

2006-023959

Klamath County, Oregon

1<sup>st</sup> - 896951



00010113200600239590060061

12/01/2006 03:03:27 PM

Fee: \$46.00

**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 11/28/06.

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

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

Voegels, Alfred & Michelle \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Molatore, Jerry & Yvette \_\_\_\_\_  
Kent, Robert & Sally \_\_\_\_\_

- 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: \_\_\_\_\_

10-1

## **REAL COVENANT, EQUITABLE SERVITUDE AND EASEMENTS**

This Real Covenant, Equitable Servitude and Easement is made between ALFRED VOEGELS and MICHELLE VOEGELS ("Voegels") as owners of Lot 8 in Block 2 of First Addition to Loma Linda Heights, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, hereinafter referred to as "Voegels Property," and JERRY M. MOLATORE and YVETTE M. MOLATORE ("Molatore") as owners of Lots 3 and 4 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, hereinafter referred to as "Molatore Property," and ROBERT A. KENT and SALLY M. KENT ("Kent") as owners of Lot 2 in Block 2 of First Addition to Loma Linda Heights according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, hereinafter referred to as "Kent Property."

The parties agree that the Voegels Property, Molatore Property and Kent 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 Deeds Records of Klamath County, Oregon, and amended by an agreement dated November 16, 1968 and recorded in Vol. M68 page 351 of the Deeds Records of Klamath County, Oregon, 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 the Voegels Property would significantly interfere with the view now enjoyed by Molatore Property; that improvement and development of the Voegels Property with other than one stick-built single-family dwelling would cause a reduction in value of the Molatore Property; that there is an underground geothermal line carrying water across the Voegels Property to the Molatore Property and Kent Property, in the approximate location shown on Exhibit A; that the fence located near the southerly boundary of the Molatore Property is supported by abutments placed on the Voegels Property and extending approximately three feet onto the Voegels Property.

Now therefore in consideration of the sum of Ten Dollars (\$10.00) paid to Voegels by Molatore and Kent, the parties agree as follows:

1. Voegels will not erect, place or construct any improvements on the Voegels Property other than one stick-built single-family dwelling together with compatible outbuildings and landscaping.
2. Voegels will not erect or place, or allow to be erected or placed, any mobile homes or manufactured homes on the Voegels Property.
3. Voegels grants to Molatore a perpetual and nonexclusive easement across the Voegels Property, for the benefit of, and appurtenant to the Molatore Property, for the purpose of cutting, trimming, and removal of that part of any vegetation of any type growing on or over the Voegels Property higher than 28 feet above the portion of Linda Vista Drive abutting the Voegels

Property. Any such cutting, trimming, and removal of any vegetation shall be at the cost and expense of Molatore and shall be done in a manner not causing unreasonable interference with the use of the Voegels Property and not causing unreasonable damage to any structures or improvements on the Voegels Property, and in a manner designed to maintain as much as reasonably possible the esthetics and beauty of vegetation on the Voegels Property.

4. Voegels grants to Molatore and Kent a perpetual and nonexclusive easement across that portion of the Voegels Property shown on Exhibit A attached, for the benefit of, and appurtenant to the Molatore Property and the Kent Property, for the purpose of constructing, reconstructing, and maintaining the buried geothermal line on the Voegels Property. All such construction, reconstruction, and maintenance shall be at the expense of Molatore and Kent, and in the event such construction, reconstruction, and maintenance damages landscaping or vegetation, Molatore and Kent agree to restore the Voegels Property to its former condition as nearly as reasonably possible, at their expense.

5. Voegels grants to Molatore a perpetual and nonexclusive easement across the northerly three feet of the Voegels Property, for the benefit of, and appurtenant to the Molatore Property, for the purpose of constructing, reconstructing, and maintaining abutments for the existing fence located on the Molatore Property. All such construction, reconstruction, and maintenance shall be at the expense of Molatore, and in the event such construction, reconstruction, and maintenance damages landscaping or vegetation, Molatore agrees to restore the Voegels Property to its former condition as nearly as reasonably possible, at Molatore's expense.

6. 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.

7. 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.

8. 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.

9. 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.

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

11. The purpose of this agreement is protection of the value, use, and enjoyment of the Molatore Property and the Kent Property.

