

2-41378
EASEMENT AND JOINT USE AGREEMENT

THIS AGREEMENT is made by and between RICHARD F. BOGATAY, hereinafter referred to as "BOGATAY", and DAVID C. ELLIOTT and RICHARD S. LEDGERWOOD, as tenants in common, hereinafter referred to as "ELLIOTT-LEDGERWOOD".

In consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. Recitals.

The parties hereby declare that the following facts are true:

BOGATAY is the owner of that certain real property described on Exhibit "A" attached hereto and made a part hereof. Said property is hereinafter referred to as the "Bogatay Property".

ELLIOTT-LEDGERWOOD is the owner of that certain real property described on Exhibit "B" attached hereto and made a part hereof. Said property is hereinafter referred to as the "Elliott-Ledgerwood Property".

The Bogatay Property and the Elliott-Ledgerwood Property are adjoining. Both parcels are included in one building located on Main Street, Klamath Falls, Klamath County, Oregon. LEDGERWOOD purchased Parcel B from BOGATAY in April of 1989. The building containing both Parcel A and Parcel B is hereinafter referred to as the "building".

The building contains several features which will be jointly used by both BOGATAY and ELLIOTT-LEDGERWOOD, including the roof, a fire suppression sprinkling system and a party wall.

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HENDERSON,
 MOLATORE & KLEIN
 ATTORNEYS AT LAW
 426 MAIN STREET
 KLAMATH FALLS,
 OREGON 97601-6084
 TELEPHONES
 (503) 884-7731
 884-2030

EASEMENT AND JOINT USE AGREEMENT -- 1

BOGATAY.EAS

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1 The party wall is a stud wall which separates the Bogatay
2 Property from the Elliott-Ledgerwood Property and which exists as
3 of the date of this Agreement.

4 The building contains a ground floor, a second floor which
5 extends partially over the ground floor, and the third floor which
6 extends partially over the second floor.

7 The ground floor and the second floor of the building have
8 been divided by a wooden stud wall, which is located on the property
9 line between the Bogatay Property and the Elliott-Ledgerwood
10 Property and which exists as of the date of this Agreement.

11 The third floor of the building is not divided by a party
12 wall. The third floor of the building is located entirely on the
13 Bogatay Property, except for a portion which extends over to the
14 Elliott-Ledgerwood Property. The portion of the third floor which
15 extends over the Elliott-Ledgerwood Property is hereinafter referred
16 to as the "third floor overhang". A legal description for the third
17 floor overhang is attached hereto, marked Exhibit "C" and made a
18 part hereof.

19 A portion of the second floor of the building, belonging
20 to ELLIOTT-LEDGERWOOD, extends to the Bogatay Property and is
21 hereinafter referred to as the "second floor overhang". The second
22 floor overhang is described on Exhibit "D" attached hereto and made
23 a part hereof.

24 2. Third Floor Overhang Easement.

25 ELLIOTT-LEDGERWOOD grants to BOGATAY a perpetual,
26 exclusive easement to maintain the existing third floor overhang on
27 the Elliott-Ledgerwood Property. Said easement shall be appurtenant
28 to the Bogatay Property. Said easement shall be used only in

EASEMENT AND JOINT USE AGREEMENT -- 2

1 conjunction with the Bogatay Property. BOGATAY shall have the
2 responsibility for all maintenance and repair of the building
3 located on the easement, except for the roof, the party wall
4 described in this agreement and the ceiling of the Elliott-
5 Ledgerwood Property under the third floor overhang. BOGATAY shall
6 indemnify and hold ELLIOTT-LEDGERWOOD harmless from any claim,
7 damages, actions or liability resulting from BOGATAY's use of the
8 third floor overhang.

9
10 **3. Second Floor Overhang Easement.**

11 BOGATAY grants to ELLIOTT-LEDGERWOOD a perpetual,
12 exclusive easement to maintain the existing second floor overhang
13 on the Bogatay Property. Said easement shall be appurtenant to the
14 Elliott-Ledgerwood Property. Said easement shall be used only in
15 conjunction with the Elliott-Ledgerwood Property. ELLIOTT-
16 LEDGERWOOD shall have the responsibility for all maintenance and
17 repair of the building located on the easement, except for the roof,
18 the party wall described in this agreement and the ceiling of the
19 Bogatay Property under the second floor overhang. ELLIOTT-
20 LEDGERWOOD shall indemnify and hold BOGATAY harmless from any claim,
21 damages, actions or liability resulting from ELLIOTT-LEDGERWOOD's
22 use of the second floor overhang.

