

After recording return to:
Neal Bouma
1550 W. Lakeshore Drive
Whitefish, MT 59937



Debbie Pierson, Flathead County MT by SM

202100042416
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Fees: \$88.00
12/10/2021 1:06 PM

AMENDED & RESTATED PRIVATE ROAD MAINTENANCE AGREEMENT

(Upper Bouma Road)

This Amended and Restated Private Road Maintenance Agreement ("Agreement") is entered into as of Dec 8th, 2021 ("Effective Date") by and between Neal Bouma, of 1550 W. Lakeshore Drive, Whitefish, MT 59937 ("Neal Bouma"), BTS, Inc., a Montana Corporation, 1550 W. Lakeshore Drive, Whitefish, MT 59937, ("Bouma Truck Sales"), Brent Elledge, of 179 Managhan Ln., Kalispell, MT 59901 ("Elledge"), and the Upper Bouma Road Association, of 1550 W. Lakeshore Drive, Whitefish, MT 59937, a Montana non-profit corporation (together with its successors and assigns, the "Association"). Neal Bouma, Bouma Truck Sales, and Elledge may be collectively referred to hereafter as the "Parties" and individually as a "Party."

Recitals:

A. This Agreement serves to amend and restate the Private Road Maintenance Agreement executed by Neal Bouma, Bouma Truck Sales and the Association, and recorded with the Flathead County Clerk and Recorder's Office on April 30, 2021 as Doc. No. 202100015083, and supersedes that document in its entirety.

B. Neal Bouma and Bouma Truck Sales formed the Association for the purpose of maintaining and repairing the Upper Roads (defined Below). Neal, Bouma Truck Sales and Elledge are currently the members of the Association, and any future title holders/owners of the Upper Properties, defined below, shall become members of the Association by virtue of their ownership of the same.

C. Neal Bouma holds title to real property located in Flathead County, Montana, more particularly described as follows (the "Upper Road Tracts"):

Tract 2 of Certificate of Survey No. 21774, a tract of land, situated, lying and being in the Northwest Quarter (NW¼) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana;

Tract 4 of Certificate of Survey No. 21774, a tract of land, situated, lying and being in the Northwest Quarter (NW¼) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana; and

Tract 2 of Certificate of Survey No. 21984, a tract of land, situated, lying and being in the Northwest Quarter (NW¼) and in the North Half of the

SA 0016266, 0016478, 0450000, 0016264, 0088685



Southwest Quarter (SW1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

D. Two unimproved logging trails are located on the Upper Road Tracts (the "Northern Upper Road" and the "Southern Upper Road," collectively referred to as the "Upper Roads") as depicted in the attached **Exhibit A**. Tract 2 of Certificate of Survey No. 21984 is an extension of Track 4 of Certificate of Survey No. 21774, which comprise the Southern Upper Road. The Upper Roads provide access from the Lower Road to the Upper Properties (defined below).

E. In addition to the Upper Road Tracts, Neal Bouma holds title to real property located in Flathead County, Montana, more particularly described as follows (the "Neal Bouma Property"):

The North Half (N1/2) of the Northeast Quarter (NE1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

The Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

The Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 20, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

Government Lot 12 of Section 20, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

A tract of land situated, lying and being in the Northwest Quarter, and in the North Half of the Southwest Quarter, all of Section 29, Township 27 North, Range 21 West, P.M.M., flathead County, Montana, and more particularly described as follows to wit:

Tract 1 of Certificate of Survey No. 21984, records of Flathead County, Montana.

F. With the exception of Tract 1 of Certificate of Survey No. 21984 ("Tract 1 of CoS 21984"), access to the Neal Bouma Property is through the use of the Northern Upper Road. Access to Tract 1 of CoS 21984 is through the Southern Upper Road. This is shown on the attached Exhibit A. Bouma Truck Sales holds title to real property located in Flathead County, Montana, more particularly described as follows: (the "Bouma Truck Sales Property").

The Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

The Southeast Quarter (SE1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

Tract 1 of Certificate of Survey No. 20946, a tract of land, situated, lying and being in the Southwest Quarter (SW1/4) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.



