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K-50719

**PARTY WALL AND DRIVEWAY EASEMENT
AND MAINTENANCE AGREEMENT**

This Party Wall And 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 ERNST BROTHERS, L.L.C., an Oregon limited liability company, Owners of Lots 111 and 112 respectively of Tract 1318, Gilchrist Townsite, Klamath County, Oregon.

RECITALS

- A. Whereas the Lots subject to this agreement are adjoining lots and either share a common driveway, a common party wall, or both.
- 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 party wall and/or the common driveway.
- C. For those Lots sharing a common driveway, 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.
- D. For those Lots sharing a party wall, the Owners of the Lots desire to enter into an agreement regarding their respective rights to such party wall and the obligations of repair and maintenance.

**AGREEMENT
ARTICLE 1
Definitions**

- 1.1. "Agreement" shall mean this Party Wall and Driveway Easement and Maintenance Agreement.
- 1.2. "Building" shall mean the structure divided by a Party Wall which contains two garages.
- 1.3. "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.

1.4. "Garage" shall mean and refer to either portion of the structure situated upon a Lot designed and intended for use as a storage facility for vehicles or other personal property and shall include the wallboard attached to the interior of the party wall which divides the two Garages of the Building.

1.5. "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.

1.5. "Party Wall" shall mean and refer to the wall between the Garages defined as described in Article 2 of this Agreement.

ARTICLE 2

Party Walls

2.1 **Limitation.** This Article 2 of this Agreement shall apply only to those Lots that share a Party Wall.

2.2 **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Building which divides the two Garages, and which is placed on the dividing line between the two Lots, shall constitute a Party Wall. The Party Wall shall consist of the studs, blocking, insulation, cement and airspace lying between the wallboard of one Garage and the wallboard of the other Garage in the Building. The Party Wall will not consist of the wallboard, paneling, sheetrock, tiles, wallpaper and paint on the interior of the Party Wall which shall be considered part of the Garage, the maintenance of which shall be the responsibility of the respective Owner. To the extent not inconsistent with the provisions of this Agreement, the general rules of law regarding Party Walls shall apply thereto.

2.3 **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article 4 of this Agreement shall apply with regard to repair or reconstruction of such Party Wall.

2.4 **Weatherproofing.** Notwithstanding any other provision of this Agreement, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements, subject, however, to reimbursement and/or contributions from available insurance policies.

2.5 **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Agreement, together with the obligations of such other Owners to contribute to expenses related to the Party Wall, or as otherwise required by this Agreement,

shall be appurtenant to the land and shall pass to such Owner's successors in title.

2.6. Maintenance and Repair. Each Owner must provide reasonable notice to the other Owner when maintenance work is required. Additionally, all exterior carpentry, painting and maintenance shall be agreed to by both owners before the work commences, unless such work shall only affect the portion of the Building on one Owner's lot. All improvements to the Building must also be approved by the Architectural Review Committee of the Gilchrist Owner's Association as required by the Declaration of Restrictions, Protective Covenants and Conditions of the Association, or its bylaws. The exterior of the Building shall be painted one color, unless the Architectural Review Committee otherwise allows. The color shall be agreed upon by the Owners and approved by the Architectural Review Committee.

2.7. Roofing. The roof of the entire Building containing both Garages must be replaced at one time. The expense of maintenance, repair or replacement of the roof shall be equally born by the owners of the two Garages.

2.8. Right to Maintain, Repair or Reconstruct Without Consent. Any painting, roofing, repair, reconstruction or other maintenance to the exterior or structure of the Building which reasonably needs to be done and which will affect portions of the Building located on both Lots, and one Owner refuses to proceed, may be completed by the other Owner with the cost apportioned between the Owners in proportion to the benefit to the Garages. There shall be a rebuttable presumption that the benefit of such exterior painting, roofing, repair, maintenance or reconstruction of or to the Building benefits the Garages equally.

2.9. Utility Easements. Each Owner shall have an easement through the Party Wall for the purpose of installing, repairing, replacing or maintaining utility lines, wires, pipes and conduits.

