

ORDINANCE NO. 05-2012

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 18-2011, AN ORDINANCE GRANTING AN EASEMENT FOR THE ENCROACHMENT INTO THE ELLSWORTH AVENUE PUBLIC RIGHTS OF WAY OF CERTAIN EXISTING ENCROACHMENTS ON THE ELLSWORTH AVENUE RIGHTS OF WAY AND LOTS 1-5, CAIRNS ADDITON TO GRAND LAKE.

BE IT ORDAINED BY THE GRAND LAKE BOARD OF TRUSTEES THAT:

Section 1. An easement is hereby granted to F.A. Heckendorf Jr., Susan Carlson, and Carl C. Heckendorf, as owners (hereinafter the "Grantee") of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 for the purpose of allowing the preexisting encroachments of 6'3"X6'3" of the corner of the garage (hereinafter the "Garage") and a 14'6"X19'6" one-story, log-sided cabin (hereinafter the "Cabin").

This easement shall remain in full force and effect for the benefit of the Grantee, its successors, heirs and assigns, for so long as the present buildings remain on the lots. Grantee may perform normal maintenance and repairs but may not enlarge them further into or above the public right-of-ways.

Section 2. Should any portion of the Garage or Cabin (hereinafter the "Buildings") be destroyed by fire or other casualty to the extent their reconstruction is not feasible; or if the Buildings or a portion of the Buildings are removed as a result of the obsolescence or structural deterioration or if option 3b in Section 4 is chose; the associated encroachment with either the Garage or Cabin as a part of this easement shall become null and void. Any new construction or reconstruction shall take place only within the confines of the property lines of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 and shall in all ways comply with the applicable zoning regulations, building codes and all other development regulations then in effect.

Section 3. An easement is hereby granted to F.A. Heckendorf Jr., Susan Carlson, and Carl C. Heckendorf, as owners (hereinafter the "Grantee") of Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 for the purpose of allowing the preexisting encroachments of a 90' long by 3' wide stone wall fence (hereinafter the "Wall").

This easement shall remain in full force and effect for the benefit of the Grantee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this easement should end. At such time, within 45 days of the Town providing notice to the Grantee, Grantee shall remove the improvement and restore that portion of the Town right-of-way to pre-existing condition or better at Grantee's expense. The Grantee may perform normal maintenance and repairs to the improvement, but may not enlarge it further into or above the public right-of-way.

Section 4. The Improvement Survey Plat (attached hereto as Exhibit 'A') purports to describe the encroachments which are the subject of this Ordinance. This Ordinance shall not apply to any encroachment other than the encroachments listed herein and are in conjunction with the Cairns Addition to Grand Lake Lot 1-5 and A .16 AC Tract North of Lot 1-5.

This easement is contingent on the following:

- A. Failure to comply with the dates for work completion submitted in the Rehabilitation Plan (attached as Exhibit 'B') shall cause this easement to become null and void. Competition dates are listed as follows:

RECEPTION#: 2012006601, 09/04/2012 at  
01:43:43 PM,  
1 OF 6, R \$36.00 , Additional Names Fee:  
Doc Code:ODC  
Sara L. Rosene, Grand County Clerk,  
Colorado

1. Demolition of existing unpermitted encroaching carport and covered walkway shall be completed by November 15, 2011; and
  2. Repair of the Wall shall be completed by November 15, 2011; and
  3. The Garage shall be completed no later than October 15, 2012 by either
    - a. Rehabilitation as proposed
    - b. Demolition
  3. Restoration of the Cabin shall be completed no later than October 15, 2012.
- B. Restoration of the log rails of the Wall shall be completed no later than October 15, 2012.
- C. Removal of all other fencing on the Ellsworth Avenue Right-of-Way (not including the fence located on the western property line, delineating the subject parcel and the neighboring property) shall be removed no later than October 15, 2012.
- D. If permitted or unpermitted purposeful destruction of any or all of the permitted or unpermitted encroachments occurs, the following shall apply:
1. The Grantee shall be required to submit to the Town an updated Improvement Survey Plat depicting the new improvement size; and
  2. The Town of Grand Lake may requirement amendment to the encroachment easements permitted in this Ordinance to reflect the new improvement size.

