

M06-02919

Klamath County, Oregon

02/15/2006 08:09:21 AM

Pages 6 Fee: \$46.00

AFTER RECORDING RETURN TO:

City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

GRANTOR:

Duke Mountain, LLC

GRANTEE:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

**EASEMENT AGREEMENT AND RESCISSION
OF EASEMENT RECORDED AT M05, PAGE 14190,
KLAMATH COUNTY DEED RECORDS**

RECITALS:

- A. Duke Mountain, LLC, an Oregon limited liability company, "Grantor," is the owner of a parcel of real property legally described as follows (the "Property"): Parcel 1, Land Partition 30-93, recorded in the office of the Clerk of Klamath County, Oregon.
- B. On or about March 2, 2005, Grantor created a municipal water line easement in favor of the City of Klamath Falls, Oregon, "Grantee." This easement was recorded in the records of Klamath County on March 2, 2005 at volume M05, page 14190. The March 2, 2005 easement has a centerline as described on Exhibit B, attached hereto and incorporated herein by this reference. Because the centerline of the constructed water line has an alignment different from the centerline in the March 2, 2005 easement, Grantor and Grantee hereby intend to rescind the March 2, 2005 easement and replace it with a new easement reflecting the as-built location of the waterline.

**RESCISSION OF MARCH 2, 2005 EASEMENT
RECORDED AT VOLUME M05, PAGES 14190-14192,
KLAMATH COUNTY DEED RECORDS**

Grantor and Grantee hereby agree that the Easement created by Grantor in favor of Grantee, dated March 2, 2005 and recorded at volume M05, pages 14190-14192 is hereby rescinded and is replaced with the following Grant of Easement.

GRANT OF EASMENT

In consideration of the terms and conditions of this Easement, and other good and

valuable consideration, the sufficiency of which is hereby acknowledged, Grantor does hereby grant, bargain and convey to Grantee a permanent, non-exclusive easement for the purpose of installing, inspecting, repairing, maintaining, altering, and operating Grantee's municipal water line(s) and all necessary appurtenances in, into, upon, over, across and under a strip of land described and shown as follows (the "Easement Area"):

SEE EXHIBIT "A" ATTACHED HERETO

The Easement Area lies within the Property owned by Grantor that is legally described above and shall include the right of ingress and egress over Grantor's adjoining lands for the purposes of Grantee's enjoyment of this Easement.

The terms of this Easement are as follows:

1. **Enjoyment of Easement.** Grantor shall not erect any buildings or structures within the Easement Area that would inhibit access to Grantee's said water line(s) or cause damage to it. Grantor retains the right to utilize the Easement Area for asphalt driveways or parking area (Portland cement concrete is prohibited except for curbs and gutters) and/or landscaping, except for trees that in Grantee's judgment would interfere with the water line(s). Although this Easement is non-exclusive, Grantor agrees that any other use of the Easement Area or the ingress/egress area permitted by Grantor shall not interfere with Grantee's use and enjoyment of those areas as authorized herein.
2. **Indemnification by Grantee.** Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings asserted by third parties against Grantor and Grantor's heirs, successors and assigns (including attorney's fees, costs and expenses) that arise from or out of the Grantee's use of the Easement Area or the Property at any time.
3. **Notice Prior to Entry.** This easement shall include the perpetual right to enter upon the Property at any necessary time (so long as Grantee uses its best efforts to coordinate such access with Grantor so as not to unreasonably interfere with Grantor's use of adjoining properties).
4. **Restoration of Property.** Upon the completion of Grantee's installation of the utility line, or upon completion of Grantee's ongoing maintenance or inspection of the utility line that is installed in the Easement Area, Grantee shall restore the Easement Area and the Property to the same condition as existed prior to Grantee's entry into the Easement Area and onto the Property.

This Easement, and the rights and obligations granted and imposed herein, shall run with the property, including any division or partition of the property. The rights, covenants and obligations of this easement shall bind burden and/or benefit all subsequent purchasers of the property, the Grantee, and the heirs, successors and assigns of Grantor and Grantee.

IN WITNESS WHEREOF, I/We have hereunto set our hands this 26th day of January, 2006.

GRANTEE:
CITY OF KLAMATH FALLS

By: [Signature]
Jeff Ball, City Manager

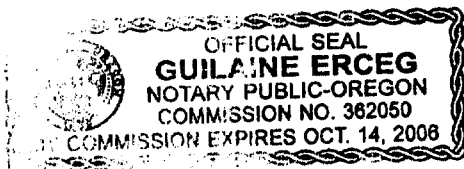
Attest: [Signature]
Elisa D. Olson, City Recorder

GRANTOR:
DUKE MOUNTAIN, LLC

By: [Signature]
Name: C.A. Galpin
Title: Manager

STATE OF OREGON)
) ss.
County of Klamath)

On January 19, 2006, personally appeared C.A. Galpin, who, being duly sworn, acknowledged to me that he/she is the representative for Duke Mountain, LLC, that the foregoing instrument was signed on behalf of Duke Mountain, LLC, that he/she is authorized to execute this instrument and that the foregoing instrument is the voluntary act and deed of Duke Mountain, LLC.

