

DECLARANT'S NAME & ADDRESS
Monti's Construction, Inc.
1504 Oregon Avenue
Klamath Falls, OR 97601

AFTER RECORDING RETURN TO
Neal G. Buchanan
435 Oak Avenue
Klamath Falls, OR 97601

mtc S2 334-m3
**AMENDED DECLARATION OF GEOTHERMAL
WATERWAY AND WELL USE EASEMENT**

KNOW ALL MEN BY THESE PRESENTS THAT:

This Declaration of Waterway and Well Use Easement is applicable to those certain parcels of real property legally described as follows to wit:

Lots 3, 4, 5 and 6, Tract 1327 OLD FORT ESTATES,
according to the official plat thereof on file with
the Clerk of Klamath County, Oregon

Lots 1 through 7 inclusive, Block 2 SUPPLEMENTARY
PLAT OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS,
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 the real property described hereinabove; and

WHEREAS The Developer does hereby certify that the following provisions with reference to easements and use of a geothermal well shall become and are hereby made a part of all conveyances of the real property above described, and that the following provisions shall by reference become a part of any conveyance of such real property and shall apply thereto as fully and with the same effect as if set forth at large therein. Such provisions provide for the use and maintenance of the water, well, pump, pumphouse, pipes and casings, as well as to provide and allow for the maintenance and use thereof; now, therefore,

WITNESSETH:

1. That the owners of each individual lot within that certain real property legally described as follows, to-wit:

Lots 3, 4, 5 and 6, Tract 1327 OLD FORT ESTATES,
according to the official plat thereof on file with
the Clerk of Klamath County, Oregon

Lots 1 through 7 inclusive, Block 2 SUPPLEMENTARY
PLAT OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS,
according to the official plat thereof on file with
the Clerk of Klamath County, Oregon

shall each have an undivided 1/11th (one eleventh) interest in the water, well, pump, pumphouse, pipes and casings of that certain well located on that certain real property legally described as follows, to-wit:

Lot 5, 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

2. The owner of each such real property parcel or lot grants to the other owners an easement to appropriate water from "JOINT WELL" hereinabove described as well as the right of ingress and egress to use and maintain the water, well, pump, pumphouse, pipes and casings, as they are now situated, or may be hereafter con-

AMENDED DECLARATION OF GEOTHERMAL WATERWAY/WELL USE EASEMENT -1

structed or replaced in accordance with the within Declarations and

3. The owners of each of these parcels of real property, 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, pumphouse, pipes and casings for "JOINT WELL"; PROVIDED, HOWEVER, that the responsibility to pay such proportionate share shall not commence until such time as the owner of such parcel of real property shall be receiving water from "JOINT WELL". The majority of the owners of parcels of real property who are receiving water from "JOINT WELL" shall agree before any major expense is incurred, including agreement to the nature and amount of such expenditure, before work is commenced, and before any such expense is incurred; and

4. The owners of each of the parcels of real property may share the water produced by "JOINT WELL" only for purposes of heating the interior of residential dwelling, and domestic hot water. This Declaration shall not allow for use of waters from "JOINT WELL" for the heating of hot tubs, swimming pools, or the like, absent the consent of the majority of the owners of each of the subject parcels of real property to such utilization, such consent to be recorded in the Records of the Clerk of Klamath County, Oregon; and

5. Each of the owners of the above described parcels of real property 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 the subject real property, 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 5, OLD FORT ESTATES as hereinabove described) in a generally northwesterly direction (over and across the most northwesterly portions of a portion of Lot 5, OLD FORT ESTATES) to the southeasterly right of way line of Old Fort Road; thence proceeding across the Old Fort Road; thence proceeding in a generally southwesterly direction over and across (and along the southwesterly boundary of) Lots 1, 2 and 3, Block 2, SUPPLEMENTARY PLAT OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS (parallel to and adjacent to the southwesterly right of way line of Old Fort Road); proceeding also in a generally northwesterly direction over and across (parallel to and immediately adjacent to the most northeasterly boundary of) Lots 4, 5, 6 and 7, Block 2, SUPPLEMENTARY PLAT OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS:

6. The easement hereinabove created allows the fee simple owners of the dominant properties and their successors 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 the owners of each of the parcels referred to in the within Declaration, or their successors in interest. In the event that such repair or replacement of piping is necessary, the fee simple owner of property subject to the within Declaration 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.

7. 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.

8. In the event the owner of any parcel of real property which is subject to this Declaration fails to pay that party's

proportionate share of costs upon demand, the owners of a majority of the parcels of real property which are the subject of this Declaration 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.

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

10. The rights created by this Declaration shall run with the land and in the event any party sells the land subject to the within Declaration, the Purchaser shall be bound by this Declaration.

11. This Declaration 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 undersigned hereunto have set their hands and seals this 29th day of November, 2000.

MONTI'S CONSTRUCTION, INC.

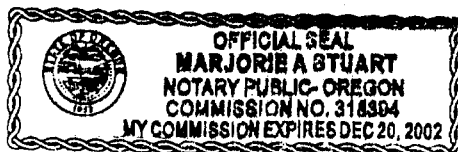
By [Signature]

By [Signature]

STATE OF OREGON/County of Klamath) ss.

WE, Martin I. Monti and James J. Monti, President and Secretary of Monti's Construction, Inc., an Oregon corporation, respectively, being first duly sworn, depose and say: That Martin I. Monti is the President and that James J. Monti is the Secretary of Monti Construction, Inc., a corporation and that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME this 29th day of November, 2000.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission expires: 12-20-02

State of Oregon, County of Klamath
Recorded 11/30/00, at 3:22 p.m.
In Vol. M00 Page 43067
Linda Smith,
County Clerk Fee \$ 31.00