

AFTER RECORDING, RETURN TO:

JONATHAN RADMACHER  
MCEWEN GISVOLD LLP  
1100 SW SIXTH AVE, SUITE 1600  
PORTLAND, OR 97204



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Fee: \$67.00

### ACCESS EASEMENT AGREEMENT

This Access Easement Agreement ("Agreement") is executed as of the 24 day of February 2011 by Daryl L. Ortis and Jacqueline S. Ortis, as trustees of the Ortis Loving Trust dated March 31, 2003 ("Grantors").

### **RECITALS**

A. Grantors are the owners of that certain real property situated in Klamath County, Oregon, more particularly described as:

The North half of the Southeast quarter of the Southwest quarter in Section 36, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon ("Grantors' Property").

B. Grantees are the owners (and/or successors of owners) of certain real property situated in Klamath County, Oregon, which real property is more particularly described on Exhibit A, attached, and the rights granted herein are intended to inure to, and for the benefit of, that real property and the owners of it.

C. The Grantees have obtained access to the real properties listed on Exhibit A via a roadway commonly known as Nine Mile Road, a portion of which crosses Grantors' Property.

D. Nine Mile Road was created by Grantors' predecessor-in-interest, Floyd Hescok.

E. As a resolution of lawsuits between Grantors and several of the Grantees, which lawsuits were consolidated as *Maggard, et ux v. Ortis*, and *Potter, et al v. Ortis*, Klamath County Case Nos. 0903617CV and 1000966CV, Grantors agreed to grant certain easement rights, as set forth herein.

F. Grantors and Grantees wish to set out and clarify their rights with regard to the portion of Nine Mile Road that crosses Grantors' Property.

### **GRANT OF EASEMENT**

1. Grant of Easement. In consideration of the foregoing, and the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors hereby grant to Grantees

and their successors and assigns a perpetual non-exclusive easement over and across that portion of Grantors' Property containing the currently existing roadway commonly known as Nine Mile Road, for the purpose of vehicular and pedestrian ingress and egress access to and from properties owned by Grantees, as it crosses Grantors' real property ("Easement"). It is the intent of this Agreement that the Easement is granted for the benefit of those parcels of property that were created by the recording of the subdivision known as Tract 1118 (Section 36), recorded in the Klamath County records on June 30, 1976, with the exception of Lot 1 of Tract 1118. The Easement shall consist of a right-of-way 30 feet in width, with at least a 20-foot-width continuous driveable surface.

2. Limitations on Use. The Easement is for ingress and egress access only. Grantees and Grantors shall not park on, nor permit their guests or invitees to park on, the Easement. Grantors and Grantees shall maintain a speed of no more than 15 miles per hour over and across the Easement; Grantors and/or Grantees may place reasonable speed restriction signs alongside the Easement. Grantees shall not cause or allow the construction or maintenance of any building, structure, or other form of obstruction in nor upon the Easement.

3. Non-Exclusive; Subject to Other Easements. The rights granted in this Agreement are non-exclusive, and shall be subject to any other prior encumbrances of record.

4. Maintenance and Repairs. Grantees shall have the right to maintain and/or repair the Easement, and shall have access to the Easement and Grantors' Property for such purposes; however, any access to Grantors' Property in order to maintain and/or repair the easement is limited to access only the extent it is reasonably necessary to maintain or repair the Easement. Grantees shall provide Grantors with at least 24 hours notice of any intended maintenance or repair of the Easement, which notice shall include a description of the portions of the Easement and/or Grantors' Property that will be utilized for such maintenance and repairs. Grantors reserve the right to maintain and repair all existing waterlines and culverts currently located under the Easement; Grantors may further locate additional waterlines and culverts under the Easement, provided that such work does not unreasonably interfere with Grantees' use of the Easement, and provided that Grantors give Grantees 24 hours written notice of any such work.

5. No Liens; Indemnification. Grantees shall not allow any lien to be placed against Grantors' Property in connection with construction, modification, maintenance, and/or repair of the Easement. Grantees shall indemnify and hold harmless Grantors and their successors and assigns from and against any such lien placed on Grantors' Property.