G. Elledge holds title to real property located in Flathead County, Montana, more particularly described as follows: (the "Elledge Property"):

Tract 1 of Certificate of Survey No. 21774, a tract of land, situated, lying and being in the Northwest Quarter (NW $\frac{1}{4}$) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

Tract 3 of Certificate of Survey No. 21774, a tract of land, situated, lying and being in the Northwest Quarter (NW $\frac{1}{4}$) of Section 29, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

H. The Neal Bouma Property, Bouma Truck Sales Property, and Elledge Property are adjacent properties. The Neal Bouma Property, the Bouma Truck Sales Property, the Elledge Property and any portion thereof or subdivided parcel therefrom are collectively hereinafter referred to as the "Upper Properties" and the owners of the Upper Properties are collectively hereinafter referred to as the "Upper Property Owners." The Upper Property Owners utilize certain portions of the Upper Roads for ingress and egress to their respective properties. The portions on the existing Upper Roads are divided as shown on the attached Exhibits "A" and "B." Because an Upper Property Owner may hold title to more than one of the Upper Properties, the term "title holder" is defined as the record owner of the property as shown on the most recent deed of record, and is used herein to avoid instances of an Upper Property Owner being charged for more than its proportionate share of use.

I. All references in this Agreement to the Upper Road(s) shall include the existing Upper Road(s) (singular for one road and plural for all) and all portions and extensions of the roads located on the Upper Road Tracts and such portions of the roads that traverse over the Upper Properties. As used herein, the terms "portions" and "extensions" shall include any roads constructed in the future that are necessary to provide ingress and egress to any of the Upper Properties, including any subdivided Upper Property tracts created in the future, but they do not include personal roads or driveways installed by any Upper Property Owners that serve to provide that Owner with ingress or egress to the interior portions of any of their Upper Properties, the construction, maintenance, and repair of the same shall be that Upper Property Owner's sole responsibility.

J. Neal Bouma, as the current owner of the Upper Road Tracts, hereby grants the Association full and complete agency authority to act on his behalf to manage the Upper Road Tracts, including handling the maintenance, repairs, and snow removal on the Upper Road Tracts, assessing all costs, and handling all collections associated with the same. A separate set of Bylaws for the Association shall incorporate the terms of this Agreement and shall further detail the governance of the Association's affairs. Any subsequent owner of the Upper Road Tracts shall take title subject to the terms and conditions of this Agreement and the Association's Bylaws.

K. Each Upper Property Owner shall be granted easement rights over the Upper Roads that it utilizes for ingress and egress and for the installation of utilities as needed by a separate recorded document. Failure to grant an easement to an existing or future title holder of an Upper Property shall not preclude the Upper Property Owner's use of an Upper Road should said use be necessary for that Upper Property Owner's ingress and egress or for the installation of utilities.

L. This Agreement is made for the purpose of and shall establish and memorialize the Parties' rights, responsibilities and understanding regarding maintenance of the Upper Roads. The Upper Property Owners shall share responsibility for such maintenance and repair of the



Upper Roads, in accordance with and subject to the terms and conditions of this Agreement. Those responsibilities shall be managed and enforced by the Association.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby incorporate the Recitals into this Agreement, and agree as follows:

1. **Definitions.** The following definitions shall apply to this Road Maintenance Agreement.

(a) **Maintenance:** The work normally necessary to preserve, improve and keep the Upper Roads in good and passable condition by 2-wheel drive passenger and utility vehicles, and shall include the following:

- i. Tree or vegetation removal to the extent any trees or vegetation prohibit or impede access over the Upper Roads.
- ii. Filling of chuckholes, grading of “washboards” on the road surface and putting in additional gravel on the road surface to keep the Upper Roads in good and drivable condition.
- iii. Ditch construction and maintenance.

(b) **Repair.** Any work necessary to remove obstructions and/or restore the Upper Roads’ foundation/base and/or shoulders to a good and usable condition by the above-described vehicles with a minimum 4” lift of gravel, in the event of damage to the integrity of any of the Upper Roads.

(c) **Snow Plowing.** Any work necessary to remove snow from the Roadway surface to allow the above-described vehicles to safely travel over any of the Upper Roads.

(d) **Maintenance Work**, as defined in subparagraphs a – c, above, shall be accomplished through the Association and paid for by fees assessed by the Association.

(e) **Extraordinary Maintenance** in excess of subparagraphs a – d, above, deemed necessary or advisable shall not be undertaken without the consent of the Association in accordance with its Bylaws. In the event the Upper Property Owners, through the Association cannot reach an agreement in favor of the proposed Upper Road Extraordinary Maintenance, any Upper Property Owner may make such reasonable Extraordinary Maintenance, at the Upper Property Owner’s sole cost and expense, and the work must not interfere with or otherwise impede the other Upper Property Owners’ use and enjoyment of the Upper Roads.

2. **The Upper Roads Terms and Conditions.**

(a) **Maintenance on Existing Upper Roads.** The Upper Tract Owners, through the Association, shall perform Maintenance Work on the Upper Roads. Each title holder of the Upper Properties, including all additional future title holders in the event any of the Upper Properties are further divided and sold, shall be responsible for their share of costs and expenses associated with the Upper Road Maintenance Work on those portions of the Upper Roads that they utilize for ingress and egress to their respective Upper Property/Properties. This is illustrated more specifically as follows:

- i. As shown on the attached Exhibit B, each title holder of all the Upper Properties is equally responsible for the Road Maintenance costs on this



portion of the Upper Road, which, as shown on Exhibit A begins at the "Second Archway – Termination of Lower Road and Beginning of Upper Road Terminus," and ends once the Upper Roads fork into the Northern Upper Road and Southern Upper Road (see Ex. A). This Road is referred to as the "NW Tract 2 Upper Road." Accordingly, as of the date of this Agreement, the costs for the NW Tract 2 Upper Road shall be split 1/3 by Elledge, 1/3 by Bouma Trucking, and 1/3 by Neal Bouma. Should, for example, title to Tract 1 of CoS 21984 be transferred to a third party, then the Road Work costs would be split 1/4 by the new title holder, 1/4 by Elledge, 1/4 by Neal Bouma, and 1/4 by Bouma Truck Sales.

- ii. Responsibility for Road Maintenance Work costs on the Northern Upper Road, as shown on Exhibit A, shall be equally shared by Elledge as the title owner of Tract 3 and by Neal Bouma as the title holder of the Neal Bouma Property (excluding Tract 1 of Certificate of Survey No. 21984, which is accessed by the Southern Upper Road). Accordingly, as of the date of this Agreement, the costs shall be split 50/50 between Elledge and Neal Bouma. Should Neal Bouma further subdivide the Neal Bouma Property (excluding Tract 1 of CoS 21984) then transfer title to one of those subdivided tracts to a third party, then the Road Work costs would be split 1/3 by the third party, 1/3 by Elledge, and 1/3 by Neal Bouma.
- iii. Responsibility for Road Maintenance Work on the Southern Upper Road, as shown on Exhibit B, shall be shared equally by Neal Bouma as the owner of Tract 1 of CoS 21984, Bouma Trucking as the owner of the Bouma Truck Sales Property. Because Elledge does not utilize this Southern Upper Road for access, he shall not be required to share in these costs. Should Elledge decide to utilize the Southern Upper Road for ingress and egress to the Elledge Property in the future, or should he further divide the Elledge Property in a manner that would require those new tract(s) to utilize the Southern Upper Road for ingress and egress, Elledge, or the title holders of the new tract(s) would then be granted an easement and would be responsible to participate equally in the Road Work costs of the Southern Upper Road. Additionally, should Bouma Truck Sales further subdivide the Neal Bouma Property, then transfer title to one or more of the subdivided tracts to a third party, then the Southern Upper Road Work costs would also be further divided equally amongst the new title holders.

(b) **Road Maintenance Work on Future Upper Roads.** The Upper Property Owners are not responsible for Upper Road Maintenance costs associated with any portion of the Upper Roads that extend past their property boundary that provide ingress and egress to any other Upper Properties. This is illustrated more specifically as follows:

- i. As contemplated above, a future title holder of Tract 1 of CoS No. 21984, would be responsible, along with all the other title holders of Upper Property, for an equally divided share of Road Maintenance costs for the NW Tract 2 Upper Road (Exhibit B), and for their proportionate share of Road Maintenance Costs for over the Southern Upper Road that ends at the southern boundary of Tract 1 of CoS 21984 as shown on Exhibit A. However, the future Owner would not be responsible for Road Maintenance costs associated with any portions of the Southern Upper Road that extend past the southern border of Tract 1.



