

GRANTOR'S NAME AND ADDRESS: :  
Ernst Brothers LLC, dba Mollies Truck Stop :  
P.O. Box 637 :  
Gilchrist, OR 97737 :

**M06-11080**

Klamath County, Oregon  
06/01/2006 10:57:24 AM  
Pages 13 Fee: \$81.00

or  
in

BENEFICIARY'S NAME AND ADDRESS: :  
Ed Staub & Sons Petroleum, Inc. :  
P.O. Box 528 :  
Merrill, OR 97633 :  
AFTER RECORDING RETURN TO: :  
Ed Staub & Sons Petroleum, Inc. :  
P.O. Box 528 :  
Merrill, OR 97633 :

## SECOND TRUST DEED

THIS TRUST DEED, made on May 31, 2006, between Ernst Brothers LLC, doing business as Mollies Truck Stop, as Grantor, and Ed Staub & Sons Petroleum, Inc., as Beneficiary, and David M. Vandenberg, Attorney at Law, Lakeview, Oregon, as Trustee,

### WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee, in trust, with power of sale, the property in Klamath County, Oregon, described as:

See Exhibit A attached hereto.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of Four Hundred Twenty Five Thousand (\$425,000.00) Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest, if not sooner paid, to be due and payable on February 1, 2018.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property, or all (or any part) of grantor's interest in it without first obtaining the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by grantor of an earnest money agreement does not constitute a sale, conveyance or assignment.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; and not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial

Code as the beneficiary may require, and to pay for filing the same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.

4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and other hazards, as the beneficiary may from time to time require, in an amount not less than insurable value, written by one or more companies acceptable to the beneficiary, with loss payable to the latter. All policies of insurance shall be delivered to the beneficiary as soon as issued. If the grantor shall fail for any reason to procure any such insurance and to deliver the policies to the beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the beneficiary may procure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected, or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges becomes past due or delinquent and promptly deliver receipts therefor to beneficiary. Should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof. For such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described. All such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and shall constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust, including the cost of the title search, as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation, and trustee and attorney fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed or any suit or action related to this instrument, including but not limited to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney fees. The amount of attorney fees mentioned in this paragraph in all cases shall be fixed by the trial court, and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sums as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking which are in excess of the amount required to pay all reasonable costs, expenses and attorney fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby. Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation promptly upon beneficiary's request.

9. At any time, and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; or (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may, at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, either upon and the take possession of the property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such event, the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753 may cure the default or defaults. If the default consists of a failure to pay when due sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or to defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed, together with trustee and attorney fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of: (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney; (2) to the obligation secured by the trust deed; (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interest may appear in the order of their priority; and (4) the surplus, if any, to the grantor, or to any successor in interest entitled to such surplus.

16. Beneficiary may, from time to time, appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The grantor covenants to and agrees with the beneficiary and the beneficiary's successors in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title thereto, except as may be set forth in any addendum or exhibit attached hereto, and that the grantor will warrant and forever defend the same against all persons whomsoever.

**WARNING: Unless grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, beneficiary may purchase insurance at grantor's expense to protect beneficiary's interest. This insurance may, but need not, also protect grantor's interest. If the collateral becomes damaged, the coverage purchased by beneficiary may not pay any claim made by or against grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by beneficiary, which cost may be added to grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date grantor's prior coverage lapsed or the date grantor failed to provide proof of coverage. The coverage beneficiary purchases may be considerably more expensive than insurance grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.**

The grantor warrants that the proceeds of the loan represented by the above-described note and this trust deed are for an organization for business and commercial purposes.

This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledge, of the contract secured hereby, whether or not named as a beneficiary herein.

In construing this trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument the day and year first written above.

Ernst Brothers LLC dba Mollies Truck Stop

By: Wayne G. Ernst  
Wayne G. Ernst, Managing Member

STATE OF OREGON, County of Klamath )ss.

This instrument was acknowledged before me on May 31, 2006, by Wayne G. Ernst, as Managing Member of Ernst Brothers LLC dba Mollies Truck Stop.

