

173926-101

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2005-71150



\$81.00

00407440200500711500100107

10/18/2005 03:45:02 PM

D-EAS Cnt=2 Str=26 SHIRLEY
\$50.00 \$5.00 \$11.00 \$10.00 \$5.00

After Recording Return To:

Mr. Steven E. McGhehey
Ponderosa Properties
PO Box 3500 #305
Sisters, OR 97759

96

10

GRANT OF EASEMENT AND MAINTENANCE AGREEMENT

This Grant of Easement and Maintenance Agreement for Ingress, Egress and Utilities is made by and between Sisters TMK, LLC, an Oregon limited liability company ("TMK") and Jefferson Meadows Condominium Owners' Association ("Jefferson").

Recitals

A. TMK is the owner of the real property which is described on the attached Exhibit "A" and incorporated by reference ("Property-A), which is being developed into seven lots (the "Lots) to be known as Cascade Cottages. A copy of the plat is shown on Exhibit "B" (the "Plat"). TMK will sell the Lots and intends to incorporate Cascade Cottage Homeowners' Association ("CCHA") and all Lot Owners will be members of CCHA.

B. Pursuant to the Declaration submitting Jefferson Meadows Condominium, a Condominium to Condominium Ownership, dated February 12, 2002, recorded May 14, 2002 as Fee No. 2002-2637, Official Records, Deschutes County, Oregon (the "Declaration"). Jefferson has the authority under Section 12.3 to grant easements over the land of Jefferson Meadows Condominium which land is described on the attached and incorporated Exhibit "C" ("Property C").

C. TMK and Jefferson wish to establish and create a permanent easement for utilities and right-of-way over and across the real property described on Exhibit "D" (the "Alley") for the benefit of both Properties and to provide for the perpetual maintenance of such Alley by the Associations of the Owners (defined below) of the two Properties, and their respective heirs, successors and assigns.

EASEMENT AND MAINTENANCE AGREEMENT

1. Grant of Easement and Definitions. TMK and Jefferson hereby establish and create

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FIRST AMERICAN TITLE
INSURANCE COMPANY OF OREGON
P.O. BOX 323
BEND, OR 97709

RECORDED BY FIRST AMERICAN TITLE
INSURANCE COMPANY OF OREGON AS AN
ACCOMODATION ONLY NO LIABILITY IS
ACCEPTED FOR THE CONDITION OF TITLE
OR FOR THE VALIDITY, SUFFICIENCY, OR
EFFECT OF THIS DOCUMENT.

a perpetual non-exclusive easement for utilities and ingress and egress over, under and across the real property described on Exhibit "D" (the "Alley"). All utilities shall be underground, except as allowed by law. The term "Owner" or "Owners" shall mean those persons who now hold or in the future may hold the fee simple title or are a contract buyer with respect to any Lot in Cascade Cottages (Property A") or own a condominium unit(s) located in Property B or own any other real property which will be authorized to use all or part of the Alley in common with Jefferson and TMK ("User" as defined below). Jefferson and CCHA may be referred to herein as an "Association" or as "Associations".

2. Use of Alley and Duration of Alley. The Alley shall be used jointly by the Owners of the Properties as a means of ingress and egress and for utilities. The Alley shall be perpetual and appurtenant to the Properties, and shall be a burden on the Properties. The part of the Alley encumbering the Lots in Cascade Cottages is shown on the attached Plat. The part of Property B encumbered by the Alley is shown on Exhibit E.

3. Use and Remedy. In addition to its use for ingress and egress and utilities, the Alley may be used by any Owner for temporary parking, loading or unloading, provided that such uses do not hinder in any way the use of the Alley by any other Owner. In addition, the Associations for Property A and Property B shall be responsible for the exclusive management and control of the Alley and any improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair, including, but not limited to, the removal of snow, trash and debris, and the maintenance, cleaning and repair of the Alley. The Associations may jointly pass rules and regulations concerning the use of the Alley by the Owners. The Owners shall use the Alley with reasonable regard for the rights of each other to use the Alley, and shall not use the Alley in any way that will impair the rights of the other Owners to use the Alley. In the event that an Owner misuses the Alley, the other Owners or any Association of each Property shall be entitled to any remedy at law or in equity, including without limitation, an injunction to prohibit such misuse, and damages for any repairs associated with the misuse.

4. Maintenance and Repair. The Alley is currently covered with asphalt. The Association for each Property shall share equally in the costs and expenses of maintenance and repair of the improvements in the Alley. If in the future any other Owner of adjoining real estate uses all or any part of the Alley, then the Owner of such real property (a "User") shall equally share in the cost of maintenance and repair of the Alley. The costs and expenses to be shared shall only be for such items of maintenance and repair which are reasonable and necessary in order to preserve the use of the Alley for utilities and as a means of ingress and egress to the Properties that use the Alley. All maintenance and repairs shall be performed in a prompt, diligent and regular basis. If any Owner conducts any activity which causes unreasonable or excessive amounts of damage or wear, such Owner shall be solely responsible for such damage to the Alley which is attributable to the unreasonable and excessive damage or repair caused by the Owner and such Owner shall promptly repair the damage at the Owner's sole cost and expense.

4.1 Cooperation for Repairs The Boards of each Association (and any other

future User of the Alley) shall confer from time to time regarding the performance of the required maintenance or repair of the Alley under this Easement and Maintenance Agreement. In the event of a disagreement concerning such maintenance and repair obligations and the payment thereof, the Boards (and User) shall initially attempt to resolve this matter in good faith and may, if necessary, select a mediator in order to mediate such dispute. If the Boards (and User) are unable to mediate any such dispute within thirty (30) days of the day that the dispute originally occurs, the Boards (and User) shall agree upon an arbitrator who shall resolve such disagreement in accordance with then effective arbitration rules of the Arbitration Service of Portland, Inc. or of Deschutes County Circuit Court, whichever organization is selected by the Board (and User) who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected. Any judgment of the arbitrator may be entered in any court having jurisdiction. The decision of the arbitrator shall be final and binding on the Association and their respective members (and User), and the fee of the arbitrator shall be shared equally between the Associations (and User). Any Association (or User) who refuses to participate in the arbitration may be compelled to do so by the other Association (or User) by obtaining an appropriate order from the Circuit Court having jurisdiction over the Properties and the Alley.

4.2 Lien. If any Association (or User) fails to pay the Association's (or User's) pro-rata share of the maintenance and repair costs within a reasonable period of time, the other Association (and User), upon fifteen (15) days prior written notice to the non-performing Association (or User), may cause such work to be done with the right of reimbursement for all sums necessarily expended to perform such maintenance and repairs. If the non-performing Association (User) fails to reimburse the other Association (or User or Association) within fifteen (15) days of demand, the Association (or User) who paid for such work to be done shall have the right to record a lien against the non-performing members' lots or units, as the case may be, in an amount equal to the non-performing Association's (or User's) pro-rata share, together with interest at the rate of eighteen percent (18%) per annum from date of payment for such maintenance or repair work. The non-performing Association (or User) shall be personally liable for such sums and the other Association (or User) may pursue any other right or remedy at law or in equity against such Association (or User) personally for the collection of the sums due. In addition, the provisions regarding the attachment, notice, recordation, duration, and attorney fees of and for liens established on real property under ORS 87.352 to 87.386, or amended or substitute statutes thereof, and the provisions regarding the foreclosure of liens under ORS Chapter 88 shall apply to a lien under this Section. Any lien under this Section shall have the same priority as a lien under ORS 94.709(2), now or as hereafter amended.

5. Taxes. The real property taxes on each part of the Alley located on the Lots in Cascade Cottages shall be paid by the Lot Owners, but it is acknowledged that those parts of the Alley on such Lots render the land valueless to each Owner. The Jefferson Meadow Condominium Owners Association shall pay its taxes on the part of the Alley located on its Property C.

6. Attorney Fees. If any arbitration, mediation, or other proceeding is brought in lieu of litigation, to enforce or interpret any of the terms of this Agreement, or if suit or action is

instituted, the losing party shall pay the prevailing party's costs and disbursements, the fees and expenses of expert witnesses in determining reasonable attorney fees pursuant to ORCP 68, the actual cost of a litigation or foreclosure report or other such report, and such sums as the court or arbitrator may determine to be reasonable for the prevailing party's attorney fees in connection with arbitration, a trial or any appeal, or for any petition for review thereof. The prevailing party shall be entitled to request post-judgment attorneys fees and costs from the court after such fees are incurred without filing a different action or suit.

7. **Notice.** Any notice required or permitted under this Easement and Maintenance Agreement shall be in writing and shall be deemed given when actually delivered, if notice is by messenger or by facsimile; two days after deposit, when deposited in United States mail as certified or registered mail; or one day after deposit with an overnight courier addressed to each Association at their address, or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

8. **Insurance and Indemnity.** Each Association or User shall carry liability insurance as follows: A comprehensive policy or policies insuring the Association, the Owners individually, the respective Boards and the manager, if any, against liabilities to the public, the Owners and their invitees or tenants, incident to the supervision, control or use of the Alley. The policy or policies shall provide coverage for bodily injury and property damage, and limits of liability under such insurance shall not be less than \$1,000,000 in a combined single limit basis. Each Association or User agrees to indemnify and hold the other Association or User and their respective guests, invitees, agents, successors, heirs or assigns, harmless from any and all damage, claim, cost or expense arising from the use of the Alley herein granted by an Association and its respective members, or to a User and each Association and any User agrees to pay to the other Association or User damages, costs, claims or expenses which may arise on the other Association's Property or Owners Lots by reason of the negligent use of the rights herein granted by or the intentional misconduct of any Owner, or such Owner's guests, invitees, agents or contractors.

9. **Binding Effect.** This Easement and Maintenance Agreement shall bind and inure to the benefit of, as such circumstances may require, not only the Owners of the Properties, now or in the future, and the Associations, but also to their respective successors, assigns, heirs, guests, and invitees.

10. **Applicable Law.** This Easement and Maintenance Agreement has been made in the state of Oregon, and the laws of Oregon shall be utilized in construing, interpreting, and enforcing this Easement and Maintenance Agreement.

11. **Termination.** This Easement and Maintenance Agreement may not be terminated, canceled or otherwise amended or modified without the written approval of all Owners which use the Alley.

12. **Amendment.** This Easement and Maintenance Agreement may only be amended in

writing and shall only be effective when recorded in the Official Records of Deschutes County, Oregon, and all Owners must agree to any amendments made to this Easement and Maintenance Agreement. Prior to the sale of any Lots in Cascade Cottages, TMK and Jefferson may amend this Agreement.

IN WITNESS WHEREOF, the parties have executed this Easement and Maintenance Agreement this 28 day of Sept., 2005.

SISTERS TMK, LLC

By: [Signature]
Its: Member

JEFFERSON MEADOWS CONDOMINIUM OWNERS ASSOCIATION

By: [Signature]
Its: PRESIDENT

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me this 28 day of Sept., 2005 by Steven E. McChesney, the Member of Sisters TMK, LLC, an Oregon limited liability company.



[Signature]
Notary Public for Oregon
My Commission Expires: 8-17-07

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me this 28 day of Sept., 2005 by Jack W. Seelhorst, the President of Jefferson Meadows Condominium Owners' Association.



[Signature]
Notary Public for Oregon
My Commission Expires: 8-17-07

617024 sisters tmk alley easement redlined 9905

EXHIBIT "A"

Lots 1 thru 7, Cascade Cottages, a plat dated _____, recorded
_____, Plat Volume _____, Page _____, Plat Records, Deschutes
County, Oregon a replat of Lot 3, Pine Meadow Village, Phase I, situated in the Northeast
Quarter of Section 8, Township 15 South, Range 10 East, Willamette Meridian, City of
Sisters, Deschutes County, Oregon

EXHIBIT A
PAGE 1 OF 1

EXHIBIT C

Lot 128, Pine Meadow Village; Phase 3, City of Sisters, Deschutes County, Oregon now known as Jefferson Meadow Condominium, a Condominium pursuant to the Declaration (defined in the Agreement) and the plat of Jefferson Meadow Condominium, recorded in the plat records of Deschutes County, Oregon

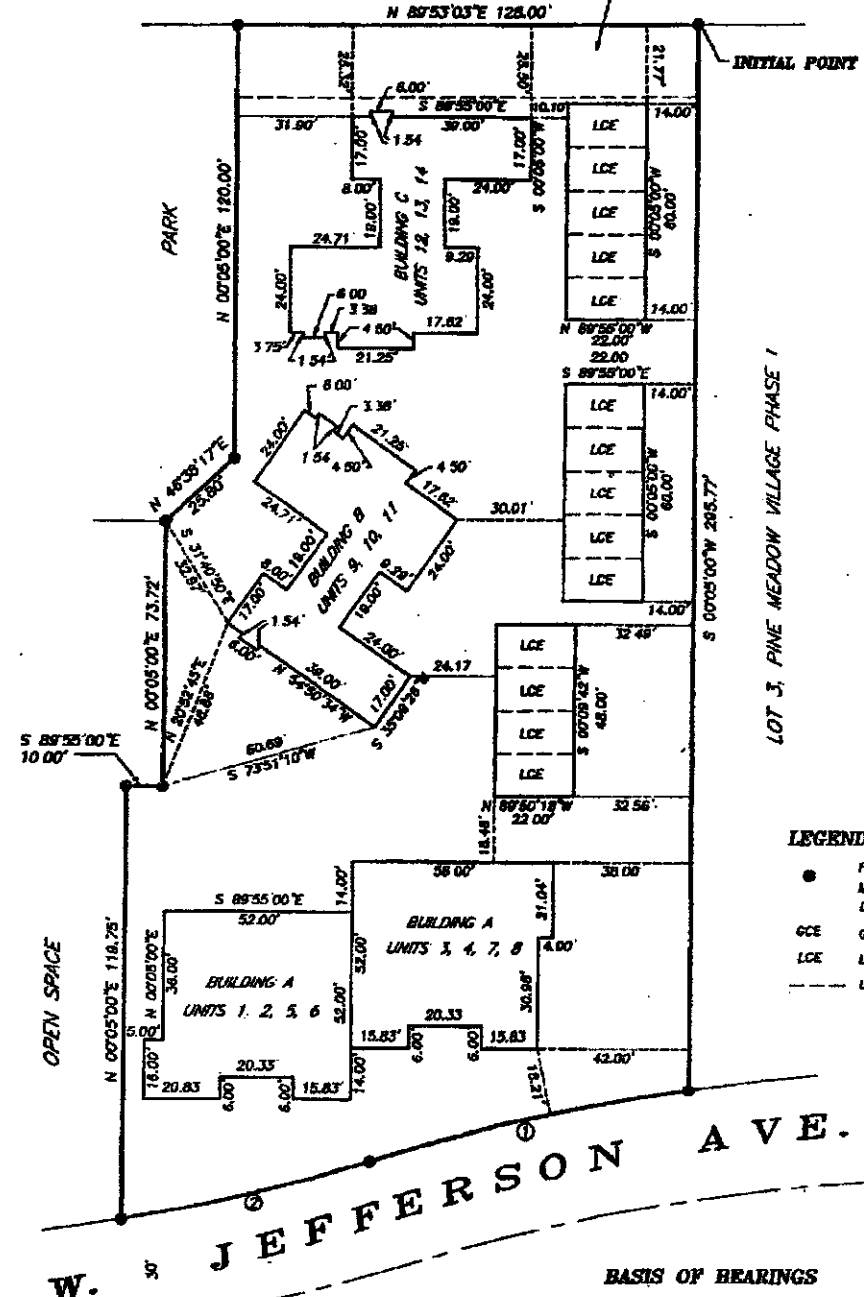
**EXHIBIT ^C
PAGE 1 OF 1**

EXHIBIT "D"

Description of the Alley Easement

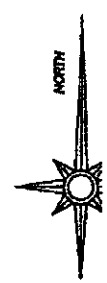
The West 12 feet of Lots 2 thru 7, Cascade Cottages, the North 12 feet of Lot 7, Cascade Cottages, and the East 12 feet of the Jefferson Meadows Condominium

20' WIDE POWERLINE EASEMENT
RECORDED 12/20/1989 IN
VOLUME 188, PAGE 2389



REGIST
PROFES
LAND SU

OREG
JULY 17,
FREDERICK /
198
RECORD DATE



LOT 3, PINE MEADOW VILLAGE PHASE 1

LEGEND

- FOUND 5/8" IRON ROD W MARKED "F. AST - PLS : DESCRIBED
- GCE GENERAL COMMON ELEM
- LCE LIMITED COMMON ELEM
- UTILITY EASEMENT

BASIS OF BEARINGS

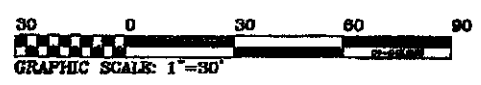
ALL BEARINGS AND DISTANCES WERE TRANSFERRED FROM OR CALCULATED ON THE BASIS OF CS14529, PLAT OF PINE MEADOW VILLAGE, PHASE 3

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD	CHLBEARING
1	580.00'	80.75'	5°48'47"	90.66'	S 77°27'21"W
2	630.00'	70.17'	7°35'10"	70.12'	S 78°30'12"W

SHEET INDEX

- SHEET 1: PLAT, DECLARATION, APPROVALS, AFFIDAVITS, EASEMENTS INDEX
- SHEET 2: BUILDING A PLAN
- SHEET 3: BUILDING A ELEVATIONS
- SHEET 4: BUILDING B & C PLAN
- SHEET 5: BUILDING B & C ELEVATIONS
- SHEET 6: BUILDING B & C CROSS-SECTIONS
- SHEET 7: GARAGE PLANS & ELEVATIONS



W. JEFFERSON AVE.