2.10. Sharing of Repair and Maintenance Costs and Expenses. The cost of repair and maintenance of a Party Wall shall be shared equally by the Owners whose Garages are divided by such Party Wall. The costs of exterior painting, roofing, repair, maintenance or reconstruction of the Building, which affects portions of the Building on both Lots, shall be apportioned between the owners in proportion to the benefit to their Garages. There shall be a rebuttable presumption that such benefit is equal.

ARTICLE 3 Driveway Easement

3.1. Limitation. Provisions of this Article 3 shall apply only to those Lots that share a common Driveway on the date of this Agreement. Any easements granted under this Article shall be subject to all prior easements or encumbrances of record.

3.2. 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 home located on the Lots.

3.3. 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.

3.4. 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.

3.5. 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.

3.6. 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 4

Liens for Non-Payment of Repair and Maintenance Cost

4.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of either Lot joined by a Party Wall or 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 Party Wall, the exterior of the Building, and 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 Party Wall, the exterior of the Building, and 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.

4.2. 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 non-use of the Party Wall or abandonment of his or her Lot or Garage.

ARTICLE 5

Damage And Destruction

5.1. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty or any other damage or destruction to the Building, the insurance proceeds of the Owners' policies, if sufficient to reconstruct the Building, shall be applied to such reconstruction.

5.2. Insurance Proceeds Insufficient to Cover Loss. Subject to the other provisions of this Section, if available insurance proceeds are insufficient to reconstruct or repair the damaged or destroyed Building, it shall, nonetheless, be promptly repaired. Any insurance policies of the Owners covered by such policies shall be contributed to the repair or reconstruction costs of the Building so insured, and each Owner shall be liable for his or her share of any deficiency for such repair or reconstruction not paid from insurance proceeds. Provided, however, if three-fourths or more in value of the Building is destroyed or substantially damaged and if either Owner wishes, and all mortgagees, trust deed beneficiaries and land sale contract vendors agree, and the insurers who have issued policies on the Building allow, the Building will not be reconstructed or repaired. In such case, insurance proceeds will be paid to the covered Owner after the expenses of demolition, debris removal, and Lot restoration are paid.

5.3. Architectural Changes After Damage or Destruction. Reconstruction of the damaged or destroyed Building as used in the Article means restoring the Building to substantially the same condition in which it existed prior to the fire, casualty or disaster unless other action is agreed to by the Owners and first trust deed holders, and/or land sale contract vendors.

ARTICLE 6 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 Party Wall, the Lots, the Building, 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 7 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: June 25, 1997.

Owner(s) of Lot No. 111

ERNST BROTHERS, L.L.C.

Wayne G. Ernst
Printed Name: Wayne G. Ernst, Managing Member

Printed Name: _____

DATED: June 25, 1997.

Owner(s) of Lot No. 112

ERNST BROTHERS, L.L.C.

Wayne G. Ernst
Printed Name: Wayne G. Ernst, Managing Member

Printed Name: _____

STATE OF OREGON)
) ss. June 25th, 1997
 County of Deschutes)

Personally appeared before me the above-named Wayne G. Ernst** and
 acknowledged the foregoing instrument to be [his] [her] voluntary act and deed.

**Managing Member of Ernst Brothers, L.L.C., an Oregon limited liability



Shannon Mc Clanahan
 Notary Public for Oregon

STATE OF OREGON)
) ss. June 25th, 19 97
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Shannon Mc Clanahan
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) ss. _____, 19____
 County of _____)

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STATE OF OREGON)
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 County of _____)

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 Notary Public for Oregon

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PAGE 7 - PARTY WALL AND DRIVEWAY EASEMENT AND MAINTENANCE

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ Klamath County Title _____ the 9th day
 of July A.D., 19 97 at 2:29 o'clock P. M., and duly recorded in Vol. M97
 of Deeds on Page 21355.

FEE \$40.00

Bernetha G. Letsch, County Clerk
 By *Kathleen Rose*