



# McMINNVILLE FIRE DEPARTMENT

175 NE FIRST STREET • McMINNVILLE, OREGON 97128 • PHONE 503.435.5800 • FAX 503.435.5815

RECEIVED

DEC 28 2020

COMMUNITY DEVELOPMENT  
CENTER

Setbacks  
Duplex  
Vacation

July 16, 2019

Steve Allen  
McMinnville Oregon

Steve,

This letter is regarding our conversations about the additional development of residential lots or future dwellings for the proposed lots located off of Hillary with access off of Fellows (see attached map).

McMinnville Fire Department has no additional requirements for access for the proposed lots, in addition, the fire department will not require the installation of a fire hydrant for water supply if all residential dwellings are equipped with residential fire sprinklers installed per NFPA 13D standards.

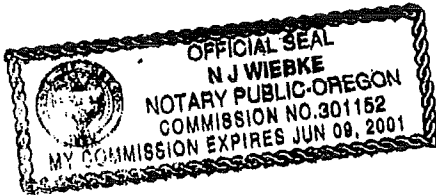
Regards,

Debbie McDermott  
Assistant Chief/ Fire Marshal  
McMinnville Fire Department  
175 NE 1<sup>st</sup> Street  
McMinnville, OR 97128  
503.435.5802  
debbie.mcdermott@ci.mcminnville.or.us

STATE OF OREGON            )  
  ) ss.  
County of Yamhill            )

Personally appeared the above-named Steven D. Allen and acknowledged the foregoing instrument as his voluntary act and deed this 9<sup>th</sup> day of January, 2000.

  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires 6-7-01



**EXHIBIT A**

That land lying within SW 1/4 Section 20, T. 4 S., R. 4 W., Willamette Meridian, Block F, COSINE'S THIRD ADDITION to the Town of McMinnville, in the Samuel Cozine DLC #56, Yamhill County, Oregon, described as follows:

Beginning at the intersection of the center of Cozine Creek with the center line of Gilson Street, now vacated; thence North 89° 59' 32" West 302.39' along the center line of vacated Gilson Street the east line of TALL OAKS; thence North 00° 15' 19" West 385.64' along the West line of TALL OAKS to the south margin of Fellows Street; thence South 89° 59' 32" East 211.47' along the south margin of Fellows Street to the center of Cozine Creek; thence southerly along the center of Cozine Creek to the point of beginning.

**EXHIBIT B**

That land lying westerly of Cozine Creek within SW 1/4 Section 20, T. 4 S., R. 4 W., Willamette Meridian, Block L, COSINE'S THIRD ADDITION to the Town of McMinnville, in the Samuel Cozine DLC #56, Yamhill County, Oregon.

Owners Parcel A: Delane Smith and Sandra Smith

Owners Parcel B : Steve Allen and Mary Bernards Allen

### DRIVEWAY CONSTRUCTION AND MAINTENANCE AGREEMENT

The following is to provide for the construction and maintenance of a driveway within a perpetual, non-exclusive easement for access and utilities that has been granted by the platting of said property to be recorded contemporaneously with this Agreement, and located on that property described in Exhibit "A."

**Construction** - The costs of constructing the driveway shall be born by the parcels required to install a segment of the driveway. For example, the beginning of the driveway is located on Parcel 1 at the north end of the original parcel where it meets Fellows Street. Parcel 1 would bear the entire cost of such construction but will only be required to construct so much as is needed to serve Parcel 1. In the event of the development of Parcel 2, Parcel 2 would be responsible for the total cost of constructing any extension of the driveway on Parcel 1 as well as all of the cost of such construction on Parcel 2. In the event of development of Parcel 3, Parcel 3 would be responsible for the cost of any extension of the driveway on Parcel 2 as well as all of the cost of such construction on Parcel 3.

Nothing contained herein shall require the owner of Parcel 2 to build or maintain the driveway on Parcel 2 anymore that is needed to access Parcel 2 from Parcel 1, nor require the owner of Parcel 3 to build the driveway within the easement over Parcel 2 and Parcel 3, provided access is granted to Parcel 3 in accordance with all applicable laws, regulations and ordinances.

