

## DECLARANT'S NAME &amp; ADDRESS

Monti's Construction, Inc.

1504 Oregon Avenue

Klamath Falls, OR 97601

## AFTER RECORDING RETURN TO:

Neal G. Buchanan

Attorney at Law

435 Oak Ave.

Klamath Falls, OR 97601

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR TRACT 1327  
OLD FORT ESTATES, KLAMATH COUNTY, OREGON**

KNOW ALL MEN BY THESE PRESENTS THAT:

This Declaration of Protective Covenants, Conditions and Restrictions is applicable to those certain parcels of real property described in Tract 1327 Old Fort Estates, situated in that certain real property located in the County of Klamath, State of Oregon, and legally described as follows, to-wit:

Certain Real property located in the SW1/4 SE1/4 and the NW1/4 SE1/4 Section 28, Township 38 S., Range 9 EWM, a replat of Block 1, Block 1A, Block 7 and Block 8, vacated portions of Warring Street, Wendling Street, and the North half of vacated Gibbs Street, Dixon Addition to the City of Klamath Falls

now known as

Lots 1 through 33 inclusive, Tract 1327 Old Fort Estates, according to the official plat thereof on file with the Clerk of Klamath County, Oregon

WHEREAS, Monti's Construction, Inc., hereinafter referred to as the "Developer," is owner in fee simple of certain of the real property herein described; and

WHEREAS, Martin I. Monti and Janet L. Monti and James J. Monti and Debra A. Monti are purchasers of fee simple interests in certain of that real property herein described and do join with Developer as Declarants in the within Declaration; and

WHEREAS, The Developer and Declarants do hereby certify that the following reservations, conditions and covenants shall become and are hereby made a part of all conveyances of the real property above described, and that the following protective covenants, conditions and restrictions shall by reference become a part of any such conveyances and shall apply thereto as fully and with the same effect as if set forth at large therein. Such conditions are as follows:

1. **PREEXISTING USE:** This Declaration of Protective Covenants, Conditions and Restrictions shall not be interpreted in a fashion so as to preclude any use, or require any alteration or change to any use or structure in existence prior to April 1, 1999.
2. **NUMBER OF LOTS:** There shall be thirty-three (33) lots or units subject to the within protective covenants, conditions and restrictions.
3. **STREETS:** Certain of the parcels of property subject to the within protective covenants, conditions and restrictions are benefited by a certain dedicated streets more specifically referred to in the plat as James Martin Court and Angela Court.
4. **ALLOCATION OF VOTES:** Each of the thirty-three (33) parcels affected by the within Declaration of Protective Covenants, Conditions and Restrictions shall be allocated one (1) vote. Each parcel shall designate the authorized voter of that parcel to the Board of Directors of the Homeowner's Association.

5. **COMMON EXPENSES:** Should the City of Klamath Falls or County of Klamath, as appropriate, fail to maintain the dedicated streets, then, and in only such an event, each of the thirty-three (33) parcels shall be liable for common expenses for maintenance of the dedicated streets in the following ratios:

- A. Each lot which has been sold to an owner and upon which improvements have been commenced shall be considered as one assessment unit.
- B. Any lot which has been sold to an owner, but upon which no improvements have been commenced, shall be considered as one-half assessment unit.
- C. Any lot owned by the Developer which is unimproved shall be considered as 1/4 assessment unit.

6. **HOMEOWNER'S ASSOCIATION; ASSESSMENTS:** For the purpose of maintaining the dedicated streets, and to preserve the unique character of the real property which is the subject of the within protective covenants, conditions and restrictions, each and every lot owner, in accepting a deed or contract for any of the individual parcels herein described, agrees to and shall be a member of and be subject to the obligations and rule of the Old Fort Estates Homeowners Association.

Each lot owner, his heirs, successors and assigns in accepting a deed or contract for any lot affected, hereby covenants and agrees to pay annually the pro rata share of the costs assessed against the lot owner's property by the Old Fort Estates Homeowners Association to carry out the purposes specified above. Said assessment shall be paid promptly when due and in the event it is not promptly paid when due shall become a lien upon the property and may be enforced by the association on behalf of and for the benefit of the other parcel owners in the same manner as any lien foreclosure.

7. **ARCHITECTURAL CONTROL COMMITTEE:** There shall be established by Developer or its successor, a permanent Architectural Control Committee which shall have the duties, rights and powers as set forth herein. The Architectural Control Committee shall be composed initially of two individuals, who shall be appointed by the Developer or its successor. If for any reason a vacancy occurs in any one of the committee positions, that vacancy shall be filled by a person appointed by the Developer or its successor. In the Absence of such an appointment, the vacancy shall be filled by majority vote of the parcels, determined pursuant to paragraph 4 hereinabove.