23 **4. Party Wall.**

24 The wall between the Bogatay Property and the
25 Elliott-Ledgerwood Property on the first and second floors is hereby
26 declared to be a party wall and is hereinafter referred to as the
27 "party wall". The party wall shall be used jointly by the parties.
28 Neither party shall have the right to extend the party wall higher
than the height of the wall existing as of the date of this

EASEMENT AND JOINT USE AGREEMENT -- 3

BOGATAY.EAS

1 Agreement. BOGATAY shall be responsible for all repairs and
2 maintenance of the exterior of the party wall on the BOGATAY side
3 of the wall and ELLIOTT-LEDGERWOOD shall be responsible for all
4 repairs and maintenance of the exterior of the party wall on the
5 ELLIOTT-LEDGERWOOD side of the wall. Any repairs or maintenance on
6 the interior of the party wall, including, but not limited to,
7 structural parts of the wall and plumbing and electrical wiring,
8 shall be paid one-half (1/2) by BOGATAY and one-half (1/2) by
9 ELLIOTT-LEDGERWOOD. Each party shall use the party wall so that
10 his use will not unreasonably interfere with use by the other party.

11
12 5. Party Wall Easement.

13 BOGATAY hereby grants to ELLIOTT-LEDGERWOOD a
14 perpetual, exclusive easement to maintain any portion of the party
15 wall on the Bogatay Property. Said easement shall be appurtenant
16 to the Elliott-Ledgerwood Property and shall inure to the benefit
17 of any successors in ownership to the Elliott-Ledgerwood Property.
18 Said easement shall be used only in conjunction with the Elliott-
19 Ledgerwood Property. ELLIOTT-LEDGERWOOD hereby grants to BOGATAY
20 a perpetual, exclusive easement to maintain any portion of the party
21 wall on the Elliott-Ledgerwood Property. Said easement shall be
22 appurtenant to the Bogatay Property and shall inure to the benefit
23 of any successors in ownership to the Bogatay Property. Said
24 easement shall be used only in conjunction with the Bogatay
25 Property.

26 6. Roof.

27 The roof of the building is declared to be a joint
28 roof and shall be jointly used by the parties. All maintenance and
repairs for the roof shall be shared evenly by the parties. Neither

1 party shall authorize maintenance or repair of the roof in an amount
2 exceeding Two Thousand Dollars (\$2,000.00) without permission from
3 the other party.
4

5 7. Sprinkler System.

6 The existing sprinkler system is declared to be a
7 joint sprinkler system for use by both parties. BOGATAY shall
8 provide and pay for all maintenance or repairs to that portion of
9 the sprinkler system which is located on the Bogatay Property, and
10 ELLIOTT-LEDGERWOOD shall provide and pay for any maintenance or
11 repairs to that portion of the sprinkler system which is located on
12 the Elliott-Ledgerwood Property, provided, however, that each party
13 shall be responsible to the other in the event the negligence of one
14 party causes damage to that portion of the sprinkler system located
15 on the property of the other. Each party shall provide reasonable
16 maintenance and repairs to that portion of the sprinkler system
17 located on the party's property so that the sprinkler system remains
18 operational throughout the entire building. Any repair or
19 maintenance to the entire sprinkler system shall be paid equally
20 by the parties. BOGATAY hereby grants to ELLIOTT-LEDGERWOOD an
21 easement for access purposes to the Bogatay Property for purposes
22 of inspection, maintenance and repair of the sprinkler system upon
23 twenty-four (24) hours written notice and during business hours.
24 ELLIOTT-LEDGERWOOD hereby grants to BOGATAY an easement for access
25 purposes to the Elliott-Ledgerwood Property for purposes of
26 inspection, maintenance and repair of the sprinkler system upon
27 twenty-four (24) hours written notice and during business hours.
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1 8. Destruction.

2 In the event the building is totally destroyed or in
3 the event seventy-five percent (75%) of the building is destroyed,
4 then, in such event, the provisions of this Agreement regarding the
5 existence and maintenance of the easements, party wall, roof and
6 sprinkler system shall terminate and be of no further binding
7 effect. The intent of this provision is to allow free use of the
8 Bogatay Property and the Elliott-Ledgerwood Property in the event
9 of a destruction of the building.

10 9. Attorneys' Fees.

11 In the event of any action, judicial or otherwise,
12 regarding this Agreement, the prevailing party shall be entitled to
13 recover from the losing party all expenses which it may reasonably
14 incur in taking such action including, but not limited to,
15 attorney's fees and costs, whether incurred in a suit or action or
16 appeal from the judgment or decree therein or in connection with
17 non-judicial action.

18 10. Entire Agreement.

19 This Agreement is the entire, final and complete
20 agreement of the parties and it supersedes and replaces all prior
21 or existing written and/or oral agreements. This Agreement may not
22 be amended except by a further written agreement executed by both
23 parties.

