

DECLARANT'S NAME & ADDRESS
Monti's Construction, Inc.
1504 Oregon Ave.
Klamath Falls, OR 97601
AFTER RECORDING RETURN TO
Monti's Construction, Inc.
1504 Oregon Ave.
Klamath Falls, OR 97601

Vol M02 Page 71881

State of Oregon, County of Klamath
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Linda Smith, County Clerk
Fee \$ 31.00 # of Pgs 3

DECLARATION CREATING SEWER EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that:

This declaration of creation of sewer easement is applicable to those certain parcels of real property legally described as follows, to-wit:

"Lots 6, 7, and 8, OLD FORT ESTATES, Tract 1327, according to the official plat thereof on file with the Clerk of Klamath County, Oregon"

"Beginning at the NE corner of Dixon Addition to the City of Klamath Falls, OR, and running thence N 45° 46' W 181.2 feet to a point on the Easterly right-of-way line of the Old Fort Klamath Road; thence N 46° 29' E along said Northerly right-of-way line a distance of 184.65 feet to a point on the 40 line; thence S 1° 02' W along said 40 line a distance of 253.21 feet to the point of beginning."

"A tract of land situated in the NE 1/4 SE 1/4 of Section 28, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at the Southwest corner of the NE 1/4 SE 1/4 of said Section; thence East along South line of said NE 1/4 SE 1/4 50 feet; thence North parallel to the West line of the NE 1/4 SE 1/4 300.69 feet to the Easterly right of way of Old Fort Road; thence South 46° 29' West along the Easterly right of way of said road 68.95 feet to the West line of the NE 1/4 SE 1/4; thence South 253.21 feet along the West line of said NE 1/4 SE 1/4 to the point of beginning."

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

WHEREAS, Developer does hereby certify that the following provisions with reference to easements and use of a sewer pipe shall become and hereby are 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 is set forth at large therein. Such provisions provide for the use and maintenance of the sewer pipe as well as to provide and allow for the maintenance and use thereof; now, therefore

W I T N E S S E T H:

1. That the owners of each individual lot referred to hereinabove shall each have an undivided one-fifth (1/5th) interest in the sewer pipe which said sewer pipe will be hereinafter referred to as "Joint Sewer Line"; and

2. The owners of each such real property parcel or lot grants to the other owners an easement to allow for the passage of sewer and drainage waters as well as the right of ingress and egress to use and maintain the joint sewer line as the same is now situated, or may be hereafter constructed or replaced in accordance with the within Declaration; and

3. The owners of each of the aforementioned parcels of real property, and/or their successors in interest, shall pay a proportionate share of all costs to operate and maintain the Joint Sewer Line; 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 connected to Joint Sewer Line; and

4. Each of the owners of the above-described parcels of real property further grant an easement sixteen feet (16') in width over and across their respective parcels of property as Joint Sewer Line is now situated, or may be hereafter constructed or replaced in accordance with the within Declaration, such sixteen foot (16') easement to be located on the most northwesterly boundary of each of the above-described parcels of real property. The said easement is immediately adjacent to Old Fort Road as currently constructed. The said easement is over and across certain of the easements created by that certain AMENDED DECLARATION OF GEOTHERMAL WATERWAY AND WELL USE AGREEMENT recorded in the Deed Records of Klamath County, Oregon, at Vol. M00, Page 44593.

5. Excepting only inasmuch as shall presently be in existence, there shall not be constructed or maintained within the sixteen foot (16') easement described herein any buildings or similar structures nor shall there be planted any trees.

6. The easement hereinabove created allows the fee simple owners of each of the dominant properties and their successors in interest to go on the said property for the purpose of installation, repair, maintenance, and replacement of Joint Sewer Line, if such replacement should become necessary to allow the continued utilization of Joint Sewer Line by the owners of each of the parcels referred to in the within Declaration, or their successors in interest. In the event that such installation, repair, maintenance or replacement of piping is necessary, the fee simple owner of property subject to the within Declaration completing such installation, repair, maintenance or replacement agrees to restore the surface of the serviant property as nearly as possible to the same condition it was in before such installation, repair, maintenance or replacement commenced.

7. 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 Joint Sewer Line 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's fees in such foreclosure or enforcement action, whether or not suit or action is brought, both at trial and on appeal of any such enforcement action.

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

9. The rights created by this Declaration shall run with the land and in the event that any party sells the land subject to the

within Declaration, the purchaser shall be bound by this Declaration.

10. 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 10th day of December, 2002.

MONTI'S CONSTRUCTION, INC.

By

STATE OF OREGON, County of Klamath) ss.

We, Martin I. Monti and James J. Monti, President and Secretary respectively of Monti's Construction, Inc., an Oregon corporation, being first duly sworn, depose and say that Martin I. Monti is the President and that James J. Monti is the Secretary of Monti's Construction, Inc. and that the foregoing instrument was signed 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 10th day of December, 2002.

Marsha Cobine
Notary Public for Oregon
My Commission expires: 11-7-03

