

2007-019092

Klamath County, Oregon



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11/07/2007 11:49:53 AM

Fee: \$96.00

After Recording Return to:
City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

**RESTRICTIVE COVENANT AND
AGREEMENT FOR SANITARY WASTEWATER SERVICE
FOR LOTS 1, 2, 3B, 4B AND 5B OF THE
LAKESHORE GARDENS SUBDIVISION AND CERTAIN PROPERTY
OWNED BY THE LAKESHORE GARDENS DRAINAGE DISTRICT**

THIS AGREEMENT ("Agreement") is made and entered into this 6th day of November, 2007 by and between the City of Klamath Falls, an Oregon Municipal Corporation ("City") and the following persons: David J. Danforth and Regina C. Danforth ("Danforths"), P. O. Box 489, Fort Klamath, Oregon 97626; Allan Murray ("Murray"), 1025 N. Central Avenue, Medford, Oregon 97501; Wayne A. Connors and Pamela J. Connors ("Connors"), 1326 W. Ambassador Drive, St. George, Utah 84790; Frederick M. Cooper and Lisa M. Cooper ("Coopers"), 777 Lakeshore Drive, Klamath Falls, Oregon 97601; and Lakeshore Gardens Drainage District ("District"), c/o John Gerbert, 1940 Lawrence Street, Klamath Falls, Oregon, 97601 (collectively the "Users").

RECITALS:

A. Users desire to construct a private sanitary sewer collection system to provide service to properties in Klamath Falls, Klamath County, Oregon, described as follows, and including any parcels or lots created by any future partition or subdivision of the properties (collectively, the "Property"):

- a. Lot 1, Lakeshore Gardens owned by Danforths pursuant to a deed recorded at Volume M94, Page 24270, Klamath County Deed Records;
- b. Lot 2, Lakeshore Gardens owned by Murray pursuant to a deed recorded at Volume M01, Page 30917, Klamath County Deed Records;
- c. Lots 3B and 4B, Lakeshore Gardens owned by Connors pursuant to a deed recorded at Volume M03, Page 43920, Klamath County Deed Records;
- d. Lot 5B, Lakeshore Gardens owned by Coopers pursuant to a deed recorded at Volume M05-10362, Klamath County Deed Records; and
- e. Tax Lot# R-3808-025DA-00200-000 owned by District pursuant to a deed recorded at Volume 103, Page 265, Klamath County Deed Records.

The Property is depicted on attached Exhibit "A."

1. AGREEMENT FOR SANITARY WASTEWATER SERVICE

B. The City estimates that it can presently accommodate the volume of wastewater that may be generated by the development currently proposed for the Property. However, ongoing requests for wastewater services will limit the City's capacities for wastewater collection and treatment.

C. The City and Users desire to enter into a formal agreement providing for wastewater services for the Property based on the terms and conditions of this Agreement.

AGREEMENT:

1. This Agreement is limited to City acceptance of wastewater flows from residential uses not to exceed seven (7) Equivalent Residential Units ("ERU's"), distributed as follows: two (2) ERU's for Lot 3B owned by Connors; two (2) ERU's for Lot 4B owned by Connors; one (1) ERU for Lot 1 owned by Danforths; one (1) ERU for Lot 2 owned by Murray; and one (1) ERU for Lot 5B owned by Coopers; (there are no ERU's dedicated to the District parcel. If any user submits an application for approval of a tentative partition or subdivision plat for any portion of the Property, or for any other connection to the City wastewater system other than the seven (7) ERU's for residential connections anticipated by this Agreement, the availability of sewer capacity within the City's system to accommodate the projected flows for that development or connection shall be reasonably determined by the City, subject to the laws in effect at the time of determination, and a separate agreement for the projected wastewater flows will need to be negotiated between the parties prior to approval of the development application or connection.

2. Users shall design and construct, at their sole expense, a pressurized private sanitary sewer collection system which shall consist of lines, laterals and all other necessary equipment and attachments to convey the sanitary wastewater from the Property to the City collection manhole (located on City-owned tax lot #R-3809-03000-00100-000, pursuant to a deed recorded at M75, Pages 531-532, Klamath County Deed Records, as noted on the design drawings (the "Private Collection System"). Per City design standards, the Private Collection System shall be designed to accommodate a maximum effluent flow equivalent to seven (7) ERU's.