- ii. Elledge would not be responsible for Road Maintenance costs associated with any portions of the Northern Upper Road that, will, in the future, extend past the eastern border of the Elledge Property as shown on Exhibit A.

(c) **Exceptions to a title holder's duty to pay its share of Road Work Costs.** If a title holder is not utilizing the Upper Property that he/she/it owns for any recreational, residential, or commercial use, and, as a result, is not utilizing any of the Upper Roads and thus not contributing to the roads' wear and tear, the title holder may submit a request for exemption for Road Work costs to the Association.

(d) **Association's Responsibility.** The Road Maintenance apportioned costs shall be managed by the Association based on the foregoing and in accordance with its Bylaws. The Upper Property Owners shall pay the Association for all its Road Maintenance Work in accordance with its Bylaws. An Upper Property Owner shall only be entitled to vote on Road Maintenance Work for the portions of the Upper Roads that it utilizes for ingress and egress.

(e) **Insurance.** Except in an emergency and except as otherwise addressed in the Bylaws, the Association and/or Parties shall require that the person performing the Road Maintenance Work have insurance, and to require that the title holder(s)/owner(s) of the Upper Road Tracts (currently Neal Bouma) be listed as an additional insured(s). Road Maintenance Work shall begin only after the contractor provides a Certificate of Insurance that names the Association and all property owners on which the Upper Roads are located as additional insureds on such contractor's Comprehensive General Liability insurance and workers compensation policies.

(f) **Obstructions.** In the event of an emergency, any Party may, at such Party's sole cost and expense, remove obstructions or accumulated snow from the Upper Roads without first securing the approval of the Association. That Party may request reimbursement from the Association, which shall be approved or denied in accordance with the Bylaws.

(g) **Deadlock.** In the event that the Parties, through their membership in the Association, are deadlocked on Road Maintenance, then the parties shall resolve the dispute in accordance with the terms set forth in the Association's duly enacted Bylaws.

3. **Underground Utility Repairs.** In the event that changes or repairs are required by any underground utility systems (gas, water, electricity, sewer, cable, phone, etc.) that require breaking or disturbing the surface of the Upper Roads, the Association shall arrange for the timing and methods of repair work. The Parties benefitting from the work shall equally share the costs.

4. **No Liens or Encumbrances.** The Association and Parties shall not permit or allow any construction liens, materialman's lien, or other liens (collectively, "Liens") arising from their acts or omissions to attach to the Upper Road Tracts, and the Association shall immediately discharge the same.

5. **Covenants & Remedies.** Each Upper Property Owner covenants and agrees to be a member in the Association, and further agrees to pay any dues and obligated amounts of Road Maintenance Work as set forth herein and as addressed in the Bylaws, and the Association is hereby granted a lien against any title holder property for any payment that the party fails to make as required by this Agreement. Such lien may be foreclosed in the manner as provided by the laws of the State of Montana. The Association or any other party to this Agreement may



bring a civil action against any party personally obligated to pay amounts required by this Agreement in order to enforce payment of the delinquent amounts or to foreclose the lien against the property. Failure by any Party or the Association to enforce the terms hereof shall in no event be deemed a waiver of the right to do so thereafter. In the event any Party or the Association employs an attorney to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover, on demand, all costs, charges, and expenses, including reasonable attorney fees, incurred by the enforcing Party or the Association.

6. **Appurtenance.** The benefits and burdens of this Agreement are appurtenant to the Upper Properties and the Upper Road Tracts and the benefits and burdens of this Agreement will run with the title to those properties and any future subdivided and/or boundary line adjusted portion thereof, whether or not this Agreement is referred to in conveyances of those properties.

7. **Binding Authority.** It is the intent hereto that this instrument be recorded and shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, and assigns. Any Party who subsequently transfers, obtains, purchases, or otherwise acquires an interest in any of the property, subject hereto, or any part thereof by acceptance or delivery of deed and/or conveyance to or of said property shall be deemed to have consented to and become bound by the terms of this Agreement.