Section 5. In granting said easement, the Town of Grand Lake expressly reserves to itself the right to construct and maintain all municipal utilities and permanent improvements, and further reserves the same right to all utility companies operating under a Town franchise or license or paying utility tax to the Town.

Section 6. The easement granted by this Ordinance will not become effective until both of the following shall has occurred as evidenced:

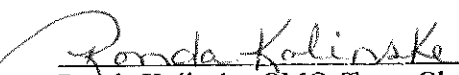
- A. Grantee shall pay to the Town the sum of Two hundred Dollars (\$200.00); and
- B. Grantee shall deliver a full executed Indemnification Agreement (attached hereto as Exhibit 'C'); and

DULY MOVED, SECONDED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE THIS 27TH DAY OF AUGUST, 2012.

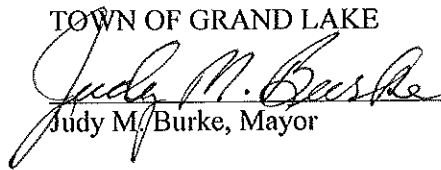
(SEAL)

Votes Approving	6
Votes Opposed	0
Absent	1
Abstained	0

ATTEST:

  
Ronda Kolinske, CMC, Town Clerk

TOWN OF GRAND LAKE

  
Judy M. Burke, Mayor

*Exhibit A*

# LAND SURVEY PLAT

LOTS 1-5, CAIRNS ADDITION TO GRAND LAKE AND  
 A 0.16 ACRE TRACT NORTH OF LOTS 1-5  
 TOWN OF GRAND LAKE, COUNTY OF GRAND, STATE OF COLORADO

- FOUND AS INDICATED
- REBAR & CAP PLS 26228
- CALCULATED CORNER

### LEGAL DESCRIPTION

CAIRNS ADDITION TO GRAND LAKE, LOTS 1-5 AND A 0.16 ACRE TRACT NORTH OF LOT 1-5, TOWN OF GRAND LAKE, COUNTY OF GRAND, STATE OF COLORADO

### SURVEYORS CERTIFICATION

I, JERALD W. RICHMOND, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, HEREBY CERTIFY THAT THIS LAND SURVEY PLAT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IS BASED ON A FIELD SURVEY PERFORMED ON SEPTEMBER 27, 2007, AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



JERALD W. RICHMOND P.L.S. 20028  
 FOR AND ON BEHALF OF  
 DIAMONDBACK ENGINEERING & SURVEYING, INC.

### MONUMENTED LAND SURVEY PLAT DEPOSITING CERTIFICATE

DEPOSITED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.  
 AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ P.M. IN BOOK NO. \_\_\_\_\_  
 OF THE RECORDS OF THE  
 GRAND COUNTY SURVEYORS OFFICE