In order to insure that buildings constructed will be consistent with the overall plan and design motif, purchaser or parcels subject to the within protective covenants, conditions and restrictions shall not construct, modify or alter any improvement on their site until the construction plans and specifications, and a plan showing the location of the structure (site plan) have been approved by the Architectural Control Committee as to quality or workmanship and material, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevations.

Approval of said plans and specifications may be withheld, not only because of their non-compliance with any of the protective covenants, conditions and restrictions contained in this declaration, but also because of the reasonable dissatisfaction of the Architectural Control Committee with the location of the structure of the home site, the color scheme, the finish, design, proportions, shape, heights, style, or appropriateness of the proposed improvement, modification or alteration, the material used therein, the kind, shape, or type of roof proposed to be placed thereon, or because in the sole judgment of the Architectural Control Committee it would render

the proposed improvement inharmonious or out of keeping with other improvements erected on other home sites.

If, within thirty (30) days after their submission, the purchaser has not been notified in writing as to the acceptance or non-acceptance of the plans and specifications, then they shall be deemed to have been approved by the Architectural Control Committee.

8. **TERMS; AMENDMENT:** The within protective covenants, conditions and restrictions, both general and special, shall run with the land with respect to all of the above-described property, and shall be binding on all parties and all persons claiming under them unless and until amended or revoked by a majority of those entitled to vote, as set forth in Paragraph 4 hereinabove. This Declaration of Protective Covenants, Conditions and Restrictions may be amended or revoked only by duly recording a revised Declaration of Protective Covenants, Conditions and Restrictions, or an instrument which contains the amendments to this declaration or a statement revoking specific provisions. The document to be so recorded shall be signed by the owners of a majority of the parcels of real property entitled to so vote.

9. **ENFORCEMENT:** These covenants, conditions and restrictions shall be enforceable by any person owning real property subject to the same. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain the violation, recover damages, or both. Should any parcel owner employ an attorney to enforce any of the covenants, conditions or restrictions contained herein, by reason of such breach, all costs incurred in any such enforcement, including a reasonable attorney fee, shall be paid by the lot owner in default.

10. **USE OF PARCELS:** All parcels shall be used as single family residential dwelling parcels. All buildings are to be approved by the Architectural Control Committee. The following is a statement of more specific restrictions, requirements, uses and maintenance of parcels subject to the within Declaration:

A. **Temporary Structures:** No structures of a temporary character, including trailers, basements, tents, shacks, garages, barns, or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently. No manufactured homes, mobile homes, or trailers will be allowed for temporary or permanent use. However, a builder or his agents may construct or move a small construction shed upon the property, but only for the duration of the construction period (not to exceed six (6) months).

B. **Fences:** No fence, wall or hedge in excess of forty-eight (48") inches in height shall be permitted to extend from the minimum front setback line of the house to the curb line of the street. No fence shall exceed six (6) feet high on any portion of the lot. All fences shall be made of materials that are compatible with the main dwelling.

C. **Nuisances:** No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood. The shooting of firearms or dangerous weapons on the premises is prohibited. Bows and arrows may be utilized only if handled in a safe manner.

D. **Pets, Livestock and Poultry:** No animals may be kept, bred or maintained for any commercial purpose. Pigs (as indoor pets), or other domestic animals or poultry may be raised on the premises only upon approval by the Architectural Control Committee. Animals shall not be

allowed to roam uncontrolled, outside of the owner's premises.

E. **Maintenance of Parcels:** Each parcel and its improvements shall be maintained in a clean and attractive condition, in good repair and in such a fashion as to not create a fire hazard or unattractive appearance.

F. **Replacement:** If a home or improvement is partially damaged by fire or other hazard, the home is to be replaced pursuant to plans and specifications approved by the Architectural Control Committee. Such replacement shall occur within six (6) months. If a home is totally destroyed by fire or other hazard, and the owners prefer not to replace the home, the lot is to be cleared and put in a clean and attractive condition.

G. **Garbage and Refuse Disposal:** No parcel shall be used or maintained as a dumping ground for rubbish, trash, or garbage and other waste shall not be kept, except in sanitary containers at all times. All equipment for the storage or disposal of such material shall be kept in clean and sanitary condition. No rubbish may be burned or buried on or near the property affected by this Declaration except CONTROLLED weed, grass, and yard trimmings, nor shall any parcel be used for the storage of any unclean or untidy condition. Firewood must be stored in an orderly manner and not be covered with colored coverings, or coverings which will be obnoxious to the eye. No substance, thing or material shall be kept upon any parcel that will, or might, disturb the peace, comfort or serenity of occupants of surrounding property. All parcels must be maintained at all times to control and prevent grass and range fires upon the property.

All garbage containers, cuttings, refuse, fuel tanks, clothes lines and other service facilities must be screened from view of neighboring parcels.

H. **Lighting:** No offensive exterior lighting or noise making devices shall be installed or maintained on a lot without written Architectural Control Committee approval.