3. The Private Collection System shall be constructed in accordance with plans and specifications as approved by the City and such System shall be inspected and approved by the City. The final design of the Private Collection System shall be subject to review and approval by any other governmental agency deemed necessary by the City in order to accept the wastewater effluent. The City will not provide direct inspection services or supervision of construction of the Private Collection System.

4. The Users, and their heirs, successors and assigns shall pay the wastewater system development charges ("SDC") then in effect for each connection to the Private Collection System prior to each lot connecting to the System. Users, their heirs,

2. AGREEMENT FOR SANITARY WASTEWATER SERVICE

successors and assigns shall comply with City Council approved policies regarding payments of SDC's in effect as of the date the SDC payment is due.

5. City shall bill each individual User, or their successors, assigns and designated agents for sanitary sewer services on a monthly basis and in accordance with the then existing City utility billing policies and procedures.

6. This Agreement shall be binding upon each party's heirs, successors and assigns. To assure that subsequent owners of the Property and successors of the parties are aware of this Agreement, Users hereby grant restrictive covenants against their respective parcels embodying the terms and conditions of this Agreement, and hereby consent to the recording of the Agreement as a restrictive covenant in the Deed Records of Klamath County, Oregon. Users agree to pay for the costs of recording

7. Upon completion and final acceptance of the Private Collection System by the City, or someone approved by the City, and verification that the System is fully operational, Users, subsequent owners of any portion of the Property, and their successors and assigns shall be responsible for all operational, maintenance, repair and replacement costs associated with the Private Collection System and shall keep the same in good and sufficient repair. Users have previously entered into an "Easement and Advance Financing Agreement," dated May 2007, and recorded in Klamath County records at Volume 2007, page 010504, that provides for the relative obligations as between Users regarding maintenance and repair obligations on the Private Collection System. Users, their successors and assigns may, at their option, form either a homeowner's association or a sanitary sewer district to be responsible for keeping said System in good and sufficient repair and for payment of such costs, but in no event shall City have any responsibility for such costs. The City shall have the right to inspect the System at any time and to require Users, and their successors and assigns, to repair, maintain and/or replace the System.

8. Users acknowledge that the City may impose a user rate surcharge for any wastewater connection to help finance future development and a capacity enlargement for the City's wastewater system ("City Improvements"). Such surcharge amounts have not yet been determined; however, Users acknowledge such surcharges may be levied in the future, and Users, and their successors and assigns, agree to pay such surcharges, if any, imposed by the City. As an alternative to such surcharges, City may elect to form a Local Improvement District ("LID") to fund and construct the City Improvements. In the event and at such time as the City initiates the formation of an LID, Users hereby waive any and all right to remonstrate against formation of the LID by the City for the purpose of constructing the City Improvements and assessing the proportionate cost to benefited properties. The phrase "right to remonstrate against the formation of an LID" refers solely to a property owner's right under the City Charter Section 38 to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of an LID for six months. The waiver of this right does not limit or restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, the appropriateness of the

3. AGREEMENT FOR SANITARY WASTEWATER SERVICE

proposed boundaries for the benefited properties, the fairness of the assessment formula, the scope and nature of the project, the proposed final assessment, or any other issue regarding the LID. City agrees that a LID assessment levied against Owner's Property shall not exceed the benefit conferred upon the Property.

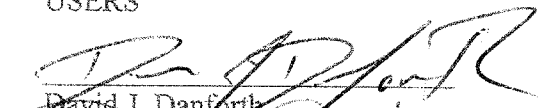
9. This Agreement sets forth the entire understanding of the parties and shall be governed by the laws of the state of Oregon.

10. Any dispute or controversy arising out of this Agreement or out of the party's refusal to perform the whole or any part of this Agreement shall be subject to resolution only through final and binding arbitration pursuant to the procedures set forth in ORS 36.300 *et seq.*


11. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

The parties have each executed this document on the dates set forth below.

