

36047

Vol. 1197 Page 11218

After Recording Return To:

JELD-WEN, inc.  
P.O. Box 5079  
Klamath Falls, OR 97601

MTC 40383-KA

**EASEMENT AGREEMENT  
(Recreational Use)**

**PARTIES:**

JELD-WEN, inc.

("Grantor")

ROBERT L. MALLOY, INDIVIDUALLY AND  
AS TRUSTEE OF THE ROBERT L. MALLOY  
REVOCABLE TRUST UNDER DECLARATION OF TRUST  
DATED JANUARY 24, 1987 and

MARILYN KIM NOVAK MALLOY, INDIVIDUALLY AND  
AS TRUSTEE OF THE MARILYN KIM NOVAK MALLOY  
REVOCABLE TRUST UNDER DECLARATION OF TRUST  
DATED JANUARY 24, 1987

("Grantee")

**DATE:**

April 11, 1997

**RECITALS:**

A. Grantor owns the real property described in Exhibit A attached hereto and by this reference incorporated herein (the "JELD-WEN Property"). Grantee owns the real property described in Exhibit B attached hereto and by this reference incorporated herein (the "Malloy Property").

B. Grantee desires to acquire an easement across a portion of the JELD-WEN Property for the purposes of ingress and egress for recreational use to certain publicly-owned forest lands located adjacent to the JELD-WEN Property. Grantor is willing to grant the easement upon the terms and conditions contained herein.

**AGREEMENT**

THEREFORE, in consideration of the recitals above and the terms contained herein, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, their successors and assigns a nonexclusive easement (the "Easement") for ingress and egress over, upon and across a 30-foot wide strip of land along the west boundary line of the JELD-WEN Property from the southwest corner of the JELD-WEN Property 1400 feet north (the "Road Easement Area"), and continuing north along the westerly boundary line approximately 2,584 feet to the northwest corner of the JELD-WEN Property (the "Recreational Easement Area"). Together, the Road Easement Area and the Recreational Easement Area are referred to herein as the



"Easement Areas". The Easement shall inure to the benefit of Grantee, their successors and assigns, and shall be appurtenant to, benefit and run with Malloy Property. The Easement shall bind Grantors, their successors and assigns, and shall bind and run with JELD-WEN Property.

2. Term. The term of this Easement shall commence on the date hereof and shall be perpetual.

3. Grantee's use of the Easement. Grantee shall use the Easement created herein for ingress and egress for recreational use to publicly-owned forest land located adjacent to the JELD-WEN Property. The Road Easement Area is subject to easement rights granted by Grantor to third parties, including an easement granted in favor of Collier State Park located adjacent to the JELD-WEN Property. Grantee agrees to cooperate with other uses of the Road Easement Area. No motorized vehicles except for snowmobiles shall be allowed in the Recreational Easement Area. Grantee shall not place any gates, fences or other structures in the Easement Areas. Grantee shall not cut or remove any timber or other vegetation in the Recreational Easement area, or make any other alteration or modification thereof, without the written consent of Grantor. Grantor reserves the right to use the Easement Areas for any and all purposes which do not unreasonably interfere with the exercise by Grantee of its rights under this Easement. Grantee shall not grant to any third party any further rights in the Easement Area.

4. Maintenance and Repair. Grantee shall repair any damage to the Easement Areas caused by Grantee's use thereof. Grantee shall cooperate with the other users of the Road Easement Area regarding maintenance and repair obligations and expense relating thereto, and at such time as Grantee is the sole holder of any easement rights in the Road Easement Area, Grantee shall be responsible, at their sole cost and expense, to maintain and repair the Road Easement Area. Under no circumstances shall Grantor be obligated to maintain or repair, or to contribute to the cost of maintaining or repairing, the Easement Areas.

5. Relocation of Easement Areas. Grantor reserves the right to relocate the Easement Areas at any time and in such case shall reconstruct any road at such new location in as good or better condition as existed in the Easement Areas. If the Easement Areas are relocated, Grantor may record an instrument indicating the location of the new Easement Areas and such instrument shall serve to amend this Easement Agreement and eliminate the rights of Grantee in the original Easement Areas described herein. Such amendment shall be effective whether or not signed by Grantee, but Grantee shall execute it or any other document necessary to evidence the relocation of the Easement Areas if requested by Grantor.

6. Indemnification. Grantee assumes all risk arising out of the use of the Easement Areas, and Grantor shall have no liability to Grantee for any condition existing in the Easement Areas. Grantee shall indemnify, defend, and hold Grantor harmless from any claims or liability to Grantor arising from the use of the Easement Areas by Grantee, its guests, invitees, successors or assigns.

7. Covenants Run with the Land. Each and all of the covenants, restrictions and conditions contained herein shall constitute a covenant running with the land and shall bind every person having any fee, leasehold or other interest in any portion of the JELD-WEN



Property or the Malloy Property and shall inure to the benefit and burden of Grantor and Grantee and their respective successors and assigns.

