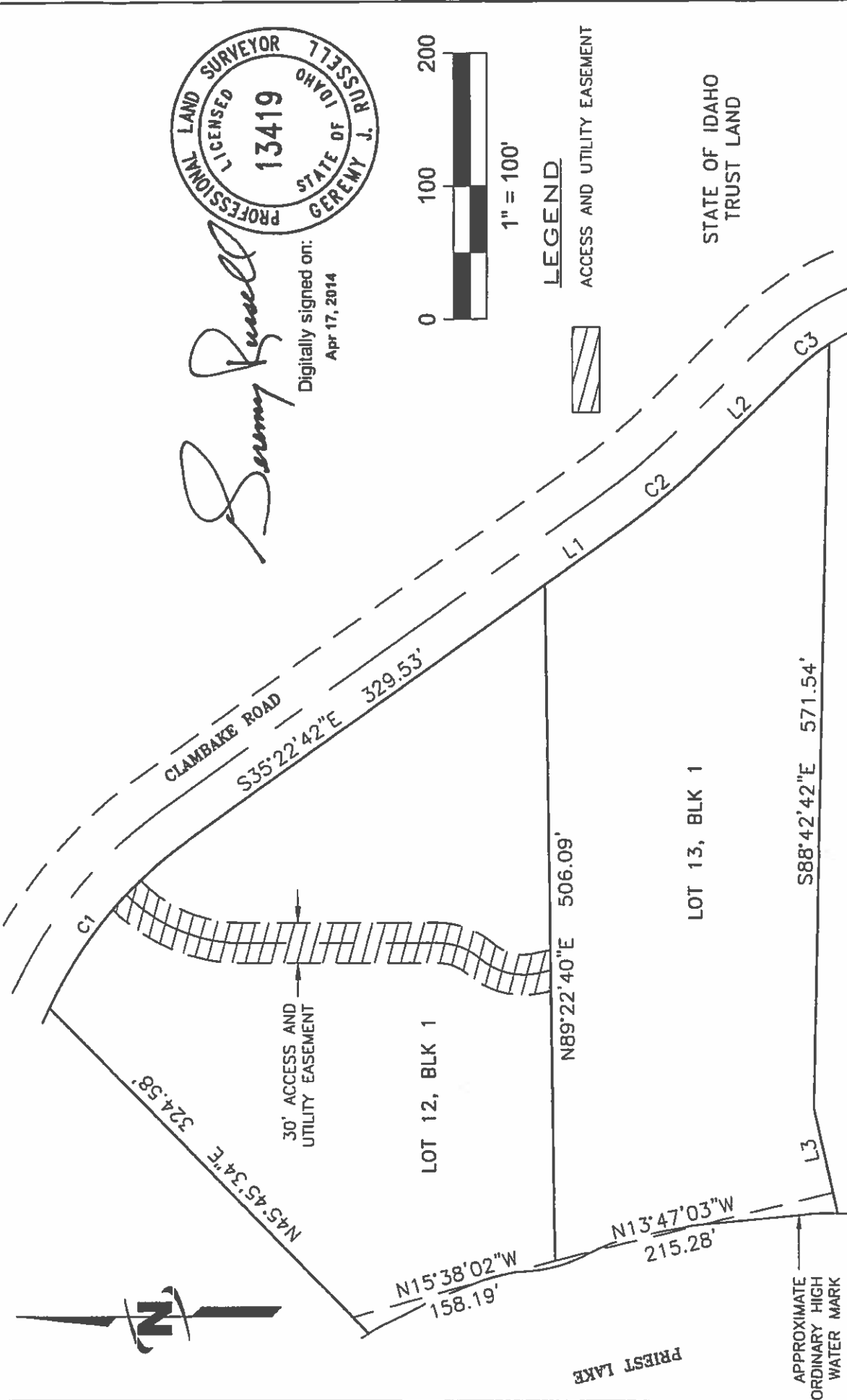


EXHIBIT 1
ACCESS AND UTILITY EASEMENT

LOT 13, BLOCK 1, STATE SUBDIVISION-CLAMBAKE POINT
SW 1/4 SEC. 22, T60 N, R4 W, B.M. SHT. 1



L134190201 04/17/2014
PROJECT: STATE SUBDIVISION-CLAMBAKE POINT
FILE: 03-13-13

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S35°22'42"E	68.77'
L2	S44°25'18"E	93.53'
L3	N77°30'19"E	64.96'

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	165.10'	320.00'	29°33'41"	S50°09'32"E	163.28'
C2	83.65'	530.00'	9°02'36"	S39°54'00"E	83.57'
C3	33.87'	170.00'	11°24'56"	S38°42'50"E	33.82'

Jeremy Russell

Digitally signed on:
August 15, 2013



Engineers • Surveyors • Planners

EXHIBIT 1
ACCESS AND UTILITY EASEMENT

LOT 13, BLOCK 1, STATE SUBDIVISION-CLAMBAKE POINT
SW 1/4 SEC. 22, T60 N, R4 W, B.M. SHT. 2