Jody Kay Choate  
Notary Public for Oregon  
My Commission Expires: January 18, 2010



**REQUEST FOR FULL RECONVEYANCE (to be used only when obligations have been paid.)**

TO: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed, the estate now held by you under the same. Mail the reconveyance and documents to \_\_\_\_\_

DATED \_\_\_\_\_

\_\_\_\_\_  
Beneficiary

**Do not lose or destroy this Trust Deed OR THE NOTE which it secures.  
Both should be delivered to the trustee for cancellation before reconveyance is made.**

**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

**Parcel 1:**

A piece of parcel of land situated in the NE ¼ of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and more particularly described as follows:

Beginning at an iron pipe which is South 0°06' West 323.4 feet and North 89°49' West 234.2 feet from the NE Section Corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, which point of beginning is also the NE corner of that certain tract of land conveyed to Elmer W. and Flora M. Zigler on page 238, Deed volume 278 of the records of Klamath County, Oregon; thence North 89°49' West along the Northerly boundary of said tract of land conveyed on page 238 Deed Volume 278, a distance of 334.8 feet to an iron pipe set at its intersection with a line which is parallel to and 192.77 feet Northeasterly of, when measured at right angles to, the Northeasterly right of way line of the Dalles-California Highway (No. US97) as the same is now located across said Section 19; thence North 38°52' West parallel to and 192.77 feet distant from said Northeasterly highway right of way line a distance of 147.25 feet to an iron pipe; thence South 89°49' East a distance of 427.3 feet to an iron pipe; thence South 0°06' West a distance of 114.35 feet more or less, to the point of beginning.

**PARCEL 2:**

Beginning at a point which is South 0°06' West a distance of 477.4 feet and North 89°49' West a distance of 234.2 feet from the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence North 0°06' East a distance of 154 feet to a point; thence North 89°49' West a distance of 336 feet, more or less, to a point on a line which is parallel to and distant 192.77 feet at right angles from the Northeasterly right of way line of the Dalles-California Highway; thence South 38°52' East a distance of 200 feet, more or less, to a point which is North 0°06' East a distance of 211.1 feet from the North line of Byrd Avenue in Chelsea Addition; thence South 89°49' East a distance of 210.2 feet to the place of beginning, being in the NE ¼ NE ¼ of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Continued.....

**PARCEL 3:**

All that portion of the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 17, 18, 19 and 20, said Township and Range; thence South 0°06' West along the East line of said Section 19, a distance of 388.5 feet to a point; thence North 89°49' West a distance of 174.2 feet to a point; thence South 0°06' West a distance of 300.0 feet to a point on the North line of Byrd Avenue; thence West along said North line a distance of 60 feet to a point; thence North 0°06' East a distance of 479.45 feet to a point; thence North 89°44' West a distance of 427.3 feet to a point; thence North 38°46' West a distance of 268.15 feet to a point on the North line of said Section 19; thence South 89°44' East along said North line a distance of 833.95 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 17, 18, 19 and 20, said Township and Range; thence South 0°06' West along the East line of said Section 19, a distance of 388.5 feet to a point; thence North 89°49' West a distance of 174.2 feet to a point; thence South 0°06' West a distance of 89 feet to the True Point of Beginning of this description; thence continuing South 0°06' West a distance of 211 feet to a point on the North line of Byrd Avenue; thence West along said North line a distance of 60 feet to a point; thence North 0°06' East a distance of 211 feet to a point; thence South 89°49' East 60 feet to the point of beginning.

**PARCEL 4:**

Beginning at a point on the Northeasterly right of way line of State Highway No. 97 which lies South 0°06' West along the East section line a distance of 688.5 feet and North 89°49' West along the North line of Byrd Avenue in Chelsea Addition, a distance of 521.6 feet and North 38°52' West along the Northeasterly right of way line of State Highway No. 97 (Note: State Highway bearing of this line shows North 39°7  $\frac{1}{2}$  ' West) a distance of 130.55 feet from the iron axle which marks the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, running thence; continuing North 38°52' West along the Northeasterly right of way line of State Highway No. 97, a distance of 250 feet to a point; thence North 51°08' East a distance of 192.77 feet to a point; thence South 38°52' East a distance of 250 feet to a point; thence South 51°08' West a distance of 192.77 feet, more or less to the point of beginning, in the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

## COMPLETE CONTRACT OF SALE (UNBRANDED)

This Complete Contract of Sale (Unbranded) (the "Contract") made and entered into between Ed Staub & Sons Petroleum Inc, with a business address of P O Box 528, Merrill OR 97633 (the "Seller") and Ernst Brothers LLC dba Mollies Truck Stop, with a business address of P O Box 637 Gilchrist OR 97737, (the "Purchaser").

### WITNESSETH:

In consideration of the mutual promises herein contained, Seller agrees to sell and deliver to Purchaser at the premises located at 3817 Highway 97 Klamath Falls OR 97601, (the "Premises"), and Purchaser agrees to purchase, receive and pay for, product(s) of the kind and in the quantities and under the terms and conditions specifically set forth in Commodity Schedule(s) annexed hereto and made a part hereof.

