

Chuck Broerman

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El Paso County, CO



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ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT FOR MCDERMOTT SUBDIVISION

This Access and Utility Easement and Maintenance Agreement for McDermott Subdivision, dated for reference this 12th day of April, 2022 (Agreement) is made between Craig A. McDermott and Sally A. McDermott as owners of Parcel A and as future owners of Lot 1, Lot 2 and Lot 3 of McDermott Subdivision Filing No. 1.

RECITALS:

Craig A. McDermott and Sally A. McDermott ("Grantors") are the owners of the real property situated in the County of El Paso, State of Colorado (Assessor Parcel #5208000030) ("Parcel A"), which is also shown on the Exhibit hereto as 5208000030 and whose legal description is;

THE NORTH THREE-FOURTHS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO. EXCEPTING THEREFROM THE EASTERLY 30 FEET FOR COUNTY ROAD RIGHT OF WAY.

- A. Grantors are subdividing Parcel A into three lots (Lot 1, Lot 2 and Lot 3, respectively, to be shown on the Final Plat of McDermott Subdivision Filing No. 1 in the real estate records of El Paso County, Colorado.
- B. In connection with the Final Plat, Grantors are creating an Access and Utility Easement across a portion of Lots 1 and 2 for the benefit of Lots 2 and 3, to be shown on the Final Plat.
- C. Grantors wish to set forth the terms governing the Access Easement.
- D. This Agreement shall become fully in force upon recording of the Final Plat of McDermott Subdivision Filing No. 1.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors grant and accept the agreements, covenants, declaration and restrictions set forth herein.

1. Grant of Easement. Effective upon the recording in the real estate records of El Paso County, Colorado, the Access and Utility Easement from Herring Rd. across Parcel A, Grantors grant the non-exclusive easement ("Easement") to benefit the future Lots to be shown on the Final Plat. The legal description of the Easement is attached hereto as Exhibit A.
2. Benefit/Appurtenant. The Easement shall be for the benefit of the future owners of Lots 2 and 3 and shall burden the future Lots 1 and 2. The Easement shall be appurtenant to each such Lot.
3. Purpose of the Easement. The Easement shall be for ingress, egress, access, utilities and drainage.
4. Use of the Easement. No owner of any Lot nor their successors and assigns shall construct fences or place any other obstructions on their respective properties in a manner which would prevent, or reasonably impede, vehicle or personnel travel, utility access or drainage across the Easement. Otherwise, the respective owners of the Lots shall each have full use and occupancy of their respective real estate, subject to the Easement.
5. Standard for Maintenance of the Easement as a Driveway. As a minimal standard, the owners of Lots 2 and 3 shall provide maintenance sufficient to provide reasonable access for emergency vehicles. At their own expense, the owner of Lot 2 and the owner Lot 3 may each make such improvements to the Easement for driveway purposes as shall in their judgment reasonably be required for their access purposes.
6. Sharing Maintenance Costs. The cost and expense of maintaining the improvements on the Easement in good operating condition, including the cost of any repair to the Improvements and the cost of operating any gate at Herring Road shall be shared by the owners ("Owners") of Lots 2 and 3 upon the following terms.
 - a. Such cost shall be allocated to the respective Owners according to the number of dwelling units located on each Owner's parcel of land accessing by the Easement. Each Owner shall pay in the proportion that the number of dwelling units on such Owner's land accessing by the Easement bears to the total number of such dwelling units.
 - b. The cost of any substantial repair required as a result of damage caused by a particular user's unusual use or abuse of the road shall be paid for by the Owner of the parcel most related to such user.
7. Maintenance Decisions. The Owners agree that decisions about maintenance shall be determined by majority vote of the Owners of the real estate accessed by the Easement, with each Owner having the number of votes corresponding to the number of dwelling units (whether occupied or not) on such Owner's parcel(s) accessing by the Easement. Such vote may appoint an Administrator to carry out such decision(s). In the event of a tie vote, the Owner of Lot 3 shall prevail.
8. Maintenance Process. The Administrator shall arrange for sufficient maintenance to meet the standard above and to enable the Owners and emergency vehicles to use the Easement for its intended purposes as set forth herein. Such maintenance shall include snow removal, grading, re-gravelling, cleaning culverts, weed treatment, tree and debris removal, and any other maintenance generally desired by Owners. The Administrator shall either (i) pay for such maintenance directly and be reimbursed by