24 11. Successor Interest.

25 This Agreement shall be binding upon and inure to the
26 benefit of the parties and to their respective successors,
27 administrators and assigns.

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HENDERSON,
MOLATORE & KLEIN
ATTORNEYS AT LAW
425 MAIN STREET
KLAMATH FALLS,
OREGON 97601-6084
TELEPHONES
(503) 884-7731
884-2030

12. Covenant.

Subject to the provisions of Paragraph 8, all covenants contained in this Agreement are intended to run with the land.

13. Preparation.

This Agreement has been prepared by Jerry M. Molatore, Attorney at Law, on behalf of BOGATAY. ELLIOTT-LEDGERWOOD acknowledges that Jerry M. Molatore does not represent ELLIOTT-LEDGERWOOD and has recommended that ELLIOTT-LEDGERWOOD have this document reviewed by an attorney of its choice.

14. Number, Gender and Captions.

As used herein, the singular shall include the plural and the plural shall include the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for the convenience of reference and shall in no way limit any of the provisions of this Agreement.

15. Applicable Law.

This Agreement has been entered into in the State of Oregon and the property is located in the State of Oregon. The parties agree that the laws of the State of Oregon shall be utilized in construing the Agreement and facing the respective rights and remedies of the parties.

16. Waiver.

Failure of either party at any time to require performance of any provision of this Agreement shall not benefit the parties' rights to enforce the provision, nor shall any waiver of

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1 any breach of any provision constitute a waiver of any succeeding
 2 dates of that provision or waiver of that provision itself.

3 17. Notice.

4 Any notice required by this Agreement shall be in
 5 writing and shall be effective when actually delivered in person or
 6 deposited in the U.S. Mail, registered or certified, postage prepaid
 7 and addressed to the party at the address stated below or at such
 8 other address as either party may designate by written notice to the
 9 other.

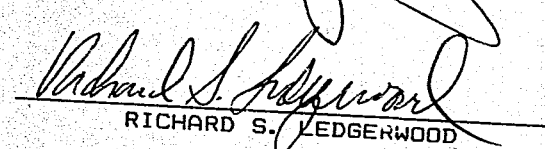
10 BOGATAY: 621 Loma Linda Drive
 11 Klamath Falls, OR 97601

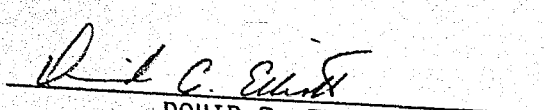
12 ELLIOTT-LEDGERWOOD: 810 Main Street
 13 Klamath Falls, OR 97601

14 IN WITNESS WHEREOF the parties have caused this Agreement
 15 to be executed as of this 24 day of May, 1989.

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 RICHARD F. BOGATAY


 RICHARD S. LEDGERWOOD


 DAVID C. ELLIOTT

STATE OF OREGON,

County of Klamath

} ss.

FORM NO. 23 — ACKNOWLEDGMENT
STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 25th day of May, 1989,
before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within
named Richard F. Bogatay

known to me to be the identical individual described in and who executed the within instrument and
acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.

Debra Buckingham
Notary Public for Oregon.
My Commission expires 12-19-92

STATE OF OREGON,

County of Klamath

} ss.

FORM NO. 23 — ACKNOWLEDGMENT
STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 24th day of May, 1989,
before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within
named Richard S. Ledgerwood and David C. Elliott

known to me to be the identical individual s described in and who executed the within instrument and
acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.

Debra Buckingham
Notary Public for Oregon.
My Commission expires 12-19-92

PARCEL B - MINOR PARTITION 89-2

A Portion of Lots 5, Block 40, "Plat of Linkville", Original Town of Klamath Falls, Oregon, more particularly described as follows:

Beginning at the most westerly corner of Lot 5, Block 40, said Plat of Linkville, said corner being the intersection of the northerly right of way line of Eighth Street and the easterly right of way line of Main Street; thence N.38°54'44"E., 47.40 feet along said Main Street right of way and the northwesterly line of said Lot 5; thence S.51°05'16"E., 107.25 feet along the middle of a common wall, said common wall being two 2x4 stud walls constructed parallel and contiguous; thence N.38°54'44"E., 11.31 feet along the northwesterly side of a 2x4 stud wall; thence S.51°05'16"E., along the northeasterly side of a 2x4 stud wall, a distance of 12.75 feet to a point on the southeasterly line of said Lot 5; thence S.38°54'44"W., 58.60 feet to the most southerly corner of said Lot 5; thence N.51°08'28"W., 120.00 feet along the southwesterly line of said Lot 5, to the point of beginning; Containing 5826 square feet more or less, with bearings and distances based on record of survey No. 2860 on file in the office of the Klamath County Surveyor.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Dale A. Cross
OREGON
JULY 13, 1973
DALE A. CROSS
993