8. Attorney Fees. In the event of any litigation arising out under this agreement, the prevailing party shall recover from the losing party, reasonable attorney fees and other costs incurred at trial, on appeal, or in any bankruptcy proceeding.

9. Counterparts. This Agreement may be executed in one or more counterparts, the signature pages of which may be assembled into a single document after execution at the convenience of the parties.

DATED as of the date first written above.

**GRANTOR:**

JELD-WEN, inc.,  
an Oregon corporation

By: Douglas P. Kotz  
Its: Secretary

**GRANTEE:**

Robert L. Malloy  
Robert L. Malloy, individually

Robert L. Malloy  
Robert L. Malloy as Trustee of the Robert L. Malloy Revocable Trust under Declaration of Trust dated January 24, 1987

Marilyn Kim Novak Malloy  
Marilyn Kim Novak Malloy, individually

Marilyn Kim Novak Malloy  
Marilyn Kim Novak Malloy as Trustee of the Marilyn Kim Novak Malloy Revocable Trust under Declaration of Trust dated January 24, 1987

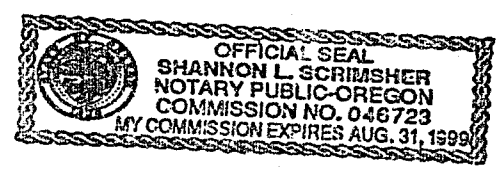


11221

STATE OF OREGON

County of Klamath ) ss.

This instrument was acknowledged before me on the 14 day of April, 1997 by Douglas L. Kintzinger as secretary of JELD-WEN, inc., an Oregon corporation.

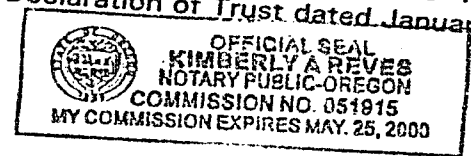


Shannon L. Scrimsher  
Notary Public for Oregon  
My Commission Expires: 8-31-99

STATE OF OREGON

County of Klamath ) ss.

This instrument was acknowledged before me on the 11 day of April, 1997 by Robert L. Malloy individually and as Trustee of the Robert L. Malloy Revocable Trust under Declaration of Trust dated January 24, 1987.

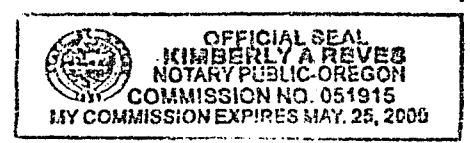


Kimberly A. Reves  
Notary Public for Oregon  
My Commission Expires: 5/25/2000

STATE OF OREGON

County of Klamath ) ss.

This instrument was acknowledged before me on the 11 day of April, 1997 by Marilyn Kim Novak Malloy individually and as Trustee of the Marilyn Kim Novak Malloy under Declaration of Trust dated January 24, 1987.



Kimberly A. Reves  
Notary Public for Oregon  
My Commission Expires: 5/25/2000



**EXHIBIT A**

The JELD-WEN Property is that certain property located in Klamath County, Oregon more particularly described as follows:

The West 1/2 of the NW1/4 and the NW1/4 of the SW1/4 of Section 11, Township 34 South, Range 7 East, Willamette Meridian, Klamath County, Oregon



11223

## EXHIBIT B

The Malloy Property is that certain property located in Klamath County, Oregon more particularly described as follows:

The E1/2 of the SE1/4, SW1/4 of the SE1/4 of Section 10, Township 34 South, Range 7, E.W.M., Klamath County, Oregon, LESS AND EXCEPT a parcel being a tract of land situate in the NE1/4 SE1/4, Section 10, Township 34 South, Range 7 E.W.M., Klamath County, Oregon more particularly described as follows:

Beginning at the Southeast corner of the said NE1/4 SE1/4; thence South 89 degrees 06' 17" West, along the South line of said NE1/4 SE1/4, a distance of 402.44 feet, thence North 21 degrees 17' 44" West, 1420.18 feet to the North line of said NE1/4 SE1/4; thence North 88 degrees 57' 42" East along the North line of said NE1/4 SE1/4, a distance of 904.98 feet to the Northeast corner of said NE1/4 SE1/4; thence South 00 degrees 34' 25" East 1333.39 feet to the point of beginning, with bearings based on Survey No. 3600 as recorded in the office of the Klamath County, Surveyor.

[Tax Lot R3407-01000-00400-000, <sup>100</sup>~~55~~ acres]



*DK*

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 15th day  
of April A.D., 19 97 at 2:26 o'clock P M., and duly recorded in Vol. M97  
of Deeds on Page 11218

FEE \$55.00

Bernetha G. Letsch, County Clerk  
by Kathleen R. Rasmussen