each Owner according to each Owner's proportionate share; (ii) arrange to have each Owner directly pay the proportionate cost of such maintenance; (iii) require periodic payments into a fund to be used for such maintenance; or (iv) use some combination of the foregoing. To the extent the Administrator pays for any Owner's share, the Administrator shall have a lien on each such Owner's respective Lot until such Owner's share is paid in full with interest accruing on any unpaid amount at the rate of 10% per annum simple interest and the Administrator shall be entitled to recover the costs of enforcing such lien and collecting such amount, including reasonable legal fees, expert witness fees and costs. The Administrator may refuse to order such maintenance until there is, in the Administrator's opinion, sufficient commitment or actual payment to reimburse the Administrator and pay for such maintenance. Unless otherwise agreed by Owners of the Lots with 60% of the dwelling units, the Administrator shall serve without compensation.

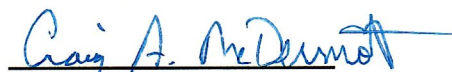
9. Property Uses.

The real estate accessing through the Easement shall be used exclusively for private residential purposes. No dwelling erected or maintained accessing through the Easement shall be used or occupied for any purpose other than for a single-family dwelling and such accessory uses as are permitted under El Paso County land use regulations without special permit or variance. The construction of separate guest quarters may be allowed on a case-by-case basis if approved by the appropriate zoning authority, subject to any conditions in such approvals.

10. Binding Agreement. The agreement for granting the Easement and for the maintenance of the driveway on the Easement shall be binding upon the relevant Owners, and their respective successors, assigns, and personal representatives upon recording in the real estate records of El Paso County in connection with the recording of the Final Plat of the subdivision.

11. Amendment/Termination. Except as stated below, this Agreement may not be revoked without the written consent of the Owners.

Grantors:


Craig A. McDermott

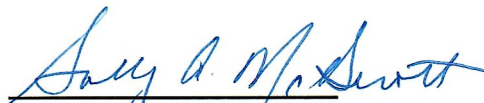

Sally A. McDermott

EXHIBIT A
LEGAL DESCRIPTION OF
ACCESS AND UTILITY EASEMENT AND MAINTENANCE
AGREEMENT
FOR MCDERMOTT SUBDIVISION

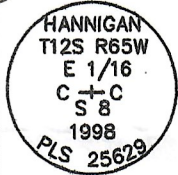
See attached Exhibit A



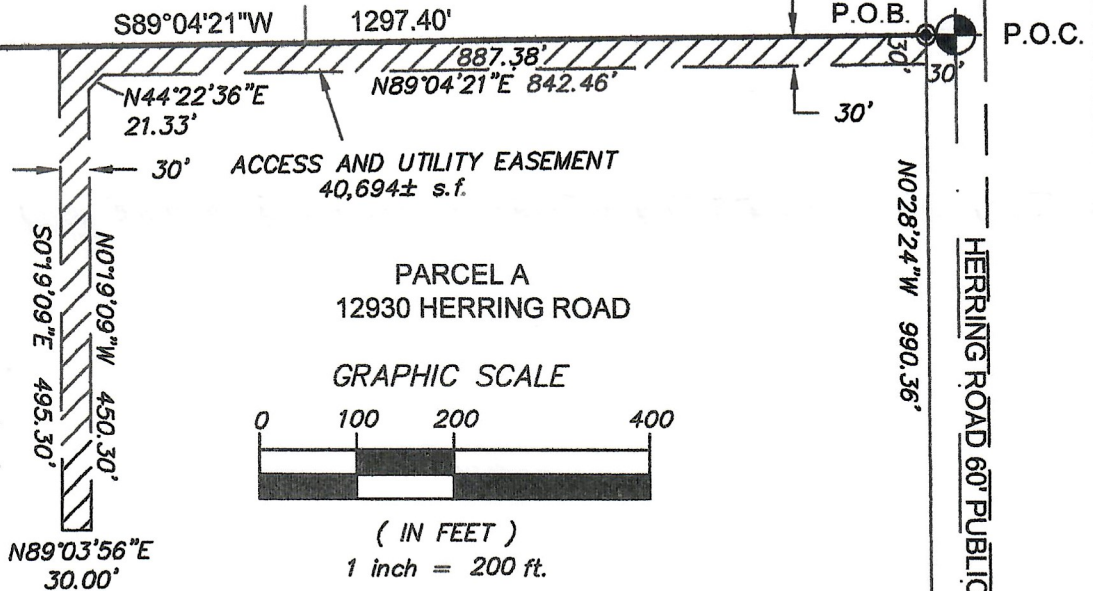
FOUND 3/4" DIA. REBAR
IN RANGE BOX 0.5'
BELOW ASPHALT SURFACE
WITH A 2-1/2" DIA. CAP
ON REBAR MARKED AS
SHOWN



FOUND 5/8" DIA.
REBAR WITH A
2-1/2" DIA.
ALUMINUM CAP
MARKED AS SHOWN

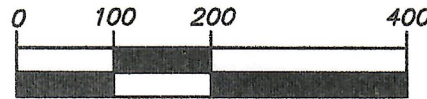


THE BASIS OF BEARINGS
FOR THIS PLAT IS THE
NORTH LINE OF THE
NORTHEAST QUARTER OF
THE SOUTHEAST QUARTER
OF SECTION 8, S89°04'21"W -
1297.40' THE DIRECTION IS
BASED ON THE McDERMOTT
SUBDIVISION. THE LINE IS
MONUMENTED AS SHOWN.



PARCEL A
12930 HERRING ROAD

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

A TRACT OF LAND LOCATED IN THE NORTH THREE-FOURTHS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8;
THENCE S89°04'21"W ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING OF THE TRACT DESCRIBED HEREIN;
THENCE CONTINUE S89°04'21"W ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 887.38 FEET;
THENCE S0°19'09"E A DISTANCE OF 495.30 FEET;
THENCE N89°03'56"E A DISTANCE OF 30.00 FEET;
THENCE N0°19'09"W A DISTANCE OF 450.30 FEET;
THENCE N44°22'36"E A DISTANCE OF 21.33 FEET TO A POINT THAT IS 30.00 FEET SOUTH OF THE AFORESAID NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER;
THENCE N89°04'21"E ON A LINE THAT IS 30.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 842.46 FEET TO A POINT THAT IS 30.00 FEET WEST OF THE EAST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER;
THENCE N0°28'24"W ON A LINE THAT IS 30.00 FEET WEST OF AND PARALLEL WITH SAID EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

THE DESCRIBED TRACT CONTAINS 40,694 SQUARE FEET BEING 0.934 ACRES, MORE OR LESS.



EXHIBIT A
ACCESS EASEMENT
12930 HERRING ROAD
SE 1/4, SEC. 8, T12S, R65W, 6th PM

DWG: HERRING
SCALE: 1"=200'
DATE: 4-12-22
DRAWN BY: KMO
CHECKED BY: THK
PROJECT: 21078

LWA LAND SURVEYING, INC.
953 E. FILLMORE ST.
COLORADO SPRINGS, CO 80907
TELEPHONE (719) 636-5179 FAX (719) 636-5199

REVISIONS: