

99 JUL 20 P1:15
GEOTHERMAL WATER WAY EASEMENT
AND
WELL AGREEMENT

THIS AGREEMENT made by and between MONTI'S CONSTRUCTION, INC., MARTIN I. MONTI (aka MARTIN MONTI), JANET L. MONTI, JAMES J. MONTI (aka JAMES MONTI) and DEBRA A. MONTI;

R E C I T A L S

A. WHEREAS, certain of the parties have heretofore entered into a certain Geothermal Well Agreement, dated the 17 day of December, 1997, recorded in the Records of the Clerk of Klamath County, Oregon, at Vol. M-97, page 41007, or as instrument number 50270, records of said county and state; and

B. WHEREAS, subsequent to the entry by certain of the parties hereto into the said Geothermal Well Agreement recorded at Vol. M-97, page 41007 and approval of the plat designated as TRACT 1327 OLD FORT ESTATES, certain of the parcels referenced in said TRACT 1327 OLD FORT ESTATES have been conveyed to certain of the parties hereto; and

C. WHEREAS, the parties hereto are owners in fee simple of Lots Nos. 25 through 33 inclusive, OLD FORT ESTATES, Klamath County, Oregon; and

D. WHEREAS, the parties hereto desire to enter into an agreement to allow for the modification of that certain GEOTHERMAL WELL AGREEMENT recorded in Vol. M-97, page 41007, and to further allow use and maintenance of the well, pump, pipes and casings, as well as to enter into an agreement to allow for the maintenance and use thereof; now, therefore,

W I T N E S S E T H:

The parties agree as follows:

1. That the within Geothermal Water Way Easement and Well Agreement shall supercede and replace all of the terms and provisions set forth in that certain Geothermal Well Agreement recorded at Vol. M-97, page 41007, which such Agreement is by this instrument voided, set aside, and held for naught; and

2. That the parties hereto (and their successors in interest as fee simple owners of that certain real property legally described as follows, to-wit:

Lots 25 through 33 inclusive, Tract 1327 OLD FORT ESTATES, Klamath County, Oregon, according to the official plat thereof on file with the Clerk of Klamath County, Oregon,

shall each have an divided interest in the water, pump, piping and casings of that certain well located on that certain real property legally described as follows, to-wit:

Lot 33, Tract 1327 OLD FORT ESTATES, Klamath County, Oregon, according to the official plat thereof on file with the Clerk of Klamath County, Oregon

which said well will be hereinafter referred to as "JOINT WELL"; and

3. Each party grants to the other an easement to appropriate water from "JOINT WELL" hereinabove described as well as the right of ingress and egress to use and maintain the well, pump, piping and casings, as they are now situated, or may be hereafter constructed or replaced in accordance with the within Agreement; and

4. Each of the parties, and/or their successors in interest, shall pay a proportionate share of all costs of electrical service to

operate and all other costs to maintain the well, pump, piping and casings for "JOINT WELL". The parties agree that before any major expense is incurred, the parties shall jointly agree to the nature and amount of such expenditure, before work is commenced, and before any such expense is incurred; and

5. Each of parties hereto agree that they shall share the water produced by "JOINT WELL" only for purposes of heating from said well the interior of residential dwellings, and domestic hot water. This Agreement shall not allow for use of waters from "JOINT WELL" for the heating of hot tubs, swimming pools, or the like, absent the consent, recorded in the Records of Klamath County, Oregon, to such utilization; and

6. Each of the parties hereto further grant an easement 10 feet in width over and across their respective parcels of property as piping is presently located, generally set forth on the excerpt from the plat map of OLD FORT ESTATES, attached hereto, marked Exhibit A, and incorporated by this reference herein as if fully set forth; which said easement shall run from "JOINT WELL" (at its existing location on Lot 33 as hereinabove described) in a generally northerly direction over and across the most westerly portions of a portion of Lot 33, and the most westerly portions of Lots 32, 31, and 30; as well as in a generally easterly direction over and across and along the southerly boundary of Lots 30 and 29; proceeding then also in a generally southerly direction over and across and along the westerly boundary of Lots 27 and 26; and

7. The easement hereinabove granted allows the fee simple owners of the dominant properties and their successor in interest to go on the said property for the purposes of installation, repair and maintenance of piping, if such replacement should become necessary to allow the continued enjoyment of the water from the well by any of the parties hereto, or their successors in interest. In the event that such repair or replacement of piping is necessary, the party completing such installation, repair or maintenance agrees to restore the surface of the servient property as nearly as possible to the same condition as it was in before such installation, repair or maintenance commenced.

8. Excepting only inasmuch as shall presently be in existence, there shall not be constructed or maintained within a ten feet (10') radius of the said well, so long as the same is operated for geothermal use consumption, any of the following: cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pig pens or other enclosures or structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides or insecticides.

9. In the event any party to this Agreement fails to pay that party's proportionate share of costs upon demand, any other party may pay the same, and further may terminate the defaulting party's right to use the geothermal water during the period of default, and may file a lien upon the real property of the defaulting party by filing a "NOTICE OF LIEN" under this agreement with the County Clerk of Klamath County, Oregon. Any non-defaulting party may foreclose the lien as provided by the present ORS Chapter 88 (or any succeeding or replacement Chapter) and shall be entitled to an award of reasonable attorney fees in such foreclosure or enforcement action, whether or not suit for action is brought, both at trial and on appeal of any such enforcement action.

10. This agreement may be modified only in writing executed by the owners of all parcels affected by the within Agreement.

11. The rights created by this Agreement shall run with the land and in the event any party sells the land subject to the within Geothermal Water Way and Well Agreement, the Purchaser shall be bound by this Agreement.

12. This Agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns. In construing this instrument, and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year set forth hereinbelow.

MONTI'S CONSTRUCTION, INC

By [Signature]

By [Signature]

Martin I. Monti

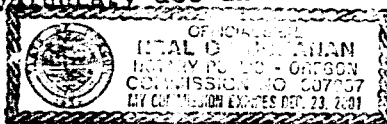
Janet L. Monti

James J. Monti

Debra A. Monti

STATE OF OREGON, County of Klamath) ss.

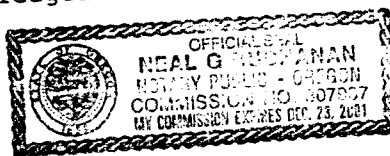
PERSONALLY appeared before me Martin I. Monti and James J. Monti as President and Secretary respectively for Monti's Construction, Inc., on this 6th day of May, 1999, and acknowledged the foregoing instrument to be their voluntary act and deed.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me Martin I. Monti, Janet L. Monti, James J. Monti and Debra A. Monti on the 6th day of May, 1999, and acknowledged the foregoing instrument to be their voluntary act and deed.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

State of Oregon, County of Klamath
Recorded 5/20/99, at 1:15 p.m.
In Vol. M99 Page 20152
Linda Smith, County Clerk
Fee \$ 40.-

[Signature]
Linda Smith