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06/17/2024 09:43:44 AM

Fee: \$102.00

DECLARATION OF NO-BUILD EASEMENT AGREEMENT
PERMIT NO. 483-24-001244-STR

RECITALS

- A. Declarant Lyle Smith is the owner of a parcel of real property, as more fully described as Parcel 1 in Section 1 ("Legal Description") below.
- B. Declarant Nicholas & Necia Porto are the owners of a parcel of real property, as more fully described as Parcel 2 in Section 1 below.
- C. Declarant Nicholas & Necia Porto have an approved building permit from Klamath County. Chapter 60 of the Planning Department Development Standards, Section 62.040 prohibits placing an accessory structure or building in an R2 zone with greater than fourteen feet average height within twenty-five feet of the front or rear lot lines. The new accessory structure on Parcel 2 described in Section 1 below is ten feet from the existing rear property line.
- D. In exchange for the promises under this Declaration of No-Build Easement Agreement ("Agreement"), Declarants have requested that the County approve an alternative method of meeting the Setback code requirements described above.
- E. Declarants further desire to burden Parcel 1 with a no-build easement in perpetuity to benefit Parcel 2, effective upon execution of this Agreement.
- F. Declarants have agreed not to build any new or additional structures within the No-Build Easement Area described below while they own the properties described in Section 1 of this Agreement, except as otherwise provided in this Agreement.
- G. Declarants have further agreed to record this Agreement to provide record notice of the terms of this Agreement, and to bind subsequent transferees of the parcels described in Section 1 below to the terms of this Agreement.
- H. In consideration of the promises in this Agreement, NOW, THEREFORE, the Declarants agree as follows:

AGREEMENT

1. **LEGAL DESCRIPTION.** The properties that are subject to this Agreement are as follows:
 - a. The property(ies) to be burdened by the No-Build Easement is/are:
 Parcel(s) 1, as more fully described in Exhibit "B" attached hereto.
 - b. The property(ies) to be benefitted by the No-Build Easement is/are:
 Parcel(s) 2, as more fully described in Exhibit "B" attached hereto.
 - c. The No-Build Easement Area is as follows:
 A 20-foot by 60-foot No-Build Easement on the West side of Parcel 1, as shown and described more fully in Exhibits "A" attached hereto (the "No-Build Easement Area").
2. **NO-BUILD EASEMENT AREA RESTRICTIONS.** No new or additional above-ground structure, including, but not limited to, a dwelling unit, garage, shed, fence or any other above-ground building or structure, or eaves or other projections, shall be erected, constructed, placed or maintained upon any portion of the No-Build Easement Area.
3. **TERM AND BINDING EFFECT.** This Agreement shall be effective as of the date of the signature(s) below and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for the benefit of Parcel 2 and burdening Parcel 1 and shall be binding on the Declarants, their respective heirs, executors, administrators, successors, and assigns and all current and future owners of the parcels described in Section 1 above and all persons claiming title, possession,

or ownership of or to such properties.

4. MODIFICATION AND TERMINATION. The Declarants and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the Klamath County. If this Agreement is a condition of approval of a property division, Klamath County requires such condition to be modified before permitting this Agreement to be terminated or dissolved or permitting a party to withdraw from this Agreement.

5. THIRD PARTY BENEFICIARY. _____ Klamath County is intended to be the sole third-party beneficiary of this Agreement.

6. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon. Any action arising out of or relating to this Agreement shall be commenced in the Superior Court Klamath Falls, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Klamath Falls Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Klamath Falls, Oregon.

7. NOTICES. Any notice under this Agreement shall be made in writing and sent Klamath County at the address below and to each owner via first class mail, in care of the street address of the owner's lot, or in the event the owner does not reside on said property, in care of the current property tax notification address of the property; provided, however, that an owner can change the notification address by written notice to each other owner and the Klamath County.

Klamath County:

Klamath County Clerk
305 Main St.
Klamath Falls, OR 97601

8. INDEMNIFICATION. The Declarants, and their respective successors and assigns, shall indemnify, defend, and hold harmless Klamath County, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs brought against any of them arising out of or resulting from the terms of this Agreement.

9. AUTHORITY TO EXECUTE AGREEMENT. The Declarants expressly represent and warrant that the persons executing this Agreement are duly authorized to do so. This Agreement may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

10. SEVERABILITY. Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

DECLARANT:

[Signature] DATE: 6/15/24
(signature)

By: Nick Porto Necia Porto
(printed name)

Title: Owners

ADDRESS: 2609 Vale RD. Klamath Falls, OR 97603
(mailing address)

STATE OF OREGON

County of Klamath)

Personally appeared before me this 15th day of June, 2024,
Ruthann Baker Nicholas Porto (name) and acknowledged the foregoing instrument to be
his/her voluntary act and deed. and Necia Porto

By: [Signature]
Notary Public for Oregon

My Commission Expires: 12/12/2026



DECLARANT:

Lyle J. Smith DATE: 6 15 24
(signature)

By: Lyle Smith
(printed name)

Title: Owner

ADDRESS: 2650 Aurora Dr, Klamath Falls, OR 97603
(mailing address)

STATE OF OREGON

County of Klamath)

Personally appeared before me this 15th day of June, 2024,
Ruthann Baker Lyle Smith (name) and acknowledged the foregoing instrument to be
his/her voluntary act and deed.

By: [Signature]
Notary Public for Oregon

My Commission Expires: 12/12/2026



Exhibit A

An area of land in the Southeast quarter of Section 6, Township 39 South, Range 10 East, Willamette Meridian. Also lying within Lot 9, Block 1 of Vale Dean Canyon, Tract 1198 and being more particularly described as follows:

The Westerly 20.00 feet of the Northerly 60.00 feet of Lot 9, Block 1, Vale Dean Canyon.



A handwritten signature in black ink, appearing to read "Andrew A. Paul", written over the stamp below.

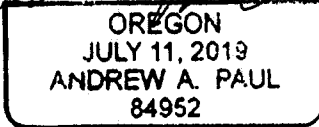


EXHIBIT B
Legal Description of Parcels

Parcel 1: 3910-006D0-01500-000, Vale Dean Canyon, Block 1, Lot 9 POR Lot 8

Parcel 2: 3910-006D0-02500-000, Vale Heights TR 1386, Lot 1