USERS

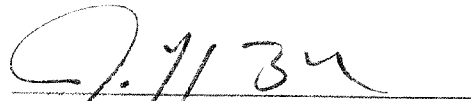


David J. Danforth



Regina C. Danforth

City of Klamath Falls
an Oregon Municipal Corp



By: Jeff Ball, City Manager

Allan Murray

Wayne A. Connors

Pamela J. Connors

Lakeshore Gardens Drainage District

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4. AGREEMENT FOR SANITARY WASTEWATER SERVICE

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Regina C. Danforth

By: Jeff Ball, City Manager



Allan Murray

Wayne A. Connors

Pamela J. Connors

Lakeshore Gardens Drainage District

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Regina C. Danforth

By: Jeff Ball, City Manager

Allan Murray



Wayne A. Connors



Pamela J. Connors

Frederick M. Cooper

Lisa M. Cooper

Lakeshore Gardens Drainage District

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4. AGREEMENT FOR SANITARY WASTEWATER SERVICE

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an Oregon Municipal Corp

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Regina C. Danforth

Allan Murray

Wayne A. Connors

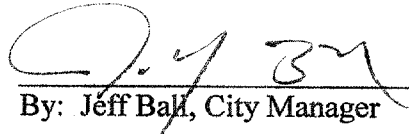
~~_____
Pamela J. Connors~~

~~_____
Frederick M. Cooper~~

~~_____
Lisa M. Cooper~~

Lakeshore Gardens Drainage District

///



By: Jeff Ball, City Manager

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USERS

City of Klamath Falls
an Oregon Municipal Corp

David J. Danforth

Regina C. Danforth

By: Jeff Ball, City Manager

Allan Murray

Wayne A. Connors

Pamela J. Connors

Frederick M. Cooper

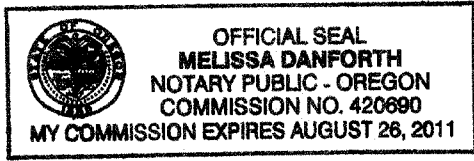
Lisa M. Cooper



Lakeshore Gardens Drainage District

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4. AGREEMENT FOR SANITARY WASTEWATER SERVICE



STATE OF OREGON)
) ss.
County of Klamath)

David J. Danforth personally appeared before me this 30 day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.



Melissa Danforth x
Notary Public for Oregon
My Commission expires: 8/26/11

STATE OF OREGON)
) ss.
County of Klamath)

Regina C. Danforth personally appeared before me this 30 day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Melissa Danforth v
Notary Public for Oregon
My Commission expires: 8/26/11

STATE OF OREGON)
) ss.
County of Klamath)

Allan Murray personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Wayne A. Connors personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

5. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF OREGON)
) ss.
County of Klamath)

David J. Danforth personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Regina C. Danforth personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Allan Murray personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.



Kathy L Landers

Notary Public for Oregon
My Commission expires: November 28, 2008

STATE OF OREGON)
) ss.
County of Klamath)

Wayne A. Connors personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

5. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF OREGON)
) ss.
County of Klamath)

David J. Danforth personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Regina C. Danforth personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Allan Murray personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

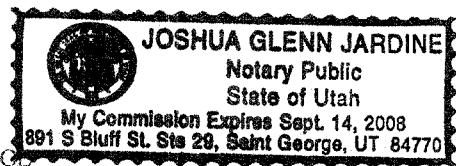
Notary Public for Oregon
My Commission expires: _____

STATE OF ~~OREGON~~ UTAH)
) ss.
County of ~~Klamath~~ Washington)

Wayne A. Connors personally appeared before me this 24 day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Wayne A. Connors

Notary Public for ~~Oregon~~ UTAH
My Commission expires: Sept. 14, 2008



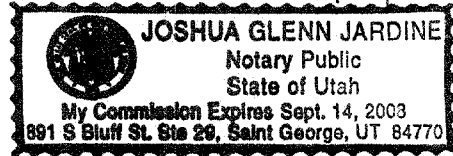
5. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF ~~OREGON~~ UTAH)
County of ~~Klamath~~ Washington) ss.

Pamela J. Connors personally appeared before me this 24 day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Pamela J. Connors

[Signature]
Notary Public for ~~Oregon~~ UTAH
My Commission expires: Sept 14, 2008



STATE OF OREGON)
County of Klamath) ss.

Frederick M. Cooper personally appeared before me this ___ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
County of Klamath) ss.

Lisa M. Cooper personally appeared before me this ___ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
County of Klamath) ss.

On _____, 2007, personally appeared _____ who, being duly sworn, acknowledged to me that he/she is the representative for Lakeshore Gardens Drainage District that the foregoing instrument was signed on behalf of Lakeshore Gardens Drainage District, that he/she is authorized to execute this instrument and that the foregoing instrument is the voluntary act and deed of Lakeshore Gardens Drainage District.

Notary Public for Oregon
My Commission expires: _____

6. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF OREGON)
) ss.
County of Klamath)

Pamela J. Connors personally appeared before me this ___ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

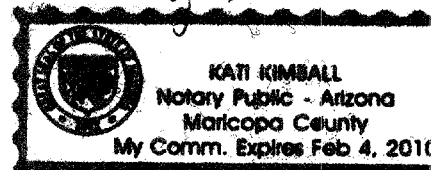
~~STATE OF OREGON~~ ^{IN ARIZONA})
) ss.
~~County of Klamath~~ ^{IN PINAL})

Frederick M. Cooper personally appeared before me this 5th day of ~~September~~ ^{October} 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Kati Kimball

Notary Public for ~~Oregon~~ ^{ARIZONA}
My Commission expires: February 4, 2010

~~STATE OF OREGON~~ ^{IN ARIZONA})
) ss.
~~County of Klamath~~ ^{IN PINAL})

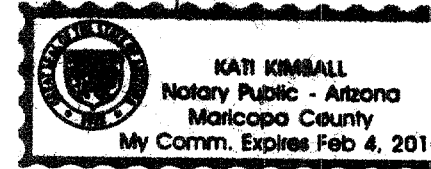


Lisa M. Cooper personally appeared before me this 5th day of ~~September~~ ^{October} 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Kati Kimball

Notary Public for ~~Oregon~~ ^{ARIZONA}
My Commission expires: February 4, 2010

STATE OF OREGON)
) ss.
County of Klamath)



On _____, 2007, personally appeared _____, who, being duly sworn, acknowledged to me that he/she is the representative for Lakeshore Gardens Drainage District that the foregoing instrument was signed on behalf of Lakeshore Gardens Drainage District, that he/she is authorized to execute this instrument and that the foregoing instrument is the voluntary act and deed of Lakeshore Gardens Drainage District.

Notary Public for Oregon
My Commission expires: _____

6. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF OREGON)
) ss.
County of Klamath)

Pamela J. Connors personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

Frederick M. Cooper personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be his voluntary act.

Notary Public for Oregon
My Commission expires: _____

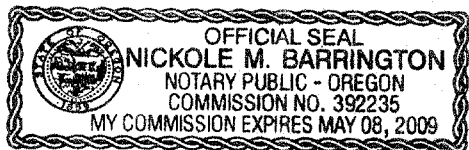
STATE OF OREGON)
) ss.
County of Klamath)

Lisa M. Cooper personally appeared before me this ____ day of September 2007, the above-named USER, and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
County of Klamath)

On October 5, 2007, personally appeared John E. Gerbert who, being duly sworn, acknowledged to me that he/she is the representative for Lakeshore Gardens Drainage District that the foregoing instrument was signed on behalf of Lakeshore Gardens Drainage District, that he/she is authorized to execute this instrument and that the foregoing instrument is the voluntary act and deed of Lakeshore Gardens Drainage District.

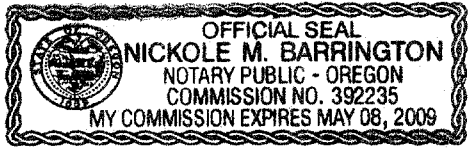


Nickole M. Barrington
Notary Public for Oregon
My Commission expires: 5-8-2009

6. AGREEMENT FOR SANITARY WASTEWATER SERVICE

STATE OF OREGON)
) ss.
County of Klamath)

Personally appeared before me this 4th day of November 2007, the above-named Jeff Ball, as Manager of the City of Klamath Falls, an Oregon Municipal Corporation and acknowledged the foregoing instrument to be his voluntary act.