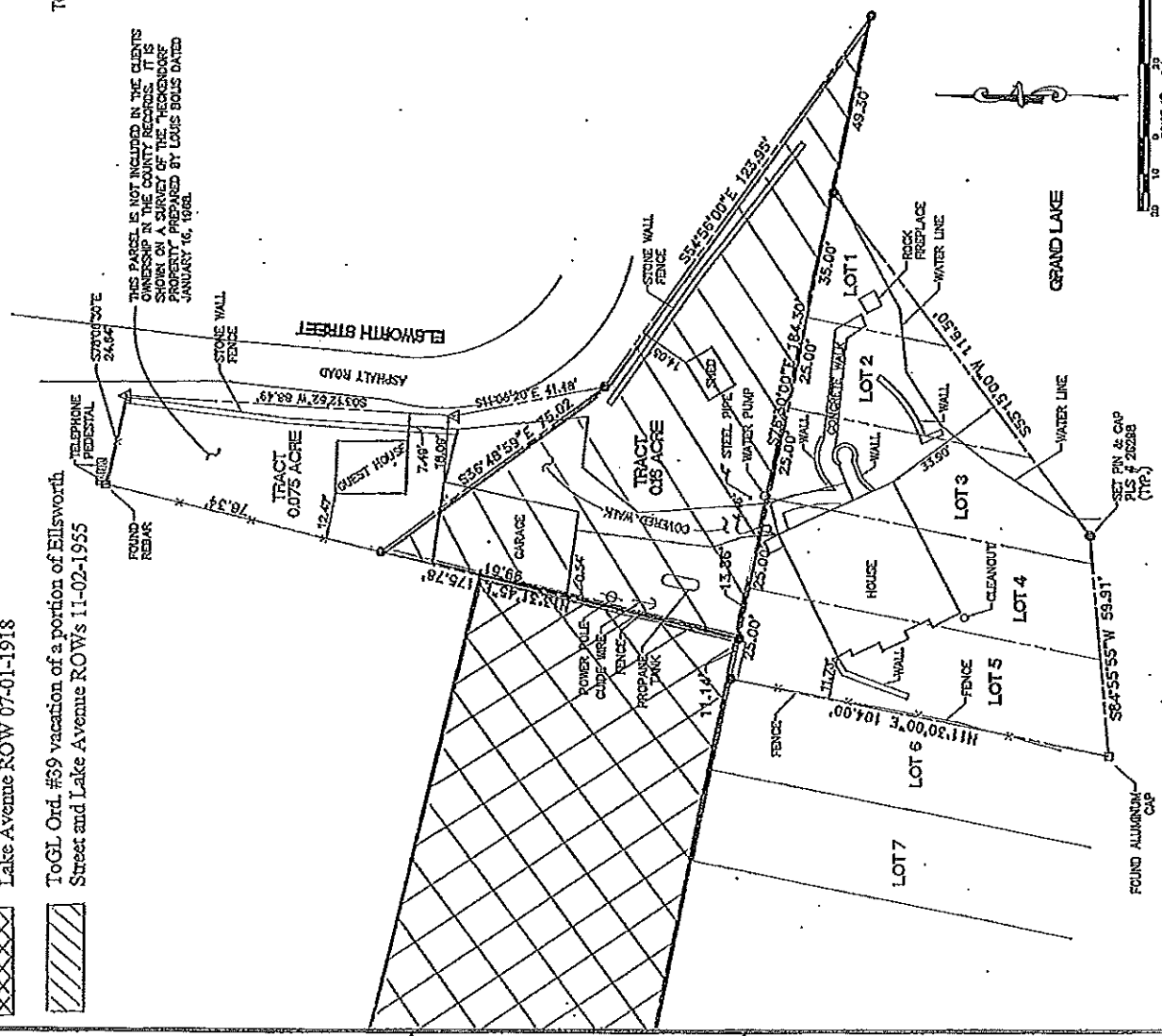
BY: GRAND COUNTY SURVEYOR

**DIAMONDBACK**  
 ENGINEERING & SURVEYING, INC.  
 12640 W. CEDAR DR. SUITE C  
 LAKEWOOD, COLORADO  
 (303)281-4204 FAX (303)281-4214

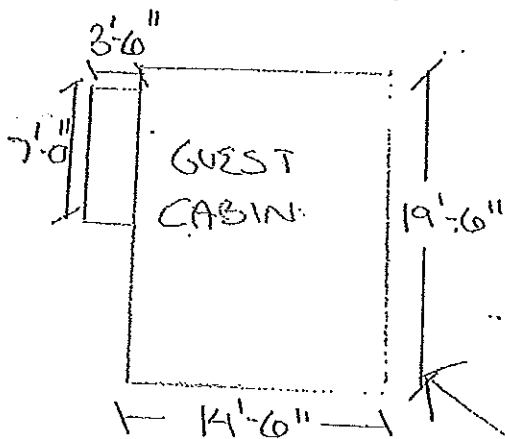
BOCC vacation of a portion of  
 Lake Avenue ROW 07-01-1918

To GL Ord. #89 vacation of a portion of Ellsworth  
 Street and Lake Avenue ROWs 11-02-1955

THIS PARCEL IS NOT INCLUDED IN THE CLIENTS OWNERSHIP IN THE COUNTY RECORDS. IT IS SHOWN ON A SURVEY OF THE "RECORDS" PROPERTY PREPARED BY LOUIS BOLLS DATED JANUARY 16, 1968.