1. Duration. This Contract shall be for a term of five ( 5 ) years (the "Term"). This Contract shall become effective on the \_\_\_\_th day of May, 2006 and continue in effect until the 1<sup>st</sup> day of May 2016.

2. Products. The following Commodity Schedule(s) ("Schedule(s)") forming a part of this Contract were affixed at or before the signing hereof.

COMMODITY SCHEDULE(S)  
See attached

DATE  
May 1, 2016

This Contract may be amended from time to time by executing additional or revised schedule(s), or by deleting one or more items from any such schedule(s) listed hereinabove. Schedules so modified and executed by Seller and Purchaser shall become a part of this Contract.

3. Quantity. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the product(s) covered by this Contract in the quantities shown on the applicable Schedule(s). If the amount of any such product(s) Seller is required to deliver hereunder is prescribed by government rules, regulations or orders, or becomes subject to an allocation by Seller's supplier, the quantity of such product(s) covered by this Contract shall be the quantity so prescribed or allocated instead of the quantity shown on the applicable Schedule(s). In addition, if Seller's supplier reduces the allocation of such products to Seller, then the quantity of products Seller is obligated to deliver and sell to Purchaser hereunder shall be reduced in the same proportion as said supplier's reduction of its allocation to Seller for the same product and grade.

4. Price/Method of Payment. (a) The price of the product(s) covered by this Contract shall be as stated in the applicable Commodity Schedule(s). Purchaser agrees to pay cash (or at Seller's option, any other means approved by Seller) for all goods delivered to Purchaser by Seller under the terms of this Contract except deliveries for which credit has been previously arranged in writing with Seller. Payment shall be made at the time of delivery. Purchases made and not paid for on delivery shall be payable at Seller's principal office unless otherwise specified by Seller.

(b) Where Seller requires payment via electronic funds transfer ("EFT"), Purchaser will establish a commercial account with a financial institution providing EFT services and will authorize Seller to initiate transfers of funds between Purchaser's account and Seller's accounts for payment of all amounts due to Seller hereunder. If any EFT transaction is rejected by said financial institution, Seller may, at its sole discretion, require that subsequent payments be made by means of cash or other means satisfactory to Seller. Purchaser shall indemnify, defend and hold Seller harmless for any losses, costs, or damages arising out of any breach or violation of this subparagraph 4(b).

5. Control. Purchaser is an independent businessman with the exclusive right to control its business operation at the Premises, including the prices at which products and merchandise are sold. Seller reserves no control over said operation. Purchaser has no authority to employ anyone as an employee or agent of Seller for any purpose.

6. Liability. Seller shall not be liable to Purchaser or to any other person for any damage to or loss of property, or for injury to or death of persons or for the violation by Purchaser or any other person of any governmental statute, law, regulation, rule, or ordinance, arising from the operation or activities of Purchaser or any other person pursuant to this Contract. Purchaser agrees to indemnify, protect, defend, and save Seller harmless from and against any and all losses, claims, liabilities, environmental cleanup costs, fines, penalties, suits and actions, judgments and costs, including attorneys' fees and the costs of litigation, which shall arise from or grow out of any injury to or death of persons, or damage to or loss of property, or violation by Purchaser or any other person of any governmental statute, law, regulation, rule, or ordinance, directly or indirectly resulting from, or in any way connected with (i) Purchaser's performance of this Contract, (ii) operation of Purchaser, or activities of any other person, at the Premises, or (iii) the condition of the Premises or of the adjoining streets, sidewalks or ways, irrespective of whether such injury, death, damage or loss is sustained by Purchaser or any other person, firm or corporation which may seek to hold Seller liable. The existence or non-existence of any insurance that may be required under this Contract will not limit Purchaser's indemnity or other obligations under this Contract. This indemnity shall survive the termination or nonrenewal of this Contract.

7. Credit. While nothing herein shall be construed to obligate Seller to extend any credit to Purchaser, in the event Seller in its sole discretion elects to extend credit to Purchaser, such extension of credit shall only be made in writing on the following terms and conditions:

(a) If payment is not timely made, a late payment charge in an amount established by Seller from time to time, may be imposed for each month (and any part thereof) which elapses from due date to the date Seller receives payment.