Nickole M. Barrington
Notary Public for Oregon
My Commission expires: 5-8-2009

7. AGREEMENT FOR SANITARY WASTEWATER SERVICE

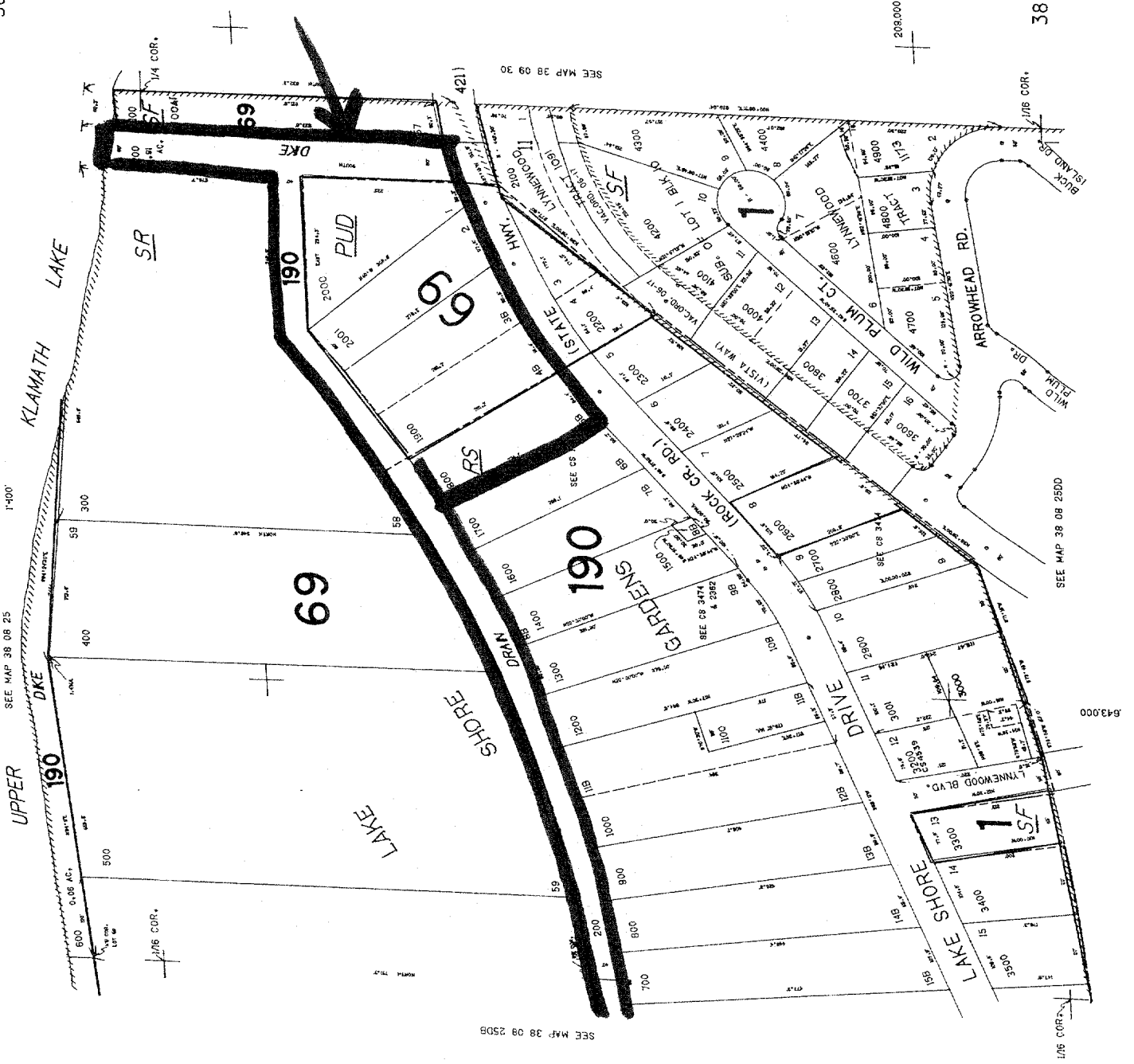
Exhibit "A"

REVISED 4-18-07

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

NE1/4 SE1/4 SEC. 25 T.38S. R.08E. W.M.
KLAMATH COUNTY

38 08 25DA



38 08 25DA