

MTC 1396-6356

DECLARATION OF DEDICATION OF ROADWAYS AND COVENANTS AND CONDITIONS  
FOR ACCESS RESPONSIBILITY AND ROAD MAINTENANCE FOR THE  
ELMWOOD HOMEOWNERS ASSOCIATION

The undersigned, Cathy Cogar, the record owner of real property situated in Klamath County, Oregon described as:

The SE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, Township 39 South, Range 9 East of the Willamette Meridian and Lots 1 through 7 and the East 20 feet of Lot 8, ELMWOOD PARK, EXCEPTING THEREFROM that portion conveyed to the United States of America recorded in Volume 99, Page 481 and that portion conveyed to Klamath County recorded in Volume M77, Page 11849 Deed Records of Klamath County, Oregon. (The portion of the above description lying North of ELMWOOD PARK is also described as Lots 1, 2 and 3 of Land Partition No. LP 12-92 Cogar as filed in Klamath County, Oregon.)

does hereby make the following Declaration of Dedication of Roadways and Covenants and Conditions for Access Responsibility and Road Maintenance for the Elmwood Homeowners Association covering the above described real property, specifying that the Declaration shall constitute covenants to run with all of the land, and shall be binding on all persons claiming under them and that these Covenants and Conditions shall be for the benefit of and be a limitation upon all future owners of said real property.

A. ACCEPTANCE AND DEDICATION OF ROADWAYS

1. **Acceptance of Bureau of Reclamation Access.** The undersigned, for the use and benefit of the above described real property and for the use and benefit of the future owners of the above described real property, hereby agrees to accept the following described access over the United States Bureau of Reclamation ("USBR") 1-C-7 Drain, to wit:

An access road over a portion of the USBR 1-C-7 Drain situated in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, Township 39 South, Range 9 East of the Willamette Meridian, being more particularly described as follows: Beginning at a point on the Southerly right of way line of the USBR 1-C-7 Drain from which the SW 1/16 corner of said Section 14 bears South 89°47'00" East 182.08 feet and South 00°19'22" East 30.00 feet; thence North 89°47'00" West along the said Southerly right of way line 30.00 feet; thence North 00°13'00" East 40.00 feet to a point on the Northerly right of way line of said 1-C-7 Drain; thence South 89°47'00" East along said Northerly right of way line 30.00 feet; thence South 00°13'00" West 40.00 feet to the point of beginning with all bearings based on

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**"Tract 1064 First Addition to Gatewood", Klamath County,  
Oregon**

under the terms and conditions as required by the USBR and to be a portion of Elmwood Road and to be governed by the Elmwood Homeowners Association as set forth in this Declaration.

**2. Dedication of Roadway.** The undersigned, for the use and benefit of the above described real property and for the use and benefit of the future owners of the above described real property, hereby dedicates the following described Roadway hereinafter called "Elmwood Road", to wit:

Beginning at a point on the Northerly right of way line of the USBR 1-C-7 Drain from which the SW 1/16 corner of Section 14, Township 39 South, Range 9 East of the Willamette Meridian bears South 00°19'22" East 70.00 feet; thence West along the Northerly right of way line of the USBR 1-C-7 Drain 668.00 feet; thence North 30.00 feet; thence East parallel with the Northerly right of way line of the 1-C-7 Drain 668.00 feet to the East line of the NW¼ SW¼ of Section 14; thence South 30.00 feet to the point of beginning, AND ALSO, Beginning at a point on the Northerly right of way line of the 1-C-7 Drain which intersects with the lot line common to Lots 3 and 4 of ELMWOOD PARK; thence West along the Northerly right of way line of the 1-C-7 Drain 15.00 feet; thence North parallel with the lot line common to Lots 3 and 4 to the drain canal as more fully described in Land Partition No. LP 12-92 Cogar; thence East 30.00 feet; thence South parallel with the lot line common to Lots 3 and 4 to the North line of the 1-C-7 Drain; thence West along the North line of the 1-C-7 Drain 15.00 feet to the point of beginning.

under the terms and conditions to be governed by the Elmwood Homeowners Association as set forth in this Declaration.

**B. ORGANIZATION OF ELMWOOD HOMEOWNERS ASSOCIATION**

**3. Nature of Organization and Powers.** The Elmwood Homeowners Association shall be an unincorporated association as provided in ORS 94.625 and shall have the powers of a homeowners association as provided in ORS 94.630. The Elmwood Home Owners Association shall act exclusively through its Agent as set forth in this Declaration.

**4. Membership.** Members of the Association shall consist of legal owners or contract purchasers, or their successors, of each parcel of property contained in the real property which is the subject of this Declaration. Where two or more individuals are in joint ownership of a parcel they shall constitute a single member. Membership in the Association may be terminated only after

**2. DECLARATION**

divestment by the Member of all interest in the property served by Elmwood Road and by payment of all accrued assessments.

5. **Designation of Agent.** Cathy Cogar, 301 Van Ness Street, Klamath Falls, OR 97601, is Designated Agent for the Association for service of process, bills or other notices on behalf of its Members. The Designated Agent may delegate powers and duties herein to such person as she shall select. The Designated Agent shall be changed or replaced only with his or her consent and by a majority vote of the Members, which voting may be by mail, but the change or replacement shall be effective only upon thirty (30) days' notice delivered personally or by certified mail to the USBR office in Klamath Falls, Oregon.

6. **Membership List.** In January of each year the Association shall prepare a list of the names and addresses of its Members showing parcels of property owned by each individual Member. This list shall be provided to the USBR office in Klamath Falls, Oregon on or before March 1 of each year.

#### C. DUTIES OF HOMEOWNERS

7. **Liability.** Each Member of the Association shall be personally liable to the Association for his or her prorata share of fees, expenses and assessments. The Association shall have the authority and responsibility to collect the assessments in an equitable fashion and to file a lien against the property of a delinquent Member and to foreclose the lien in accordance with the laws of the State of Oregon. These remedies shall be in addition to and not in lieu of any remedy which might be available to the Association. Notwithstanding the delinquency of its Members, the Association shall be obligated to perform the required obligations to the USBR.

8. **Assessments.** Each Member who owns a particular parcel of property shall pay an annual fee on or before January 1 of each year, commencing on January 1, 1994. Each Member shall pay an annual fee of a minimum of \$250.00 per parcel on an annual basis. In the event the annual fee is insufficient to cover the expenses of the Association under this Declaration, including any court costs or attorney fees necessarily incurred, the excess shall be assessed to the Members on a prorata basis. The funds shall be paid to the Association's Agent, as designated, who shall maintain the funds in a bank account in the name of the Association.

9. **Obligation to United States Bureau of Reclamation.** The present and future Members of the Association do and will benefit from Elmwood Road, including the segment granted to the Association by the USBR. The Association and its Members agree to maintain the segment granted to them by the USBR and to maintain the same in accordance with USBR requirements. The segment granted to the Association by the USBR shall be used for ingress and egress

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purposes only and shall not be obstructed by any Member for any purpose unless prior written consent for the authorized use by the USBR. Each Member herein, both present and future, does hereby for himself, his heirs, successors and assigns, agree to be responsible for the performance of all of the covenants, conditions and requirements of any road agreements necessary to be entered into with Klamath County, Oregon or, in the alternative, to maintain and meet the responsibilities of road maintenance as set by Klamath County, Oregon.

10. **Hold Harmless.** Each Members agrees to indemnify and hold harmless the other Members, the USBR and Klamath County, Oregon from and against any and all law suits, claims, demands or other liabilities whatsoever arising out of their own use or use by their invitees, guests, agents or employees of Elmwood Road. Each Member assumes all risks arising out of their individual use of Elmwood Road.

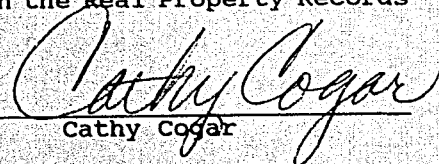
#### D. MISCELLANEOUS PROVISIONS

11. **Attorney Fees.** In the event any suit or action, or appeal therefrom, is brought to enforce any right or remedy arising from this Declaration, or any portion thereof, the losing party or parties shall pay to the prevailing party or parties, reasonable attorney's fees as determined by the court.

12. **Enforcement of Liens.** In the event of the failure of any property owner to pay any assessment as it becomes due, the Designated Agent may, on behalf of the Association, file a lien at any time thereafter by filing a notice thereof with the Recording Officer of Klamath County, Oregon, by submitting a statement in writing, verified by the oath the Designated Agent and containing (a) a true statement of the lien claimant's demand; (b) the name of the owner or reputed owner, if known, of the land to be charged with the lien; and (c) a description of the property to be charged with the lien sufficient for identification. A lien filed under this Section shall be foreclosed in the manner provided in ORS Chapter 88.

13. **No Amendment.** This Declaration, except as expressly provided herein, may not be amended or modified except by unanimous vote of the Members, nor may it be amended or modified without the written consent of the USBR.

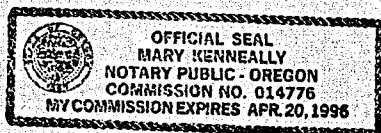
14. **Recording.** This Declaration shall be executed by the undersigned, acknowledged and recorded in the Real Property Records for Klamath County, Oregon.

  
Cathy Cogar

#### 4. DECLARATION

STATE OF OREGON       )  
                               ) ss.  
 County of Klamath     )

On this 26 day of May, 1993, personally appeared  
 CATHY COGAR, now known as CATHY COGAR KING, who, being sworn,  
 acknowledged the foregoing to be her voluntary act. Before me:



Mary Kenneally  
 Notary Public for Oregon  
 My Commission expires: 4/20/96

STATE OF OREGON: COUNTY OF KLAMATH:       ss.

Filed for record at request of Mountain Title Company the 27th day  
 of May A.D., 19 93 at 9:27 o'clock A M., and duly recorded in Vol. M93,  
 of Deeds on Page 12064

FEE \$30.00

Evelyn Biehn County Clerk  
 By Annette Mueller

# 5. DECLARATION

cogaca01.004