I. **Signs:** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than four (4) square feet to advertise the art, craft or hobby of the owner, or one sign of not more than nine (9) square feet advertising the property for sale or rent.

J. **Dwelling Quality and Size:** No building, other than a single-family dwelling for private use (and attached or separate garage for use in conjunction with such dwelling) may be constructed on any lot (except those duplexes which have been or may be constructed on Lots 31, 32 and 33). No mobile home, manufactured home, or trailer may be used as a residence. No more than one single-family dwelling not to exceed twenty-eight feet (28') in height (measured vertically and computed using average existing ground level of that portion of the lot upon which improvements are located) shall be constructed on any parcel. Garages incidental to residential use shall be of the same or acceptably similar architecture as the main home. Basements, which are daylight, split entry and split level types, shall not be considered in determining the number of stories in the dwelling. Minimum square footage per single-family dwelling is 1200 square feet, excluding the garage and porches.

K. **Building Location:** No structure shall be located on any parcel unless and until the appropriate plan has been approved by the Architectural Control Committee.

**L. Landscape:** All yard areas shall be landscaped within one year after the exterior of the main residential dwelling is finished, such landscaping to utilize grass, bark chips, evergreens or similar material in a professional manner. No tall or dry grass, weeds, or noxious plants or other nuisance shall be permitted on any parcel.

No Chinese Elm trees will be permitted.

When a dwelling has been constructed on a lot, all adjacent vacant lots owned or controlled by the dwelling owner shall be treated in a manner consistent with the treatment in existence on the parcel where the dwelling is located.

**M. Completion of Construction:** All dwellings shall be completed within one (1) year from the beginning of construction. Upon completion of the exterior of all buildings under construction, the owner may petition the Architectural Control Committee for permission to leave certain interior portions unfinished. The decision of the Architectural Control Committee with reference to such a petition shall be final.

**N. Parking:** No storage of recreational vehicles, trailers, trucks, campers, boats, boat trailers, snowmobiles, or off-road vehicles shall be permitted unless they are garaged, screened or concealed from the view of any neighbor. Parking of such items for short periods of time is allowed in driveway areas, but not on streets.

**O. Additional Subdivision:** There will be no future subdivision of the thirty-three (33) parcels subject of this Declaration. However, this prohibition shall not preclude future lot line adjustments thereto. Any such lot line adjustment shall, however, be subject to prior written approval of the Architectural Control Committee.

**P. Pollution Prohibited:** In the interest of public health and sanitation, and in order that the land above-described and all the land in the same locality may be benefited by a decrease in the hazard of water pollution, owners of any parcels affected by the within Declaration shall not use the above-described property for any purpose which will result in the pollution of sub-surface waters, or waters which flow through or lie adjacent to such property, by refuse, sewage, or other material that might tend to pollute such waters, or otherwise impair the ecological balance of the surrounding lands.

**Q. Sewage Disposal:** No individual sewage disposal system shall be permitted on any parcel, unless the system is designed, located and constructed in accordance with the requirements, standards and recommendations of all controlling public health authorities, including the State of Oregon, Department of Environmental Quality.

**11. SEVERABILITY:** Invalidation of any one of the protective covenants, conditions and restrictions contained in the within Declaration by judgment, or court order, shall in no way affect any of the other provisions, which such provisions shall remain in full force and effect.

**12. NO WAIVER PRESUMED:** The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the owners of any parcel of property affected by the within Declaration, as well as their heirs, successors, or assigns, and each of their legal representatives; and failure by any property owner or their legal representatives, heirs, successors or assigns to enforce any such covenants, conditions,

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restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 6th day of May, 1999.

MONTI'S CONSTRUCTION, INC.

By [Signature]

By [Signature]

Martin I. Monti

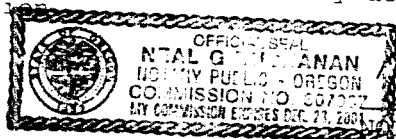
Janet L. Monti

James J. Monti

Debra A. Monti

STATE OF OREGON County of Klamath ) ss.

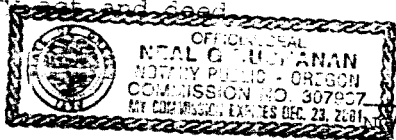
Personally appeared Martin I. Monti and James J. Monti as President and Secretary respectively for Monti's Construction, Inc. before me on the 6th day of May, 1999, and acknowledged the foregoing instrument to be the voluntary act and deed of each and the said corporation.



Neal Buchanan  
NOTARY PUBLIC FOR OREGON

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.



Neal Buchanan  
NOTARY PUBLIC FOR OREGON

State of Oregon, County of Klamath

Recorded 5/20/99, at 1:15 p.m.

In Vol. M99 Page 20155

Linda Smith, County Clerk

Fee \$ 35

Linda Smith