8. **Entire Agreement: Amendments.** This Agreement contains the entire agreement between the Parties, and no prior written or oral representations, inducements, agreements, promises or undertakings which alter, modify, add to or supplement the terms and conditions of this Agreement shall have any force or effect. No modification of or amendment to the terms of this Agreement shall be deemed effective unless the same shall be in writing and executed by a two-thirds (2/3) vote of the title holders of the Upper Properties. Any Party may apply to the Association for a variance to the terms of this Agreement according the Association's Bylaws for a term not exceeding one year. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

9. **Conflict.** To the extent that the provisions of this Agreement conflict with pre-existing covenants and/or agreements, this Agreement will control. To the extent that provisions of this Agreement conflict with the duly enacted Bylaws of the Association, the Bylaws shall control.

10. **Severance.** In the event that one or more of the provisions hereof shall be held to be illegal, invalid, or unenforceable, such provisions shall be deemed severable and the remaining provisions hereof shall continue in full force and effect.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[signatures to follow on next page]



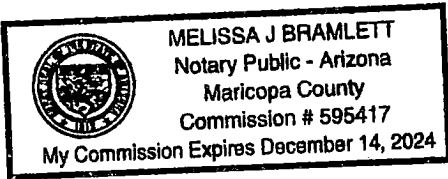
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Neal Bouma

Arizona
STATE OF MONTANA)
: ss.
County of Maricopa)

This instrument was acknowledged before me on the 8 day of December, 2021, by Neal Bouma.

(SEAL)



Printed Name: Melissa J. Bramlett
Notary Public for the State of Montana
Arizona

BTS, Inc.

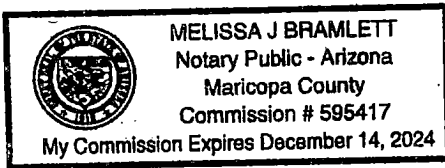
By:

Neal Bouma, its: President

Arizona
STATE OF MONTANA)
: ss.
County of Maricopa)

This instrument was acknowledged before me on the 8 day of December, 2021, by Neal Bouma, President of **BTS, Inc.**

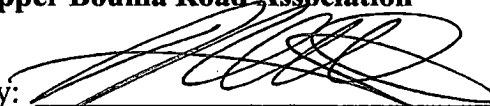
(SEAL)



Printed Name: Melissa J. Bramlett
Notary Public for the State of Montana
Arizona



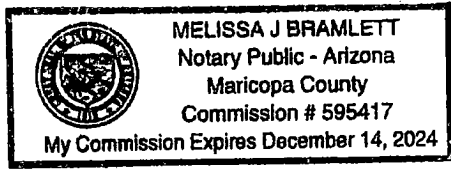
Upper Bouma Road Association

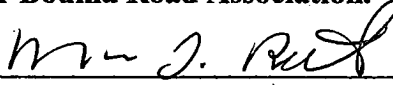
By: 
Neal Bouma, its: Presiding Officer

Arizona
STATE OF MONTANA)
: ss.
County of Maricopa)

This instrument was acknowledged before me on the 8 day of December, 2021,
by Neal Bouma, Presiding Officer of the **Upper Bouma Road Association.**

(SEAL)



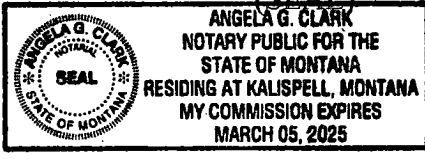

Printed Name: Melissa J. Bramlett
Notary Public for the State of Montana
Arizona


Brent Elledge

STATE OF MONTANA)
: ss.
County of FLATHEAD)

This instrument was acknowledged before me on the 10th day of December, 2021,
by **Brent Elledge.**

(SEAL)