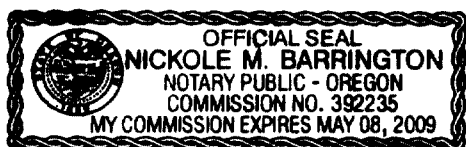


WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY PUBLIC
Notary Public for Oregon
My Commission Expires: Oct. 14, 2008

STATE OF OREGON)
) ss.
County of Klamath)

On the 26th day of January, 2006, personally appeared Jeff Ball and Elisa D. Olson, who, each being first duly sworn, did say that the former is the City Manager and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and each of them acknowledged said instrument to be its voluntary act and deed.



WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY PUBLIC
Notary Public for Oregon
My Commission Expires: 5-8-2009

EXHIBIT "A"
WATERLINE EASEMENT
JULY 2005

A STRIP OF LAND 40 FEET IN WIDTH, LYING 20 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 25 TOWNSHIP 38 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 25; THENCE NORTH 00°03'33" WEST, 162.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°55'21" EAST 49.46 FEET TO A POINT OF CURVATURE; THENCE ALONG A 500.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 4°48'41", AN ARC LENGTH OF 41.99 FEET, (THE LONG CHORD OF WHICH BEARS SOUTH 87°31'01" EAST, 41.98 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 85°06'40" EAST, 226.23 FEET TO A POINT OF CURVATURE; THENCE ALONG A 500.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 4°48'41", AN ARC LENGTH OF 41.99 FEET, (THE LONG CHORD OF WHICH BEARS SOUTH 87°31'01" EAST, 41.98 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 89°55'21" EAST, 153.66 FEET TO A POINT OF CURVATURE; THENCE ALONG A 200.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 50°31'02", AN ARC LENGTH OF 176.34 FEET, (THE LONG CHORD OF WHICH BEARS NORTH 64°49'08" EAST, 170.68 FEET) TO A POINT OF TANGENCY; THENCE NORTH 39°33'37" EAST, 416.65 FEET TO A POINT OF CURVATURE; THENCE ALONG A 100.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 42°29'16", AN ARC LENGTH OF 74.16 FEET, (THE LONG CHORD OF WHICH BEARS SOUTH 60°48'15" WEST, 72.47 FEET) TO A POINT ON THE SOUTHERLY SIDELINE OF THAT EASEMENT DESCRIBED IN VOLUME M02, PG 27393 KLAMATH COUNTY OFFICIAL RECORDS, WHICH BEARS SOUTH 52°34'25" EAST, 1255.65 FEET FROM THE SOUTH ONE-SIXTEENTH CORNER COMMON TO SECTIONS 25 AND 26 AND THE END OF THE CENTERLINE; SIDELINES ARE LENGTHENED OR SHORTENED TO TERMINATE AT THE WESTERLY AND SOUTHERLY SIDELINES OF SAID EASEMENT DESCRIBED IN VOLUME M02, PAGE 27393.

SAID EASEMENT CONTAINS 1.08 ACRES, MORE OR LESS.

BEARINGS ARE BASED UPON FOUND MONUMENTATION FROM SAID PARTITION 57-96, KLAMATH COUNTY RECORDS.

City Waterline Easement Legal Description

A STRIP OF LAND 44 FEET IN WIDTH, LYING 22 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINES SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 25 TOWNSHIP 38 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, SAID CENTERLINES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 36, SAID POINT BEING MARKED BY A BRASS CAP, THENCE NORTH 59°29'55" EAST 1143.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 10°14'35" WEST 65.21 FEET TO A POINT OF CURVATURE; THENCE ALONG A 100.00 FOOT RADIUS CURVE RIGHT, THROUGH A CENTRAL ANGLE OF 29°19'02", AN ARC LENGTH OF 51.17 FEET, (THE LONG CHORD OF WHICH BEARS SOUTH 24°54'06" WEST 50.61 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 39°33'37" WEST 211.83 FEET TO A POINT OF CURVATURE; THENCE ALONG A 400.00 FOOT RADIUS CURVE RIGHT, THROUGH A CENTRAL ANGLE OF 50°31'02", AN ARC LENGTH OF 352.68 FEET, (THE LONG CHORD OF WHICH BEARS SOUTH 64°49'08" WEST 341.36 FEET) TO A POINT OF TANGENCY; THENCE NORTH 89°55'21" WEST 508.69 FEET TO A POINT WHICH BEARS NORTH 00°01'40" WEST 162.50' FROM SAID NORTHWEST CORNER OF SECTION 36 AND THE END OF THE CENTERLINE; SIDELINES ARE LENGTHENED OR SHORTENED TO TERMINATE PERPENDICULAR TO THE BEGINNING AND END OF THE PROPOSED CITY WATERLINE EASEMENT.

SAID EASEMENT IS TO TERMINATE UPON FUTURE PUBLIC ROAD DEDICATION THAT RUNS ALONG SAID EASEMENT.

SAID STRIP CONTAINS 76,133 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"

EASEMENT BEING RESCINDED