

2021-009750

Klamath County, Oregon

06/22/2021 10:27:00 AM

Fee: \$112.00

After recording, return to:

Michael C. Petersen
Merrill O'Sullivan, LLP
805 SW Industrial Way, Suite 5
Bend, Oregon 97702

DECLARATION OF ACCESS EASEMENT

This Declaration of Access Easement ("**Declaration**") is executed this 17th day of June, 2021 by William L. Schmeck and Cindy M. Schmeck (Collectively "**Declarants**").

RECITALS

A. Declarants own fee title to the parcel of land commonly known as 6575 Old Fort Road, Klamath Falls, Oregon, ("**Lot 1503**"), described more particularly in the attached Exhibit A.

B. Declarants own fee title to an adjacent parcel of land commonly known as Lot 1502 Old Fort Road, Klamath Falls, Oregon, ("**Lot 1502**"), described more particularly in the attached Exhibit A.

C. Lot 1502 is north of and adjacent to Lot 1503. Approximately 105 feet south of the property line between Lot 1502 and Lot 1503, a gravel road runs northeast from Old Fort Road and across a portion of Lot 1503 and then across Lot 1502 ("**Gravel Roadway**"). The Gravel Roadway is the only access road from Old Fort Road to Lot 1502.

D. Declarants intend to sell their interest in the Lot 1502 Parcel and hereby declare the access easement created herein shall be perpetual, permanent, and non-exclusive. Declarants intend that this Declaration shall be binding on and inure to the benefit of the Lot 1502 Parcel and the rights and obligations set forth in this Declaration shall run with and be appurtenant to the Lot 1502 Parcel.

DECLARATION OF ACCESS EASEMENT AND MAINTENANCE PROVISIONS

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees as follows:

1. DECLARATION OF EASEMENT.

Declarant hereby grants, for the benefit of the Lot 1502 Parcel, a private, perpetual, nonexclusive easement (the "**Easement**") over and across the Gravel Roadway situated on the Lot 1503 Parcel as depicted in Exhibit B. The Easement shall be fifteen feet (15') in width from the center of the Gravel Roadway. The Easement will be used solely for the purposes of providing residential vehicular and pedestrian access to and from a single residence and any permitted auxiliary dwelling units on the Lot 1502 Parcel. The Easement may be used for such ingress and egress purposes by the owner of the Lot 1502 Parcel (the "**Lot 1502 Owner**"), successors in interest, and the tenants, invitees, and agents of the Lot 1502 Owner (collectively, the "**Users**"). The use of the Easement by the Users shall be in common with the use by the Lot 1503 Owner of that portion of the Easement that runs over Lot 1503. No above-ground structures, barriers, fences, buildings, or other improvements of any kind will be installed in the Easement other than roadway surfaces and improvements. Declarant reserves the right to install utilities, cables, landscaping, signage, concrete and asphalt surfaces, and other improvements in the Easement from time to time, together with the right to grant to third parties any of such reserved rights, as long as such use does not unreasonably interfere with the Lot 1502 Owner's permitted uses of the Easement. No Users of the Easement will park any vehicles in the Easement. The grant of the Easement is made subject to all exceptions to title on file or of record in the Official Records of Deschutes County, Oregon.

1.1. Nature of Easement. The Easement granted herein will be appurtenant to, and for the benefit the Lot 1502 Parcel. Any conveyance of fee title to Lot 1502 Parcel will include a conveyance of the Easement, regardless of whether the Easement is specifically identified in the instrument of conveyance.

1.2. Maintenance. The Lot 1502 Owner will, at its sole cost and expense, repair any damage to the Easement caused by any Users. Should the Lot 1502 Owner fail to correct any deficiency in its compliance with such repair obligation (an "**Uncured Deficiency**") prior to the expiration of 30 days after the effective date of notice of such Uncured Deficiency from the Lot 1503 Owner, then the Lot 1503 Owner, at its option (without any obligation to do so), may correct the Uncured Deficiency for the account of the Lot 1502 Owner, who will reimburse the Lot 1503 Owner for all expenses it incurred in curing such default, together with interest thereon at the rate of 12 percent per annum from the date expended until the date reimbursed to the Lot 1503 Owner. The Lot 1503 Owner will have no obligation to maintain or repair the Easement, and the Lot 1502 Owner and any parties claiming by, through, or thereunder will be deemed to have elected to use the Easement at their sole risk. The Lot 1502 Owner, after reasonable notice to the Lot 1503 Owner, may make repairs and surface improvements to the Easement from time to time at its sole risk and expense.