(b) Seller reserves the right to withdraw such credit immediately at any time on giving to Purchaser notice thereof. In the event credit is withdrawn, all amounts then due and owing shall become payable, and all future sales by Seller to Purchaser shall be for cash or other means approved by Seller.

(c) To secure payment of all Purchaser's present and future indebtedness owed to Seller at any time during the Term, including renewal periods thereof, or upon its termination or expiration, Purchaser hereby grants to Seller a security interest and/or a purchase money security interest in (i) all of Purchaser's inventory of petroleum products and tires, batteries and accessories ("TBA") purchased from Seller, regardless of when purchased and (ii) all accounts receivable owing to Purchaser regardless of when or how incurred. Purchaser agrees to sign all financing statements and renewals as necessary to provide public record of this security interest. **Seller reserves the right to require from Purchaser from time to time a security deposit, letter of credit, personal guaranty and/or other forms of security acceptable to Seller to secure Purchaser's obligations under this Contract or any other contract or agreement between Seller and Purchaser.**

8. **Delivery.** Delivery of the product(s) covered by this Contract and passage of title and risk of loss shall be as stated in the applicable Commodity Schedule(s).

9. **Taxes.** It is agreed that any duty, tax, fee or other charge which Seller may be required to collect or pay under any municipal, state, federal or other laws now in effect or hereafter enacted with respect to the production, manufacture, inspection, transportation, storage, sale, delivery or use of the product(s) covered by this Contract shall be added to the prices to be paid by Purchaser for product(s) purchased hereunder.

10. **Failure To Perform.** (a) Any delays in or failure of performance of either party hereto shall not constitute default hereunder or give rise to any claims for damages if and to the extent that such delay or failure is caused by occurrences including, but not limited to, acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or request of any governmental authority; acts of war, rebellion or sabotage or damage resulting therefrom; embargoes or other import or export restrictions; fires, floods, explosions, accidents, or breakdowns; riots; strikes or other concerted acts of workers, whether direct or indirect; or any other causes whether or not of the same class or kind as those specifically above named which are not within the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent or provide against. A party whose performance is affected by any of the causes set forth in the preceding sentence shall give prompt written notice thereof to the other party. (b) Seller is not obligated to make deliveries hereunder at any time Seller believe, in its sole judgment, that such delivery would be likely to cause strikes to be called against it or cause its properties to be picketed. (c) Seller shall not be required to make up any deliveries omitted for the causes set forth in this paragraph. (d) Nothing herein shall excuse Purchaser from making timely payment for deliveries made under the Contract.

11. **Determination of Quantity and Quality.** The quantity and quality of product(s) sold hereunder are conclusively deemed to be the quantity and quality contained in Seller's document of delivery unless, within twenty-four (24) hours of delivery, Purchaser delivers to Seller written notice of any claimed shortage in quantity or deviation in quality, or where discovery of any such shortage or deviation could not reasonably have been discovered at the time of delivery, within three (3) days after discovery. Time is of the essence in complying with this provision.

12. **Inspection of Records; Audit.** Seller shall have the right to inspect Purchaser's operation of its business at the Premises, and in particular, to verify Purchaser compliance with all its contractual obligations contained herein and with all federal, state and local laws pertaining to the environmental protection and operation of the Premises. Seller shall have the right, and Purchaser shall permit Seller, to enter the Premises unimpeded to review and audit all station records including, but not limited to, all records of deliveries, sales and inventory reconciliation, to take samples of motor fuels stored at the Premises, to inspect equipment, and to make such inspections, measurements, and tests necessary to insure Purchaser's compliance with federal, state, and local laws related to environmental compliance and the operation of the Premises. Seller shall have the right, at any reasonable time and without prior notice, to conduct a walk through and visual inspection of the Premises.

13. **Quality, Specification or Name of Product.** Seller shall have the right at its sole discretion at any time during the life of this Contract to (a) change or alter the quality, grade, or specifications of any product(s) covered by this Contract or (b) discontinue the availability of any such product(s). Any such change or discontinuation shall not affect the minimum purchase requirements set forth in the Commodity Schedule(s).

14. **Assignment.** Purchaser shall not assign or otherwise transfer its interest in this Contract, in whole or in part, directly or indirectly, without the prior written consent of Seller. Seller may assign this Contract in whole or in part upon ten (10) days' prior written notice to Purchaser.

15. **Waiver.** No waiver a party hereto of any breach of any covenants or conditions herein contained to be performed by the other shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

16. **Environmental Compliance.** (a) Purchaser shall become informed about and comply with all local, state and federal laws and regulations related to the generation, handling, transportation, treatment, storage and/or disposal of solid or hazardous wastes and environmental protection and compliance relevant to Purchaser's operations at the Premises, whether currently in effect or which may come into effect in the future.