6. Binding Effect. This Agreement, the Easement granted hereunder, and all of the terms and conditions contained herein shall run with the land, as such land may be subdivided or partitioned, and shall be binding upon, apply and inure to the benefit of the tenants, successors and assigns of Grantors and Grantees. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the Grantors' or Grantees' respective interests pursuant to this Agreement; provided, however, that upon any sale under

foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

7. Waiver. Failure at any time to require performance of any provision of this Agreement shall not limit a party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

8. Enforcement; Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action, and on any petition for review, in addition to all other sums provided by law.

9. Termination; Modification. This Agreement may not be modified, amended, or terminated except by the written Agreement of Grantors and the owners of the real properties identified on Exhibit A, which written Agreement must be recorded in the real property records of Klamath County.

Ortis Loving Trust dated March 31, 2003

By: *Daryl L. Ortis*  
Daryl L. Ortis, Trustee

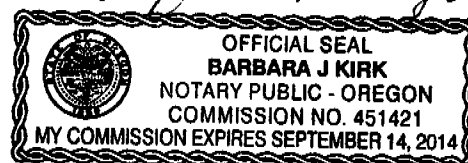
By: *Jacqueline S. Ortis*  
Jacqueline S. Ortis, Trustee

STATE OF OREGON           )  
  ) ss.  
County of Klamath        )

Personally appeared before me this 24 day of February, 2011 the above named Daryl L. Ortis and Jacquelyn S. Ortis and acknowledged the foregoing instrument to be their voluntary act and deed.

*Barbara J. Kirk*  
NOTARY PUBLIC - STATE OF OREGON  
My Commission expires: September 14, 2014

*Philomena, Oregon*



## EXHIBIT A

1. Lot 2 in Block 1 Tract 1118, according to the official plat thereon on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-03600-02600).

2. A portion of Lot 3, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, excepting therefrom that parcel described as follows:

Beginning at the Southeast corner of said Lot 3; thence North  $89^{\circ}55'37''$  West, along the South line of said Lot 3, 355.35 feet; thence North  $50^{\circ}06'19''$  West 706.16 feet to the Southwest corner of Lot 6 of said Block 1; thence East, along the South line of said Lot 6, 897.83 feet to the Northeast corner of said Lot 3; thence South  $00^{\circ}02'14''$  West 453.37 feet to the point of beginning, with bearings based on the plat of said TRACT 1118. (Tax Lot R-3408-03600-01700).

3. A parcel of land situated in Lot 3 and Lot 6 of Block 1 of TRACT 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, also being in the Southeast quarter of the Northwest quarter of Section 36, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Southeast corner of said Lot 3; thence North  $89^{\circ}55'37''$  West, along the South line of said Lot 3, 355.35 feet; thence North  $50^{\circ}06'19''$  West 706.16 feet to the Southwest corner of said Lot 6; thence North, along the West line of said Lot 6, 613.45 feet, more or less, to a point 485.00 feet South of the Northwest corner of said Lot 6; thence East, parallel to the North line of said Lot 6; 897.83 feet to a point on the East line of said Lot 6; thence South  $00^{\circ}02'14''$  West 613.45 feet to the Easterly corner common to said Lots 3 and 6; thence continuing South  $00^{\circ}02'14''$  West 453.37 feet to the point of beginning, with bearings based on the plat of said TRACT 1118. (Tax Lots R-3408-03600-00700 and R-3408-03600-00801).

4. Lot 4, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-3600-01600).

5. Lot 5, Block 1, Tract No. 1118 in the County of Klamath, State of Oregon. Excepting therefrom the Northerly 250 feet thereof. (Tax Lot R-3408-03600-01500).

6. The Northerly 250 feet of Lot 5, Block 1, Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-03600-01400).

7. The North 485 feet of Lot 6, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon. (Tax Lot R-3408-03600-00800).

8. Lot 7, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon. (Tax Lot R-3408-03600-00900).

9. Lot 8 in Block 1 of Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. Excepting therefrom the South 507 feet of Lot 8. (Tax Lot R-3408-03600-01100).