1.3. No Dedication. Nothing contained herein will be deemed to be a gift or dedication of any portion of the Easement to the general public, for the general public, or for any public use or purpose whatsoever.

1.4. Successors. This Declaration will be binding on, and inure to the benefit of, the owners of the Lot 1503 Parcel and the Lot 1502 Parcel and their respective heirs, successors and

assigns, lessees, mortgagees.

2. EFFECT OF THIS AGREEMENT.

The Easement granted hereunder shall run with the land as to all property burdened and benefited by such Easement. The rights, covenants and obligations contained in this Declaration shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under a deed of trust). Upon transfer of a party's interest in its property, by deed or contract, such party shall be relieved of all personal liability for future performance of this Declaration.

3. CONSIDERATIONS.

The true consideration for the rights and interests granted under this Declaration are the mutual promises contained herein.

4. INDEMNIFICATION.

The Lot 1502 Owner will indemnify and hold the Declarants and Lot 1503 Owner harmless for, from and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, including but not limited to attorney's fees, arising out of or relating to any act or omission of the Users related to the Easement.

5. MISCELLANEOUS.

5.1 Binding Effect; No Assignment. This Declaration is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

5.2 No Third-Party Beneficiaries. Nothing in this Declaration, express or implied, is intended or may be construed to confer on any person, other than the parties to this Declaration, any right, remedy, or claim under or with respect to this Declaration.

5.3 Notices. Any notice required or permitted by this Declaration must be in writing and given by delivering the same in person to the recipient or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the address of the Lot 1502 or Lot 1503 Parcel, as applicable, as shown on the current records of the tax assessor for Klamath Falls County, Oregon, with respect to the parcel in question.

5.4 Amendments. This Declaration may only be amended by written instrument executed by the then current owners of the Lot 1502 and Lot 1503 Parcels. The writing must refer to this Declaration.

5.5 Further Assurances. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Declaration.

5.6 Waiver. Any provision or condition of this Declaration may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

5.7 Governing Law. This Declaration will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

5.8 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Declaration, to rescind this Declaration, or otherwise with respect to the subject matter of this Declaration, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

5.9 Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

5.10 Exhibits. The exhibits referenced in this Declaration are part of this Declaration as if fully set forth in this Declaration.

5.11 Severability. If any provision of this Declaration is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Declaration will not be impaired in any way.

5.12 Recording. The parties shall record the Declaration and any Addendums thereto.


5.13 Assignment Prohibited; Benefits Run with the Land. The rights and obligations set forth in this Declaration shall run with and be appurtenant to the described Parcels. The rights herein granted may not be extended to other property.


5.14 Consents. Whenever the consent or approval of a party is required to be given hereunder, such consent or approval will not be unreasonably withheld, delayed, or conditioned unless the provision in question expressly stipulates another standard of approval.

5.15 Entire Agreement. This Declaration constitutes the entire agreement and understanding of the Declarant with respect to the subject matter of this Declaration and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.


IN WITNESS WHEREOF, Declarants executed this Declaration of Access Easement and entered into this Declaration as of the date first written above.


DECLARANTS AND LOT 1503 PARCEL
OWNER:


Cindy M. Schmeck


William L. Schmeck

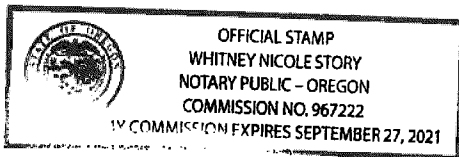
DECLARANTS AND LOT 1502 PARCEL
OWNER:

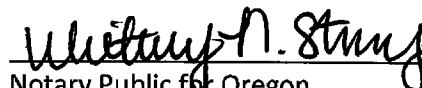

Cindy M. Schmeck


William L. Schmeck

STATE OF OREGON)
) ss.
County of Klamath)

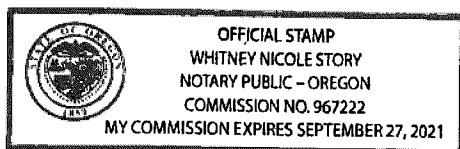
This instrument was acknowledged before me this 17 day of June, 2021, by Cindy M. Schmeck.




Notary Public for Oregon
My commission expires: September 27, 2021

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me this 17 day of June, 2021, by William L. Schmeck.