(b) Purchaser shall comply with all applicable local, state and federal underground storage tank ("UST") compliance requirements, whether currently in effect or which may come into effect in the future, including, but not limited to: (i) required inspections of any release detection equipment for USTs and product lines; (ii) required inspections of any automatic tank gauging equipment; (iii) maintenance and required



inspections of any vapor recovery equipment. Purchaser shall maintain accurate written records of all maintenance and inspections of UST equipment. Purchaser shall maintain such records at the Premises for at least twelve (12) months, or longer, if required by law.

(c) Purchaser shall immediately notify Seller and any appropriate local, state or federal governmental agency after discovery of any inventory loss or other condition which may be the result of a leaking UST or other equipment failure. Purchaser shall immediately investigate and undertake all appropriate initial abatement and other emergency measures to contain, treat, mitigate and/or remediate a discharge, spill, or release of motor fuels or other petroleum products at the Premises.

(d) Purchaser agrees that representatives of Seller shall be permitted to enter upon the Premises from time to time to perform physical measurements and reconciliation of product stored in USTs and to inspect and/or test any equipment and records used for complying with any local, state, or federal environmental protection or environmental compliance requirements, including, but not limited to, Purchaser's reconciliation and inspection records. However, Seller is not obligated to make any such inspections or tests.

(e) Purchaser shall properly maintain all USTs, hoses, connections, and associated equipment at the Premises. Seller may, without liability to Purchaser, refuse to make delivery of products covered under this Contract if Seller believes any UST, hose, connection, or associated equipment is not safely maintained or in compliance with applicable safety standards.

(f) Purchaser shall indemnify, defend, protect and hold Seller, its employees, officers, directors, shareholders, agents and affiliates harmless from and against any and all liabilities, losses, obligations, claims, damages (consequential or otherwise), penalties, suits, actions, judgments, costs and expenses (including attorneys' fees) of whatever nature for personal injury (including death) of persons (including, without limitation, agents and employees of Seller and dealer) or property damage (including, without limitation, damage to the property of Seller or Purchaser), which may be imposed on, incurred by or asserted against Seller directly or indirectly, (i) caused in whole or in part by Purchaser's failure to comply with any local, state or federal law, statute, regulation or ordinance, whether currently in effect or which may come into effect, related to environmental protection or environmental compliance or (ii) for any releases or discharges of petroleum products into the environment caused, in whole or in part, by the acts or omissions of Purchaser, its employees, agents, contractors, customers, licensees, or invitees. This indemnity in no way limits and is intended to be within the scope of the general indemnity set forth in paragraph 6 hereof. The terms and provisions of this paragraph 16 shall survive the expiration or termination of this Contract.

17. Notices. All written notices required or permitted herein shall be deemed to be given if delivered personally or sent by certified or overnight mail at the address set forth above or to such other address as may be furnished by either party to the other in writing in accordance with the provisions of this paragraph. The date of mailing shall be deemed the date of such notice, except for notice of change of address, which must be received to be effective.

18. Equipment/Fixtures. Purchaser shall provide all necessary buildings, improvements, fixtures, and equipment, except for Seller's equipment and/or trade fixtures if any, listed at Attachment "A", attached hereto. Title to all such equipment and/or trade fixtures shall at all times remain with Seller. If any such equipment and/or trade fixtures is levied upon, Purchaser shall immediately notify both the levying creditor, disclaiming ownership, and Seller. Purchaser shall not encumber or remove said equipment and/or trade fixtures or cause to be done anything thereto that damages or otherwise disturbs Seller's title to said equipment and/or trade fixtures. Purchaser shall pay Seller the cost of repair or replacement of any damage to or destruction of Seller's equipment or trade fixtures.