# (EXHIBIT B)

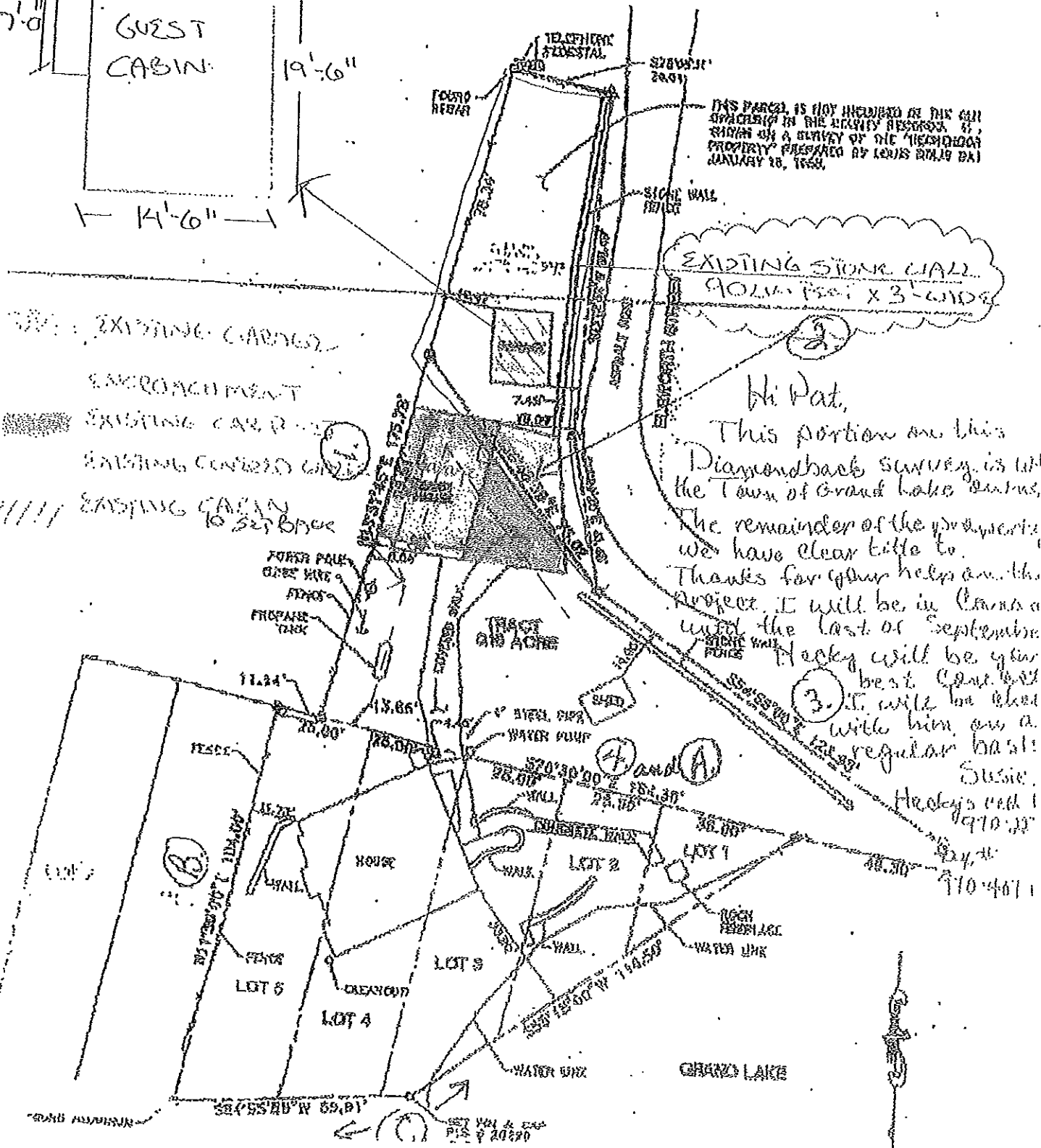


THIS PARCEL IS NOT INCLUDED IN THE GUN OWNERSHIP IN THE UNLAWY RESERVATION, IS PART OF A SURVEY OF THE "DIAMONDBACK PROPERTY" PREPARED BY LEWIS BRADY DAL JANUARY 18, 1958.