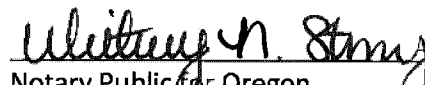

Notary Public for Oregon
My commission expires: September 27, 2021

EXHIBIT A
PROPERTY LEGAL DESCRIPTIONS

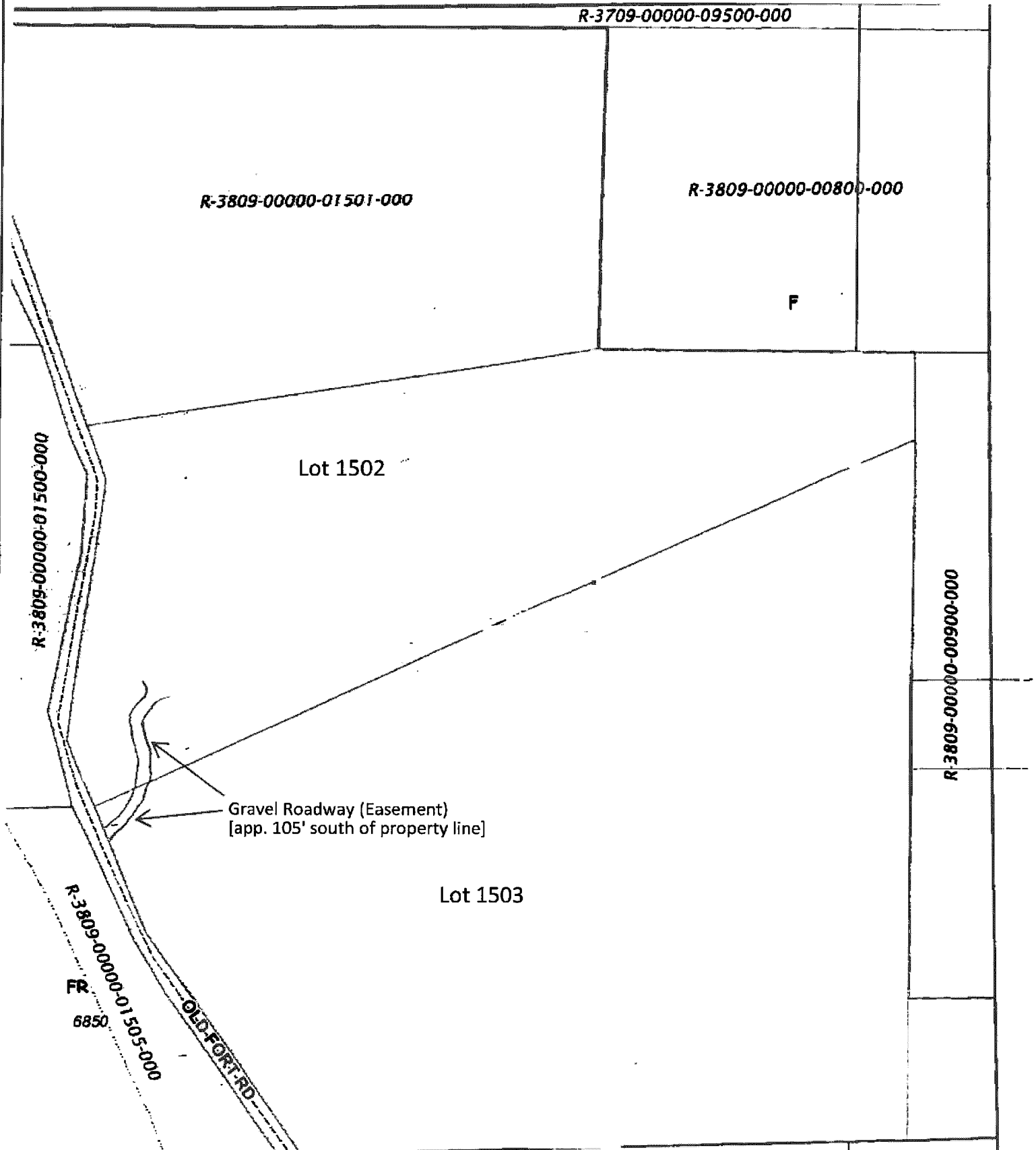
Lot 1503 Parcel:

Parcel 3 of land partition 41-96, being parcel 2 of land partition 73-94 situated in Section 3, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Lot 1502 Parcel:

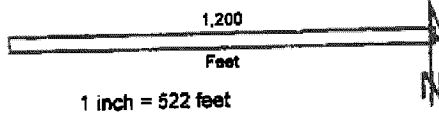
Parcel 2 of land partition 41-96, being Parcel 2 of land partition 73-94, situated in Section 3, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Exhibit B
Depiction of Easement



Klamath County

Declaration of Access Easement
P. 7 of 7



Date Printed: **10/16/08**

This map is for planning purposes only. This map has been prepared for internal use by Klamath County only. Accuracy and completeness is not guaranteed to any other agency, public or private.