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

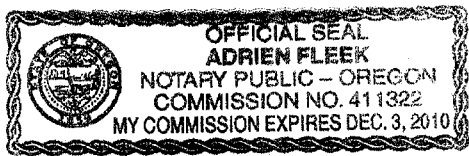
13. The rights and obligations set forth in this Agreement are intended to run with the Voegels Property and with the Molatore Property and the Kent Property and shall inure to the benefit of and be binding upon the successors in interest of Voegels in the Voegels Property, and the successors in interest of Molatore in the Molatore Property and the successors in interest of Kent in the Kent Property.

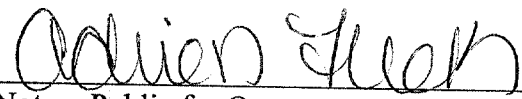
Dated: 12-01, 2006

  
ALFRED VOEGELS

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 1 day of December, 2006, before me personally appeared ALFRED VOEGELS and acknowledged to me that he executed this agreement freely and voluntarily.



  
Notary Public for Oregon  
My commission expires: 12-3-10

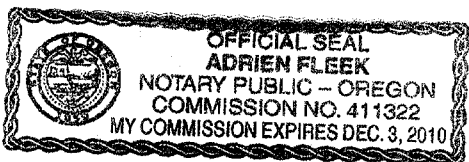
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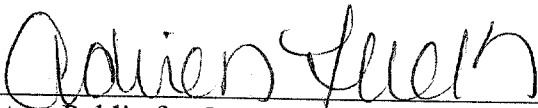
Dated: 12-01, 2006

  
MICHELLE VOEGELS

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

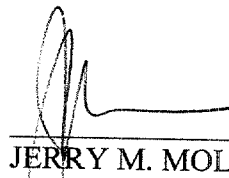
On this 1 day of December, 2006, before me personally appeared MICHELLE VOEGELS and acknowledged to me that she executed this agreement freely and voluntarily.



  
Notary Public for Oregon  
My commission expires: 12-3-10

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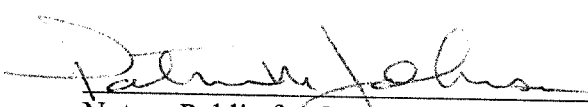
Dated: 11-28, 2006

  
JERRY M. MOLATORE

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

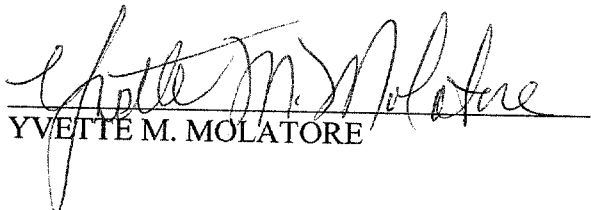
On this 28 day of November, 2006, before me personally appeared JERRY M. MOLATORE and acknowledged to me that he executed this agreement freely and voluntarily.



  
Notary Public for Oregon  
My commission expires: 6-17-2010

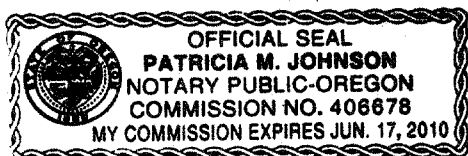
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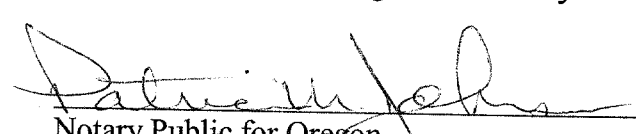
Dated: 11-28, 2006

  
YVETTE M. MOLATORE

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 28 day of November, 2006, before me personally appeared YVETTE M. MOLATORE and acknowledged to me that she executed this agreement freely and voluntarily.



  
Notary Public for Oregon  
My commission expires: 6-17-2010

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Dated: November 22, 2006

Robert A. Kent  
ROBERT A. KENT

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 22 day of November, 2006, before me personally appeared ROBERT A. KENT 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

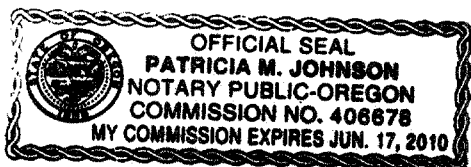
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Dated: Nov 22 06, 2006

Sally M. Kent  
SALLY M. KENT

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

On this 22 day of November, 2006, before me personally appeared SALLY M. KENT 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