

2006-018627

Klamath County, Oregon



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09/15/2006 03:48:18 PM

Fee: \$36.00

1st-896812

**COVER SHEET**

**ORS: 205.234**

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet **DO NOT** affect the transaction(s) contained in the instrument itself.

After recording, return to:  
Jerry M. Molatore  
426 Main Street  
Klamath Falls, OR 97601

Send Tax Statements to:  
Same as on file

The date of the instrument attached is 9-14-06.

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)  
Real Covenant, Equitable Servitude & Easement

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Thomas L. Molatore

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Jerry & Yvette Molatore

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ 10.00

5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S LIEN RECORDS, ORS 205.121(1)(c)

6) RE-RECORDED to correct: \_\_\_\_\_  
Previously recorded as: \_\_\_\_\_


36- F

## REAL COVENANT, EQUITABLE SERVITUDE AND EASEMENT

This Real Covenant, Equitable Servitude and Easement is made between THOMAS L. MOLATORE <sup>Trustee for the Thomas L. Molatore Trust</sup> ("Tom") as owner of Lot 10, Block 2, First Addition to Loma Linda Heights, Klamath Falls, Klamath County, Oregon, hereinafter referred to as "Tom's Property," and JERRY M. MOLATORE and YVETTE M. MOLATORE ("Jerry and Yvette") as owners of Lots 3 and 4, Block 2, First Addition to Loma Linda Heights, Klamath Falls, Klamath County, Oregon, hereinafter referred to as "Jerry and Yvette's Property."

Tom, and Jerry and Yvette agree that both Tom's Property and Jerry and Yvette's Property are subject to certain covenants, conditions, and restrictions affecting all of First Addition to Loma Linda Heights, dated August 17, 1964 and recorded in Vol. M355, page 361 of the Deed Records of Klamath County, and amended by an agreement dated November 16, 1968 and recorded in Vol. M68 page 351 of the Deed Records of Klamath County; that said covenants, conditions and restrictions are insufficient for maximum protection of the value, use and enjoyment of the property in First Addition to Loma Linda Heights; that growth of vegetation higher than 28 feet above street height on Tom's Property would significantly interfere with the view now enjoyed by Jerry and Yvette's Property; that improvement and development of Tom's Property with other than one stick-built single-family dwelling would cause a reduction in value of Jerry and Yvette's property.

Now therefore in consideration of the sum of Ten Dollars (\$10.00) paid to Tom by Jerry and Yvette, Tom agrees as follows:

1. Tom will not erect, place or construct any improvements on Tom's Property other than one stick-built single-family dwelling together with compatible outbuildings and landscaping. 
2. Tom will not erect or place, or allow to be erected or placed, any mobile homes or manufactured homes on Tom's Property.
3. Tom grants to Jerry and Yvette a perpetual and nonexclusive easement across Tom's Property, for the benefit of, and appurtenant to Jerry and Yvette's Property, for the purpose of cutting, trimming, and removal of that part of any vegetation of any type growing on or over Tom's Property higher than 28 feet above the portion of Linda Vista Drive abutting Tom's Property. Any such cutting, trimming, and removal of any vegetation shall be at the cost and expense of Jerry and Yvette and shall be done in a manner not causing unreasonable interference with the use of Tom's Property and not causing unreasonable damage to any structures or improvements on Tom's Property, and in a manner designed to maintain as much as reasonably possible the esthetics and beauty of vegetation on Tom's Property.
4. In the event suit, action, or arbitration is instituted by either party to enforce any rights under this agreement or for any other matter arising out of this agreement, including appeals to any appellate court, and including any action in bankruptcy court, it is agreed that the prevailing party in such suit, action, or arbitration shall recover from the other party, in addition

to costs and disbursements, such further sums as the court or arbitrator may deem reasonable as attorney's fees at trial, on appeal, in arbitration, or in bankruptcy proceedings.

5. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

6. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

7. The parties agree that the remedy at law for any breach or threatened breach of this agreement by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

8. This agreement may be enforced as a real covenant or as an equitable servitude.

9. The purpose of this agreement is protection of the value, use, and enjoyment of Jerry and Yvette's Property.

10. This agreement has been negotiated and drafted by all parties and shall be interpreted as drafted by all parties.

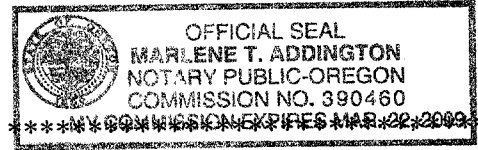
The rights and obligations set forth in this Agreement are intended to run with Tom's Property and with Jerry and Yvette's Property and shall inure to the benefit of and be binding upon the successors in interest of Tom in Tom's Property, and the successors in interest of Jerry and Yvette in Jerry and Yvette's Property.

Dated: September 14, 2006

Thomas L. Molatore  
THOMAS L. MOLAOTORE  
Thomas L. Molatore, Trustee

STATE OF OREGON            )  
  ) ss.  
County of Klamath        )

On this 14<sup>th</sup> day of September, 2006, before me personally appeared THOMAS L. MOLATORE, and acknowledged to me that he executed this agreement freely and voluntarily. both for himself & as Trustee of the Thomas L. Molatore Trust



W. Arlene Addington  
Notary Public for Oregon  
My commission expires: 3-22-2009

Dated: 9-14, 2006

JERRY M. MOLATORE

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 14 day of September, 2006, before me personally appeared JERRY M. MOLATORE and acknowledged to me that he executed this agreement freely and voluntarily.



Patricia M. Johnson  
Notary Public for Oregon  
My commission expires: 6-17-2010

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Dated: 9-14, 2006

Yvette M. Molatore  
YVETTE M. MOLATORE

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 14 day of September, 2006, before me personally appeared YVETTE M. MOLATORE and acknowledged to me that she executed this agreement freely and voluntarily.



Patricia M. Johnson  
Notary Public for Oregon  
My commission expires: 6-17-2010