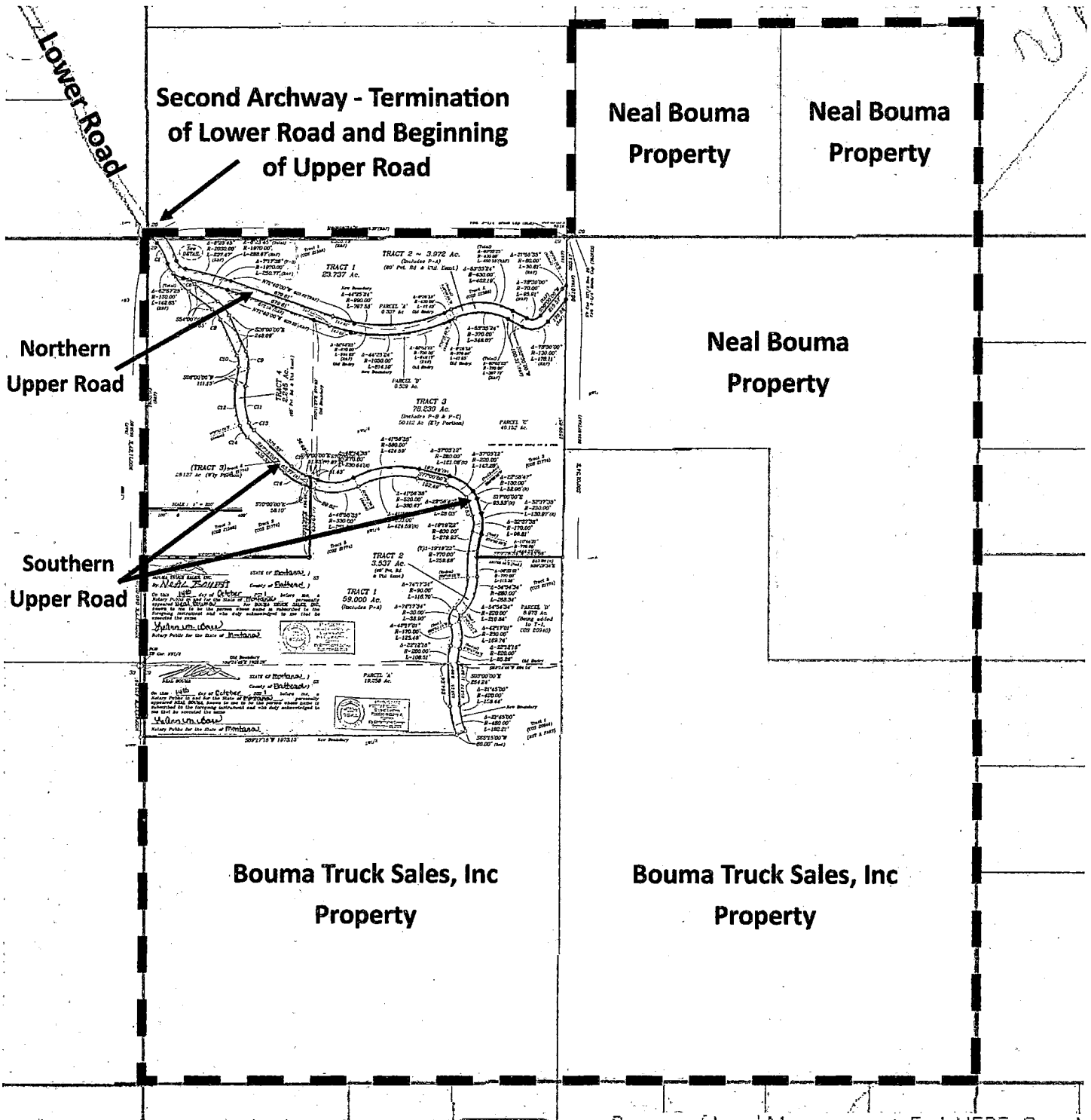

Printed Name: Angela G. Clark
Notary Public for the State of Montana

Exhibit "A"



= Properties Included in the Upper Road Association

By: SANDS SURVEYING INC.
 2 Village Loop
 Kalispell, MT 59901
 (406) 755-6481

202100042416
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 Fees: \$88.00
 12/10/2021 1:06 PM

EXHIBIT "B"