19. Termination. (a) This Contract shall terminate upon expiration of the Term of this Contract.

(b) This Contract may be terminated by Seller: (i) if Purchaser makes any material false or misleading statement or representation that induces Seller to enter the Contract; (ii) if Purchaser becomes insolvent, commits an act of bankruptcy, or takes advantage of any law for the benefit of debtors or Purchaser's creditors, or if a receiver is appointed for Purchaser; (iii) if Purchaser's possession of the Premises is interrupted by act of any governmental authority; (iv) if Purchaser fails to pay in a timely manner any sums when due hereunder; (v) if Purchaser defaults in any of its obligations under this Contract; (vi) if Purchaser is declared incompetent by any court or is mentally or physically disabled for three (3) months or more to the extent that Purchaser is unable to provide for the continued and proper operation of the Premises; (vii) for any ground for termination by Seller contained elsewhere in this Contract; (viii) if Purchaser dies; (ix) if Purchaser engages in any criminal misconduct relevant to the operation of the Premises; (x) if Purchaser is convicted of a felony or misdemeanor, whether or not such conviction arose from the operation of the Premises; or (xi) if Purchaser fails to purchase minimum monthly volume requirements outlined in paragraph 1 of the attached Commodity Schedule(s) or to maintain an inventory of any one or more grades of product(s) covered by this Contract adequate to meet customer demand.

(c) Purchaser agrees not to engage in or permit any illegal or improper act on or about the Premises that is detrimental to Seller or any member of the public. At Seller's option, the Contract may be terminated without further notice upon the failure of Purchaser to desist from any such further acts or conduct after written notice from Seller to do so. If at any time Purchaser's financial condition becomes impaired or unsatisfactory to Seller or if Purchaser is in arrears in his accounts with Seller, Seller may require, as a condition of making further deliveries under this Contract, payment by Purchaser of all amounts past due and cash payment for all future deliveries.

(d) Upon the expiration of the Term hereof or upon termination hereof, Seller shall have the right, at its option, to enter upon the Premises and to remove, paint out, or obliterate any signs, symbols or colors on said Premises or on the buildings or equipment thereof which in Seller's opinion would lead a patron to believe that Seller's products are being offered for sale at the Premises.

(e) Termination hereof by either party for any reason shall not relieve the parties of any obligation theretofore accrued under this Contract.

20. Purchaser's Insurance Requirements. Purchaser shall obtain insurance of the type and coverage amounts that Seller may require from time to time. All such insurance will name Seller as an additional insured and will be primary as to any other existing, valid and collectible insurance. If

Seller so requires, Purchaser shall furnish Seller with certificates of such insurance that provide that coverage will not be canceled or materially changed prior to 30 days' advance written notice to Seller. Insurance required hereunder in no way limits or restricts Purchaser's obligations under the law or this Contract as to indemnification of Seller.

21. Nature of Agreement. This Contract shall not be deemed to form a "joint venture" or "partnership" at the Premises or elsewhere. This Contract shall bind the executors, administrators, personal representatives, assigns, and successors of the respective parties.

22. Compliance with Laws. Purchaser shall comply with all laws and regulations of all applicable governmental authorities with respect to the operation of its business at the Premises. The parties agree that it is the intention of neither party to violate statutory or common law and that if any section, sentence, paragraph, clause or combination of same is in violation of any law, such sentences, paragraphs, clauses or combination of same shall be inoperative and the remainder of this Contract shall remain binding upon the parties hereto.

23. Express Warranties. Seller warrants that the product(s) supplied hereunder will conform to the promises and affirmations of fact made in Seller's current technical literature and printed advertisements, if any, related specifically to such product(s); that it will convey good title to the product(s) supplied hereunder, free of all liens, and that the product(s) supplied hereunder meet such specifications as have been expressly made a part of this Contract. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED. THE WARRANTY OF MERCHANTABILITY, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, AND WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

24. Entire Agreement. This Contract cancels and supersedes all prior written and unwritten agreements, promises, and understandings between the parties pertaining to the matters covered under this Contract, except any indebtedness owed to Seller by Purchaser, and is a final, complete and exclusive statement of the agreement between Seller and Purchaser. This Contract may be modified only by a writing signed by both of the parties or their duly authorized agent. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES AFFECTING IT. EXECUTION OF THIS CONTRACT BY PURCHASER IS AN ACKNOWLEDGEMENT THAT NO REPRESENTATIONS NOT SET FORTH IN WRITING HEREIN HAVE BEEN MADE OR RELIED UPON BY PURCHASER.

25. Damages. NO CLAIM SHALL BE MADE UNDER THIS CONTRACT FOR SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EXCEPT AS PROVIDED OTHERWISE BY LAW.

26. Survivorship. To the extent, but only to such extent, that any law requires provisions governing the succession of the rights and obligations to a designated family member to be contained in this Contract, such provisions are incorporated herein by reference.

27. Joint and Several Obligations. All acknowledgments, representations, warranties, debts, and obligations of performance of Purchaser under this Contract are made, and binding on, all those signing this Contract jointly and severally as the Purchaser.