5/4/99

ALPHA-OMEGA
LAND SURVEYING SERVICES
4027 Sturdivant Ave.
Klamath Falls, Oregon 97601
(503) 884-5336

EXHIBIT "A"

PARCEL A - MINOR PARTITION 89-2
(Revised 4/27/89)

A Portion of Lots 5 and 6, Block 40, "Plat of Linkville", Original Town of Klamath Falls, Oregon, more particularly described as follows:

Commencing at the most westerly corner of Lot 5, Block 40, said Plat of Linkville, said corner being the intersection of the northerly right of way line of Eighth Street and the easterly right of way line of Main Street; thence N.38°54'44"E., 47.40 feet along said Main Street right of way and the northwesterly line of said Lot 5, to the True Point of Beginning of this description; thence S.51°05'16"E., 107.25 feet along the middle of a common wall, said common wall being two 2x4 stud walls constructed parallel and contiguous; thence N.38°54'44"E., 11.31 feet along the northwesterly side of a 2x4 stud wall; thence S.51°05'16"E., along the northeasterly side of a 2x4 stud wall, a distance of 12.75 feet to a point on the southeasterly line of said Lot 5; thence N.38°54'44"E., 33.36 feet to a point on the southeasterly corner of that property described in Deed Volume M89 at page 3, deed records of Klamath County, Oregon; thence N.51°08'28"W., 120.00 feet along a line parallel with and 27.0 feet northeasterly from the southwesterly line of said Lot 6, to a point on the northwesterly line of said Lot 6; thence S.38°54'44"W., 44.56 feet to the True Point of Beginning. Containing 5209 square feet more or less, with bearings and distances based on record of survey No. 2860 on file in the office of the Klamath County Surveyor.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Dale A. Cross

OREGON
JULY 13, 1973
DALE A. CROSS
933

ALPHA-OMEGA
LAND SURVEYING SERVICES
4027 Sturdivant Ave.
Klamath Falls, Oregon 97601
(503) 884-5336

EXHIBIT "B"

EASEMENT FOR ENCROACHMENT
OF THIRD FLOOR OFFICES
(Parcel B encroaches Parcel A)

L. 9159

A Portion of Lot 5, Block 40, "Plat of Linkville", Original Town of Klamath Falls, Oregon, more particularly described as follows:

Commencing at the most westerly corner of Lot 5, Block 40, said Plat of Linkville, said corner being the intersection of the northerly right of way line of Eighth Street and the easterly right of way line of Main Street; thence N.38°54'44"E., 47.40 feet along said Main Street right of way and the northwesterly line of said Lot 5, to a point; thence S.51°05'16"E., 89.65 feet to the True Point of Beginning of this description; thence continuing S.51°05'16"E., 17.60 feet; thence N.38°54'44"E., 6.11 feet; thence N.51°05'16"W., 17.60 feet; thence S.38°54'44"W., 6.11 feet to the True Point of Beginning. Containing 78 square feet more or less.

EXHIBIT "C"

EASEMENT FOR ENCROACHMENT
OF SECOND FLOOR STORAGE AREA
(Parcel A encroaches Parcel B)

9160

A portion of Lot 5, Block 40, "Plat of Linkville", Original Town of Klamath Falls, Oregon, more particularly described as follows:

Commencing at the most westerly corner of Lot 5, Block 40, said Plat of Linkville, said corner being the intersection of the northerly right of way line of Eighth Street and the easterly right of way line of Main Street; thence N.38°54'44"E., 47.40 feet along said Main Street right of way and the northwesterly line of said Lot 5, to a point; thence S.51°05'16"E., 89.65 feet to the True Point of Beginning of this description; thence continuing S.51°05'16"E., 17.60 feet; thence N.38°54'44"E., 11.31 feet; thence S.51°05'16"E., 12.75 feet to a point on the southeasterly line of said Lot 5; thence S.38°54'44"W., 15.15 feet; thence N.51°05'16"W., 30.35 feet; thence N.38°54'44"E., 3.78 feet to the True Point of Beginning. Containing 260 square feet more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Dale A. Cross

OREGON
JULY 13, 1973
DALE A. CROSS
933

ALPHA-OMEGA
LAND SURVEYING SERVICES
4027 Sturdivant Ave.
Klamath Falls, Oregon 97601
(503) 884-5336

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co.
of May A.D., 19 89 at 9:59 o'clock A.M., and duly recorded in Vol. M89
of Deeds on Page 9148
By Evelyn Biehn County Clerk
By Pauline Mullinsdale

FEE \$68.00

Return: K.C.T.C.

EXHIBIT "D"