The easement will provide access to one and possibly two parcels located on property located to the south of the property in Block L of the Cozine Addition as described in the attached "Exhibit B." Those parcels shall be responsible for the cost of widening the existing segments of the driveway as may be required by any statute, regulation, ordinance or condition placed upon it by the City of McMinnville in the granting of a land use decision or building permit. They shall also be responsible for the costs incurred in constructing the driveway extension across Parcels 1, 2 and 3 needed to reach the south boundary of Parcel 3, to the extent such extensions are not already in place.

Due to fire code standards, the noise and dust associated with gravel driveways, the undersigned require that any driveway constructed within the easement shall be made of asphaltic concrete or Portland cement concrete except that any additional

After Recording Return to:

Anita Crouser  
16500 NW Willis  
McMinnville OR 97128

Page 1 of 5 DRIVEWAY CONSTRUCTION  
AND MAINTENANCE AGREEMENT

OFFICIAL YAMHILL COUNTY RECORDS  
CHARLES STERN, COUNTY CLERK



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10:11:07 AM 1/16/2001

DMR-AGRDMR Cnt=1 Stn=2 ANITA  
\$25.00 \$10.00 \$11.00

\$46.00

width requirement to the existing driveway needed to serve the property described in Exhibit B to meet fire code standards may be made of compacted rock only beyond a 15 feet width. Asphalt or concrete shall not be required beyond the 15 feet width.

Any construction, improvement or repair undertaken pursuant to this agreement shall carry with it a minimum of a one year warranty in the construction, design, materials, placement and workmanship of the improvement or repair against any failure and or defect in the construction, design, materials, placement and workmanship which is discovered prior to the expiration of one year warranty commencing from the total completion of the improvement or repair.

Nothing herein shall require the Allens, or successor owners of the property described in Exhibit B, to pay for the construction or maintenance of the driveway until such time as they make more than incidental use and/or begin development, of their property. The Allens or the current owner of said property can, at any time, construct a rock driveway within the easement to their parcel to the south of and across parcels 1, 2 and 3. Prior to the sale or occupancy of any residence on said property described in Exhibit B, the driveway must be paved to at least 15 feet in width.

**Maintenance** - The goal of this agreement is to assess against each parcel the cost of maintenance in proportion to the use each parcel makes of the driveway and to charge each parcel only for maintenance for those segments of the driveway which the parcel owner uses. Upon the construction of the driveway, each of the parcels should share in the cost of maintaining the new driveway by dividing the cost of such maintenance by the use of a fraction made up of the denominator consisting of the total linear footage of each parcel's use of such driveway, divided by the number of parcels using the driveway and the cost of maintenance of that segment of the driveway being the numerator. The result would then be the cost to be paid by each of the parcel owners. For illustrative purposes assume the total length of the driveway is 425 feet from Fellows Street to the South boundary of Parcel 3. Further assuming that each parcel used the following amounts of the driveway: Parcel 1 (105'); Parcel 2 ( 236'); Parcel 3 (364'); Parcels 4 & 5 (425' each). Thus, Parcel 1 would pay 50% of the cost of maintaining the 105' used by Parcel 1 if there were only one other parcel using the driveway; 33% if there were 3 parcels using it; 25% if there were 4 and 20% if there were five parcels using the driveway. Parcel 2 would pay either 50%, 33%, 25% or 20% of the first 105, then either 100%, 50%, 33% or 24% of the remaining 131'. Assuming development of Parcels 1 and 2, Parcel 3 would pay 33% of the first 105', 50% of the next 131' and either 100%, 50% or 33% of the remaining 128'. Parcels 4 and 5 would each pay either 25% or 20 % of the first 105'; 50%, 33% or 25% of the next 131'; 100%; 50% or 33% of the next 61'. Nothing herein shall require a parcel owner to pay for the maintenance of a segment of the driveway that does not serve his or her parcel. It is further understood that incidental use of a portion of the driveway

shall not be used in apportioning maintenance costs. For example, if the owner of Parcel 1 were to access, on an infrequent basis, the southerly portion of that Parcel by using that segment of the driveway constructed for access beyond that Parcel, the owner would not be charged maintenance costs for that segment as long as the use did not damage or place an extraordinary load upon that segment.