28. Attorneys' Fees. Seller shall be entitled to recover from Purchaser all reasonable attorneys' fees and other legal costs incurred to secure or protect its rights under this Contract or enforce the terms thereof, whether at law or in equity.

Executed this the 31 th day of May 2006.

SELLER:  
ED STAUB & SONS PETROLEUM INC

By: Brad W. Staub  
Brad W Staub, Vice President

Title

Witness: Robert Brown

PURCHASER:  
ERNST BROTHERS LLC dba MOLLIES TRUCK STOP

By: Wayne Ernst  
Wayne Ernst Managing Member

Witness: Robert Brown

### COMMODITY SCHEDULE (MOTOR FUEL SALES TO PURCHASER)

PURCHASER: Ernst Brothers LLC dba Mollies Truck Stop NO: 79-13240  
DELIVERY POINT: 3817 Highway 97 Klamath Falls OR 97601 PRODUCT: Diesel and Unleaded  
DATE: May , 2006

This Commodity Schedule is attached to and made a part of a certain contract of sale (the "Contract") between Purchaser and Seller dated March 10, 2005. Unless otherwise indicated, the capitalized terms used in this Commodity Schedule shall have the same meaning used in the Contract.

1. Quantity. Except as otherwise provided in the Contract, the quantity of diesel covered by the Contract shall be all Purchaser's requirements, but in no case less than a minimum of 100% of gallons from March 10, 2005 to February 28, 2010 in monthly minimum and maximum quantities hereinafter specified.

Annual Quantity: (Minimum): 100% and (Maximum): 100%

2. Delivery. Where delivery is made to Purchaser's business location, delivery shall be complete on unloading of the tank wagon or transport truck. Where delivery is made into equipment furnished by Purchaser, delivery shall be complete at the point of loading of such equipment.

3. Title. Title to product covered under the Contract shall pass to Purchaser upon delivery of product.

4. Risk of Loss. Risk of loss of product shall pass to Purchaser upon delivery of product.

5. Inspection. Purchaser shall have the right, at its expense, to have an inspection made at delivery point, provided such inspection shall not delay shipment. Should Purchaser fail to make inspection, it shall accept Seller's inspection and measurement.

6. Price. The price per gallon to be paid by Purchaser shall be the Supplier's invoice price to Seller in effect at the time and place of delivery to dealers of the same class and in the same trade area as Purchaser, plus all applicable taxes and all fees itemized on the invoice of Supplier to Seller, plus State loading and environmental fees, if any, plus the cost of transportation as measured by the applicable common carrier freight rate, plus a margin of \$0.025 per gallon. Any additional two cents per gallon will be paid on all fuels as a separate line item to be applied to principal of Promissory Note dated March 24, 2005. The price per gallon is based upon the delivery of a full transport truckload of product. Purchaser understands and agrees that Purchaser shall not receive the benefit of any discounts, allowances, rebates, or other similar deductions credited to Seller by Supplier. Delivery of a quantity of product less than a full transport truckload shall be subject to an additional delivery charge. All prices charged by Seller are subject to the provisions of applicable law.

ACCEPTED:

SELLER: Ed Staub & Sons Petroleum

By: 

Brad W. Staub, Vice President

ACCEPTED:

PURCHASER: Ernst Brothers LLC dba Mollies Truck Stop

By: 

Wayne G. Ernst, Managing Member

**KEY PERSON RIDER**  
**(The "Key Person Rider")**

1. Purchaser states that the following named person(s), Wayne G Ernst, Managing Member (and N/A) (each such person referred to as the "Owner"), has (have) an ownership interest in Purchaser. The parties hereto agree that, should Owner, or any one of the Owners, relinquish, convey, or otherwise transfer, directly or indirectly, in whole or in part, his or her ownership interest in the Purchaser, or die, the accompanying contract of sale ("Contract of Sale") between Purchaser and Seller, which Contract of Sale constitutes a franchise under the Petroleum Marketing Practices Act (the "Act"), 15 U.S.C. §2801, *et seq.*, may be terminated or nonrenewed by Seller. In the case of death, the Contract of Sale shall not be terminated or non-renewed if the remaining Owners are acceptable to Seller.

2. (a) It is understood and agreed that Wayne G Ernst, Managing Member is designated the "Key Person," which designation is deemed by the parties hereto to be a reasonable and material provision of the franchise. The Key Person shall personally operate on a daily basis the business of Purchaser at the Premises covered by the Contract of Sale. The phrase "to operate on a daily basis the business covered by this Contract of Sale" shall mean that the Key Person must (i) manage the business and (ii) have authority to make all business decisions that an unincorporated retail service station dealer normally makes concerning operations of a retail service station business. Purchaser represents that the Key Person has the authority to buy and sell motor fuel, to enter into financing agreements on behalf of Purchaser, and to authorize merchandising and/or cooperative advertising programs.