EXISTING STONE WALL  
90.00' HIGH X 3'-WIDE

- EXISTING CHARGE
- ENCROACHMENT
- EXISTING CARPORT
- EXISTING CONCRETE WALL
- ////// EXISTING CABIN TO SETBACK

Hi Pat,  
This portion on this Diamondback Survey is in the Town of Grand Lake since the remainder of the property we have clear title to. Thanks for your help on the project. It will be in Grand until the last of September. Hecky will be your best contact with him on a regular basis. Susie. Hecky's cell 970-227-2476 970-4011



SET WALL & CAP P. 2 & 201220

**EXHIBIT C**  
**Indemnification Agreement**

2nd This Indemnification Agreement (hereinafter "the Agreement"), is entered into this day of MAY, 2012, by and between F.A. Heckendorf Jr., Susan Carlson, and Carl C. Heckendorf, as owners, (hereinafter referred to as the "Owner") Cairns Addition to Grand Lake Lot 1-5 and A .16AC Tract North of Lot 1-5 and the Town of Grand Lake, (hereinafter referred to as "the Town".)

WHEREAS, within the Town of Grand Lake, the Owner own a certain parcel of real property, a portion of which encroaches into and on the public rights of way of the Town; and

WHEREAS, the Town has granted to the Owners an easement for the encroachment into the public rights of ways, by Ordinance No. 18-2011; and

WHEREAS, one of the requirements for the granting of the aforementioned easement is the execution by the Owner of an Indemnification Agreement satisfactory to the Town;

**IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

1. The Owner shall at all times prior to the termination or expiration of the Easement indemnify the Town against all liability, loss, damage or expense sustained by the Town, including attorneys' fees and other expense of litigation, whether prosecuted to judgment or not, arising prior to termination or expiration of the Easement:
  - a. On account of, or through the use of the premises or improvements thereon or any part thereof by the Owners or any other person for any purposed, less any reasonable wear and tear;
  - b. Arising out of, directly or indirectly due to, and failure of the Owner in any respect to promptly and faithfully satisfy their obligations under the Easement;
  - c. Arising out of, directly or indirectly due to, any accident or any other occurrence causing injury to any person or persons or property resulting from or in connection with the Owners' use of the Easement of the improvements thereon or any part thereof or connect thereto;
  - d. For which the Easement and improvements or any part thereof or the Town as owner thereof or interested herein may hereafter without fault by the Town become liable, and especially, but not exclusively, and such liability, loss, cost, damage or expense that may arise out of any statue, ordinance or regulation.
2. The Owner shall also, as the times prior to the termination of expiration of the lease term, indemnify the Town against all liens and charges of any and every nature that may at any time be established against the premises or any improvement thereon or any part thereof, or connected thereto, as a consequence, direct or indirect, of any act of omission of the Owners' interest under the Easement.

3. The Owner shall also indemnify the Town against all costs, counsel fees and liabilities incurred in or about such claim or in or about any action or proceeding brought hereon. In case any action or proceeding be brought against the Town by reason of any such claim the Owners shall, on notice from the Town, resist or defend such action or proceeding by counsel, approved by the Town, which approval shall be unreasonably withheld.

4. The Owners shall carry comprehensive general liability insurance, including broad form coverage in the face amount of \$700,000 with the Town named as an additional insured. A copy of the current insurance policy shall be submitted to the Town. In the event the Colorado Governmental Immunity Act is amended, the Town shall be required to provide increased coverage so that the total amount of insurance equals the limit of liability under the Act as amended, plus \$100,000.

5. This Agreement shall be subject to the terms and provisions of the Easement.

6. This Agreement may be assigned by the Owners only with the prior written approval of the Town, which approval shall not be unreasonably withheld.

7. In the event a dispute should arise as to the interpretation or application of this Agreement, the dispute shall be resolved according to the laws of the State of Colorado.

8. As used herein, 'Owner' shall include the Owners, their heirs, successors, assigns, and invitees of any kind.

THE OWNER:

F.A. Heckendorf Jr.

*F.A. Heckendorf Jr.* 1/27/2012

Date

*Susan Carlson* 01-27-2012

Date

Susan Carlson

*Carl C. Heckendorf*

Carl C. Heckendorf

Date Dec. 15, 2011

TOWN OF GRAND LAKE:

By: *Judy M. Burke*  
Judy M. Burke, Mayor

Date May 2, 2012