10. The South 507 feet of Lot 8 in Block 1 of TRACT 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-03600-01000).

11. Lot 9, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. Excepting therefrom the following:

Beginning at the Northeast corner of Lot 9, Block 1, Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon; thence Southerly along the Easterly lot line of said Lot 1098.84 feet to the Southeast corner of said Lot; thence Westerly 200 feet to a point; thence North 1098.84 feet, more or less, to the North line of said Lot; thence Easterly along said North line to the point of beginning. (Tax Lot R-3408-03600-01300).

12. A portion of Lot 9, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of Lot 9, Block 1, Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon; thence Southerly along the Easterly lot line of said Lot 1098.84 feet to the Southeast corner of said Lot; thence Westerly 200 feet to a point; thence North 1098.84 feet, more or less, to the North line of said Lot; thence Easterly along said North line to the point of beginning. (Tax Lot R-3408-03600-01200).

13. Lot 10 of Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-02500-00800).

14. Parcel 2 of Land Partition 35-01, being a portion of Lot 11, Block 1, Tract 1118, situated in the Southwest quarter of Section 25, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon. (Tax Lot R-3408-02500-00700).

15. Parcel 1 of Land Partition 35-01, being a portion of Lot 11, Block 1, Tract 1118, situated in the Southwest quarter of Section 25, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon. (Tax Lot R-3408-02500-00701).

16. Lot 12, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-02500-00400).

17. Lot 13, Block 1 of Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, excepting therefrom that portion thereof conveyed by Quitclaim Deed recorded August 31, 1990 in Volume M90, page 17481, Microfilm Records of Klamath County, Oregon, described as follows:

Beginning at the Northwest corner of said Lot 13; thence South 851.85 feet; thence East 50 feet; thence North to a point 50 feet East of the Northwest corner of said Lot 13 (and parallel to the 851.85 foot Western line of said Lot 13); thence West 50 feet to the Northwest corner of said Lot 13 and the place of beginning.

**TOGETHER WITH:**

A parcel of land in Section 25, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the center monument of said Section 25; thence North 100 feet; thence West 425 feet; thence South 100 feet; thence East 425 feet to the place of beginning. (Tax Lot R-3408-02500-00500).

18. A portion of Lot 13 of TRACT 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the Northwest corner of Lot 13, Tract 1118, thence South 851.85 feet; thence North 60°59'26" East 50 feet; thence North and 50 feet parallel to the West line to a point 50 feet East of the Northwest corner of Lot 13, Tract 1118; thence West 50 feet to the point of beginning. (Tax Lot R-3408-02500-00501).

19. Lot 14, Block 1, Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH a 1971 Broad Mobile Home, Oregon License #X162549, Serial #S0344 which is situated on the real property described herein. (Tax Lot R-3408-02500-00600 and M162549).

20. Lot 15, Block 1, Tract No. 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. (Tax Lot R-3408-02500-01000).

21. Lot 16, Block 1, TRACT 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH a 1980 WESTR 2U Mobile Home, License # X169257, Serial # 9206198 which is situated on the real property described herein. (Tax Lot R-3408-02500-00900 and M169257).

22. Lot 17, Block 1, Tract 1118, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (Tax Lot R-3408-02500-01100).

23. The Northerly 320 feet of Lot 18, Block 1, Tract 1118, situated in Section 36, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northwest corner of said Lot 18; thence South 00°02'14" West along the Westerly line of said Lot 18, 320.00 feet; thence South 89°55'26" East, 1360 feet more or less, to the Westerly bank of the Sprague River; thence Northeasterly along said bank, 330 feet, more or less, to the Northerly line of said Lot 18; thence North 89°55'23" West along said line 1446 feet, more or less, to the point of beginning. (Tax Lot R-3408-03600-00400).

24. The Southerly 342.02 feet of Lot 18, Block 1, Tract 1118, situated in Section 36, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Southwest corner of said Lot 18; thence North 00°02'14" East along the Westerly line of said Lot 18, 342.02 feet; thence South 89°55'26" East 1360 feet, more or less, to the Westerly bank of the Sprague River; thence Southwesterly along said bank 355 feet, more or less, to the Southerly line of said Lot 18; thence North 89°55'30" West along said line 1268 feet, more or less, to the point of beginning. (Tax Lot R-3408-03600-00500).