(b) The parties hereto agree that failure of the Key Person to operate on a daily basis Purchaser's business covered by the Contract of Sale is an "event that is relevant to the franchise relationship," under the Act. Such failure shall be grounds for the termination or nonrenewal, as applicable, of the Contract of Sale by the Seller.

3. Purchaser may seek Seller's consent to add, modify, or delete, by amendment, one or more of the names listed above in paragraph 1 or 2(a) by making a written request at least 45 days prior to any change. Such request shall include such information as Seller may designate as necessary to determine the qualifications of the new person. Seller will consider and respond to Purchaser's request within thirty (30) days following receipt of Purchaser's written request. Such request for amendment may be denied at Seller's reasonable discretion.

4. These covenants are attached to and incorporated into the Contract of Sale between Purchaser and Seller and may be enforced as if set forth in said Contract of Sale. This Key Person Rider cancels and supersedes any pre-existing Key Person Rider of the underlying Contract of Sale.

ACCEPTED:

ACCEPTED:

PURCHASER:

SELLER:

Ernst Brothers LLC dba Mollies Truck Stop

Ed Staub & Sons Petroleum Inc

By: Wayne G Ernst, Managing Member  
Wayne G Ernst, Managing Member

By: Brad W Staub, Vice President  
Brad W Staub, Vice President

**PROMISSORY NOTE**

\$425,000.00

Tulelake CA

May , 2006

**FOR VALUE RECEIVED**, the undersigned, **Ernst Brothers LLC dba Mollies Truck Stop**, promises to pay **Ed Staub & Sons Petroleum Inc.**, at Merrill OR, or at such other place as the holder hereof may, from time to time, designated in writing, the principal sum of **FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS AND 00/100**, together with interest at the rate of 8% per annum from March 10, 2006, rate is subject to the prime rate not to exceed 8% payable as follows:

**Principal payments of \$3,000.00 plus interest shall be payable monthly, beginning June 1, 2006, and continuing monthly thereafter through January 1, 2018 plus a final installment equal to the entire unpaid principal and interest February 1, 2018.**

**DEFAULT:** Maker shall be deemed in default of the Note, without notice or demand, if maker fails to make payment on this Note by its due date. Such default shall entitle payees herein to exercise all available legal remedies.

**PREPAYMENT:** There are no prepayment restrictions on this Note.

**WAIVER:** The maker and any endorser or guarantor hereto severally waive notice of acceptance, presentment for payment, demand, and protest of the note. However, any extension of the time of payment on all or any part of the amount owing hereunder or any variation, modification or waiver of any term or condition set forth herein, at any time or times, shall not constitute a waiver of any subsequent default, nor shall the same affect the liability of any maker, endorser, or guarantor hereto.

**COLLECTION CHARGES AND ATTORNEY FEES:** Maker agrees to pay any reasonable collection charges if this note is referred to a collection agency or attorney for collection in the event of default. In the event suit or action is instituted to enforce the provisions of the note, maker shall pay the costs, disbursements and reasonable attorney fees incurred by payees in such suit or action or any appeal therefrom or any proceeding in Bankruptcy.

**EACH SIGNER IS JOINTLY AND SEVERALLY LIABLE FOR THE OBLIGATION EVIDENCED BY THE COMPLETE TRUST DEED, CONTRACT OF SALE, COMMODITY SCHEDULE, PERSONAL GUARANTY OF PERFORMANCE, KEY PERSON RIDER, AND PROMISSORY NOTE DATED, May , 2006.**

This is a workout situation agreed to by the payee and the maker of said Note.

**ALL FUEL AND OIL PURCHASES WILL BE PAID ON A DAILY BASIS TO SELLERS CHECKING ACCOUNT AT STERLING BANK, NO CREDIT WILL BE EXTENDED UNTIL BALANCE OF NOTE IS PAID IN FULL. IF PAYMENTS ARE NOT RECEIVED ON A DAILY BASIS, FUEL DELIVERS WILL BE TERMINATED AND NOTE WILL BE DUE AND PAYABLE.**

Ernst Brothers LLC dba Mollies Truck Stop

By:

*Wayne G. Ernst, Managing Member*  
Wayne G. Ernst, Managing Member

*May 31, 2006*  
Dated