**Conduct of Repairs.** All repairs and maintenance shall be made promptly after the decision that such repairs and maintenance are needed.

Decisions as to the condition of the roadway at any given time, the necessity of repairs or maintenance work, the existence of disproportionate damage other than ordinary wear and tear and the cause of such damage, the length of time in which to make repairs and the decision as to who is to perform such repairs and maintenance shall be as agreed by the parties. If the parties cannot agree within thirty (30) days of the request of one party, the matter shall be submitted to binding arbitration pursuant to the procedures adopted by the court system of the State of Oregon or pursuant to such other procedures as the parties may agree upon. Nothing herein shall prevent the parties from seeking mediation of the dispute and the 30 day period described herein shall be tolled during any such mediation attempt.

The new driveway is intended for residential use only and any extraordinary use by the parcel owners, their agents, employees and any person or entity coming upon their parcel causing more than ordinary wear and tear would be the responsibility of the owner, owners, or purchasers of that parcel. It is further understood that any damage to or deterioration of the driveway caused by truck and other traffic associated with the construction on and improvement of the parcels served by the driveway is not "ordinary wear and tear" and the owner of the parcel causing such traffic shall be responsible for the cost of restoring the driveway to its pre-construction condition.

In the event of legal action being taken by one parcel owner against another for enforcement of the provisions of this Driveway Construction and Maintenance Agreement, the prevailing party shall be entitled to recover a reasonable attorney fee and costs and disbursements at trial and upon any appeal therefrom.

This Agreement shall run with the land and be binding upon the undersigned who are the legal owners of the real property described in the attached Exhibits A (Parcel A) and B (Parcel B) and shall bind our heirs, successors, assigns of the interest  
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in the land, their legal representatives and all owners and occupiers of land benefitting from the use of the easement.

Owners of Parcel A:

Sandra G. Smith

Delane Smith  
Delane Smith

Sandy Smith  
Sandy Smith

Owners of Parcel B:

Steven D. Allen  
Steven D. Allen

Mary Bernards Allen  
Mary Bernards Allen

STATE OF OREGON )  
 ) ss.  
County of Yamhill )

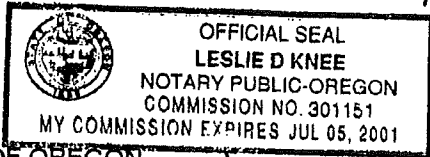
Personally appeared the above-named <sup>Sandra G. if</sup> ~~Sandy~~ Smith and acknowledged the foregoing instrument as her voluntary act and deed this 9 day of JANUARY, 2000. <sup>if</sup>



Leslie D. Knee  
Notary Public for Oregon  
My Commission Expires 7/5/2001

STATE OF OREGON )  
 ) ss.  
County of Yamhill )

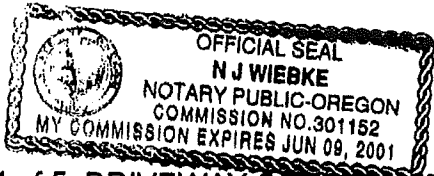
Personally appeared the above-named <sup>I:</sup> Delane Smith and acknowledged the foregoing instrument as his voluntary act and deed this 9 day of JANUARY, 2000. <sup>if</sup>



Leslie D. Knee  
Notary Public for Oregon  
My Commission Expires 7/5/2001

STATE OF OREGON )  
 ) ss.  
County of Yamhill )

Personally appeared the above-named Mary Bernards Allen and acknowledged the foregoing instrument as her voluntary act and deed this 9<sup>th</sup> day of January, 2000.



N.J. Wiebke  
Notary Public for Oregon  
My Commission Expires 6-9-01