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**DRIVEWAY EASEMENT  
AND MAINTENANCE AGREEMENT**

This Driveway Easement and Maintenance Agreement ("Agreement") is made on the date hereinafter set forth by Ernst Brothers, L.L.C., an Oregon limited liability company and Albert D. Brewer and Ruby A. Brewer, husband and wife, Owners of Lots 44 and 45 respectively of Tract 1318, Gilchrist Townsite, Klamath County, Oregon.

**RECITALS**

- A. Whereas the Lots subject to this agreement are adjoining lots and share a common driveway.
- B. Whereas the Lots were recently created through a subdivision of the town of Gilchrist, and prior to such subdivision, no agreement existed regarding the common driveway.
- C. The Owners of the Lots desire to grant to each other easements for use of the common driveway, and to enter into an agreement regarding the maintenance and repair of the common driveway.

**AGREEMENT**

**ARTICLE 1  
Definitions**

- 1.1 "Agreement" shall mean this Driveway Easement and Maintenance Agreement.
- 1.2 "Driveway" shall mean a strip of property centered on the property line between the two Lots no greater than 15 feet wide for vehicular access to a single-family residential home located on either Lot.
- 1.3 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to either Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in either Lot merely as security for the performance of an obligation.

**ARTICLE 2  
Driveway Easement**

- 2.1 **Limitation.** Any easements granted under this Article shall be subject to all prior easements or encumbrances of record.



**2.2 Grant of Easement.** For good and valuable consideration, each Owner hereby grants to the other Owner a perpetual easement of ingress and egress over so much of their respective Lots as is presently improved as part of a Driveway for use by vehicular traffic for access to the single-family residential homes located on the Lots.

**2.3 Maintenance and Repair.** The Owners, and their successors and assigns, agree to share equally in any costs to maintain and repair the portion of the Driveway used jointly by both property owners. In the event the parties are unable to agree upon the appropriate level of maintenance and repair for the portion of the Driveway used jointly by both parties, the parties hereby agree to submit the matter to the Board of Directors of the Gilchrist Owner's Association, an Oregon nonprofit corporation, and agree to be bound by the decision of said Board of Directors as to the appropriate level of maintenance and repair necessary for the Driveway. Maintenance and repair of any portion of the Driveway used solely by one Owner shall be the responsibility of that Owner.

**2.4 Indemnification.** Each Owner agrees to be responsible for any loss, claim or liability arising out of such Owner's use of the easement strip and such Owner shall indemnify and defend the other Owner from any such loss, claim or liability.

**2.5 Appurtenance.** This Easement is appurtenant to the real property owned by the Owners as described above. Also, the right of any Owner to contribution from any other Owner under this Agreement for maintenance, repair or other expense of the common Driveway shall be appurtenant to the land and shall pass to such Owner's successors in title.

**2.6 Perpetuity.** This Easement shall be perpetual; however, in the event the Driveway is not used by either Owner, or successors or assigns, for a period of three (3) years, or if otherwise abandoned, the easement shall automatically expire.

### ARTICLE 3

#### Liens for Non-Payment of Repair and Maintenance Cost

**3.1 Creation of the Lien and Personal Obligation for Assessments.** Each Owner of either Lot sharing a common Driveway by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay his/her share of the costs and expense of repair and maintenance of the Driveway.

If either Owner of such Lot fails to pay the other Owner for such expenses or fails to reimburse for expenses already incurred relating to the repair and maintenance of the Driveway, then all such costs and expenses, together with interest thereon at the rate of twelve percent (12%) per annum, and all other costs, fees and charges allowed by law shall be a lien and charge on the land, and shall be a continuing lien upon the Lot against which each such cost, expense and repair is incurred. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law. No particular form of lien shall be required as long as it states the names of the



parties, identifies the Lots, describes the repairs or improvements made, and states the amount of the obligation. Such lien shall be superior to all other liens except first mortgages, first trust deeds, or the vendor's lien of a land sale contract, property taxes, and other liens having priority as a matter of law.

**3.2 Effect of Nonpayment of Maintenance Costs and Expenses by Either Owner; Remedies.** In addition to any other remedies provided by law, either Owner may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Property. No such action or a judgment entered therein shall be a waiver of the lien of the Owner. No Owner may waive or otherwise escape liability for the maintenance costs and expenses provided for herein by abandonment of his or her Lot.

#### ARTICLE 4 Arbitration

Unless a different method of resolving a dispute is provided by this Agreement, in the event a dispute arises between the Owners concerning the Easement, the Driveway, or concerning the obligations of the Owners pursuant to the provisions of this Agreement, the Owners shall choose an arbitrator, and the dispute shall be resolved by the arbitrator. If the parties cannot agree upon an arbitrator, either may apply to an appropriate Court having jurisdiction for the appointment of an arbitrator. The decision of the arbitrator shall be final and unappealable. The arbitrator's decision or award may be entered in the appropriate court and shall have the same effect as any other final unappealable judgment or decree.

#### ARTICLE 5 Enforcement

Either Owner or the holder of any first mortgage, trust deed or land sale contract of any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Agreement as may appertain specifically to such parties or Owners. Failure by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event arbitration is requested by an Owner or suit or action is brought by an Owner to collect the other Owner's share of expenses payable hereunder, the prevailing Owner shall be entitled to reasonable attorney fees in such arbitration, suit or action and in any appeal therefrom.

DATED: April 8, 1997.

Owner(s) of Lot No. 45

Albert D. Brewer  
Printed Name: Albert D. Brewer

Ruby A. Brewer  
Printed Name: Ruby A. Brewer



DATED: March 26, 1997.Owner(s) of Lot No. 44

ERNEST BROTHERS, L.L.C.

Printed Name: Wayne G. Ernst, Managing Member

Printed Name: \_\_\_\_\_

STATE OF OREGON

County of Klamath

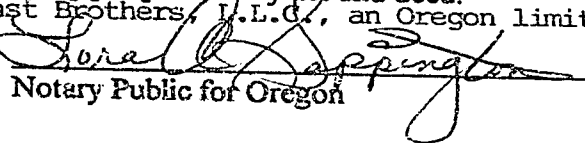
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) ss.

March 26<sup>th</sup>, 1997

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Personally appeared before me the above-named Wayne G. Ernst\*\* and  
 acknowledged the foregoing instrument to be his voluntary act and deed.  
 Managing Member, on behalf of Ernst Brothers, L.L.C., an Oregon limited  
 liability company

  
 Notary Public for Oregon

STATE OF OREGON

County of Deschutes


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) ss.

April 8, 1997

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Personally appeared before me the above-named Albert d. Brewer and  
 acknowledged the foregoing instrument to be his voluntary act and deed.


  
 Notary Public for Oregon

STATE OF OREGON

County of Deschutes

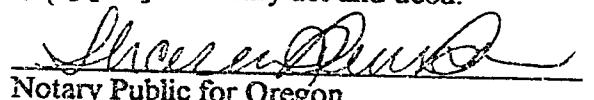
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) ss.

April 8, 1997

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Personally appeared before me the above-named Ruby A. Brewer and  
 acknowledged the foregoing instrument to be his voluntary act and deed.


  
 Notary Public for Oregon

AFTER RECORDING RETURN TO:  
 WESTERN TITLE & ESCROW  
 1345 NW WALL STREET, SUITE 200  
 BEND, OR 97701  
 ATTN: SHARON

PAGE 4 -

DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

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STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 11th day  
 of April A.D., 1997 at 3:31 o'clock P.M., and duly recorded in Vol. M97  
 of Deeds on Page 10871

FEE

\$25.00

Bernetha G. Leisch, County Clerk

by Sharon Kunkel