60' PRIVATE ROAD & UTILITY EASEMENT

In NW1/4 SEC. 29, T.27N., R.21W., P.M.,M.,
 FLATHEAD COUNTY, MONTANA

JOB NO: 469103
 DATE: October 28, 2021
 FOR: Neal Bouma

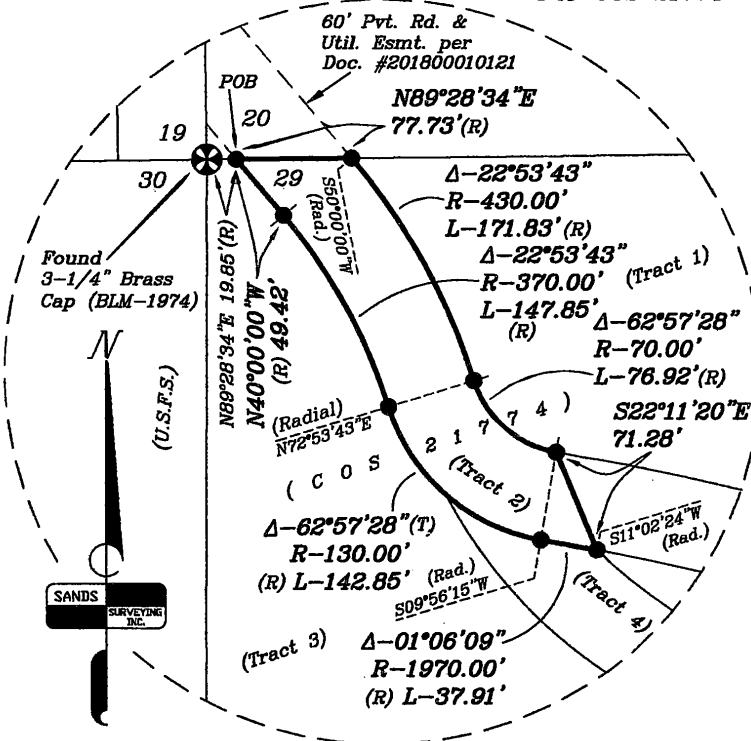
LEGEND:

- ⊗ Section Corner (as noted)
- Fnd. 1/2" Reb. & Cap (19236S)
- POB Point of Beginning
- (R) Fnd. & Rec. Info.
 Per COS 21774

DESCRIPTION: 60' PRIVATE ROAD & UTILITY EASEMENT

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 27 NORTH, RANGE 21 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

Commencing at the northwest corner of Section 29, Township 27 North, Range 21 West, P.M.,M., Flathead County, Montana, which is a found brass cap; Thence N89°28'34"E 19.85 feet to a found iron pin on the southwesterly R/W of a 60 foot private road and utility easement and THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED: Thence continuing N89°28'34"E 77.73 feet to a found iron pin on the northeasterly R/W of said easement and the P.C. of a 430.00 foot radius non-tangent curve, concave southwesterly (radial bearing S50°00'00"W); Thence southeasterly along said curve and said R/W through a central angle of 22°53'43" an arc length of 171.83 feet to a found iron pin and the P.R.C. of a 70.00 foot radius reverse curve, concave northeasterly (radial bearing N72°53'43"E); Thence southeasterly along said curve through a central angle of 62°57'28" an arc length of 76.92 feet to a found iron pin; Thence leaving said R/W S22°11'20"E 71.28 feet to a found iron pin on said southwesterly R/W of said easement and the P.C. of a 1970.00 foot radius non-tangent curve, concave southwesterly (radial bearing S11°02'24"W); Thence northwesterly along said curve and said R/W through a central angle of 01°06'09" an arc length of 37.91 feet to a found iron pin and the P.R.C. of a 130.00 foot radius reverse curve, concave northeasterly (radial bearing N09°56'15"E); Thence northwesterly along said curve through a central angle of 62°57'28" an arc length of 142.85 feet to a found iron pin and the P.R.C. of a 370.00 foot radius reverse curve, concave southwesterly (radial bearing S72°53'43"W); Thence northwesterly along said curve through a central angle of 22°53'43" an arc length of 147.85 feet to a found iron pin; Thence N40°00'00"W 49.42 feet to the point of beginning and containing 0.432 ACRES; Subject to and together with all appurtenant easements of record.



SCALE: 1" = 100'