

WTC 96777-KK
WHEN RECORDED, RETURN TO:

Dutch Bros. L.L.C.
300 N. Valley Drive
Grants Pass, OR 97526

Attn. Joshua L. Lute, Esq.

2013-004710
Klamath County, Oregon



00135173201300047100120124

05/02/2013 03:22:51 PM

Fee: \$92.00

RECIPROCAL EASEMENT AGREEMENT

This Reciprocal Easement Agreement ("Agreement") is entered into and effective this 30th day of April, 2013 (the "Effective Date"), by and between Richard Darren Bogatay, having his place of business at 680 Loma Linda Drive, Klamath Falls, OR 97601 ("Bogatay") and Dutch Bros. L.L.C., an Oregon limited liability company, having its place of business at 300 N. Valley Drive, Grants Pass, OR 97526 ("DB").

RECITALS

WHEREAS, Richard Darren Bogatay is the owner of certain real property located in Klamath Falls, Klamath County, Oregon, described on Exhibit A attached hereto, (hereinafter referred to as "Parcel 1"); and

WHEREAS, DB is the owner of certain real property located in Klamath Falls, Klamath County, Oregon, described on Exhibit B attached hereto, more commonly known as 2568 Campus Drive, Klamath Falls, OR (hereinafter referred to as "Parcel 2"); and

WHEREAS, Parcel 1 and Parcel 2 are adjoining parcels of real property; and

WHEREAS, the driveway, curbs and improvements for ingress and egress from public rights-of-way, and parking (together, "Driveway Improvements") that serve both Parcel 1 and Parcel 2 are located on both parcels, in the locations depicted by cross-hatching on Exhibit C; and

Handwritten signature

WHEREAS, Bogatay and DB each desire to provide an easement to the other, and to receive an easement from the other for use, ingress, egress and access to the Driveway Improvements, and also to provide for construction, maintenance and repair of the Driveway Improvements, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

AGREEMENT

1. Definitions. In addition to the definitions provided in the Recitals above, the following definitions shall apply to this Agreement.

1.1 Benefited Site. The term "Benefited Site" shall mean and refer to the property that is benefited by certain easements and/or rights hereinafter set forth, and consequently constitutes the dominant estate with respect to such easements and/or rights.

1.2 Burdened Site. The term "Burdened Site" shall mean and refer to the property that is burdened by certain easements and/or rights hereinafter set forth, and consequently constitutes the servient estate with respect to such easements and/or rights.

1.3 Occupant. The term "Occupant" shall mean and include any of the Owners and any Person who shall be, from time to time, entitled to the use and occupancy of Parcel 1 or Parcel 2 under any lease, sublease, license, concession, agreement, or other instrument or arrangement under which such rights are acquired, including, without limitation, mortgagees in possession.

1.4 Owner. The term "Owner" shall refer to the owner of Parcel 1 or Parcel 2, as the context may require. The term "Owners" shall refer collectively to the owners of Parcel 1 and Parcel 2.

1.5 Permittees. The term "Permittees" shall mean and refer to all Occupants and all guests, employees, licensees, agents, contractors, vendors and other invitees of Occupants.

1.6 Person. The term "Person" shall refer to any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity.

2. Easements Benefiting Parcel 1. The Owner of Parcel 2, as the Burdened Site, hereby grants to the Owner of Parcel 1, as the Benefited Site, for the use of Parcel 1 Occupants and Permittees, a non-exclusive easement for the use and enjoyment of, over, upon, across and through the Driveway Improvements located within Parcel 2, for pedestrian and vehicular ingress, egress and access within and limited to those portions of

Parcel 2 which are improved for vehicle driveway purposes. The Owner of Parcel 2, as the Burdened Site, hereby also grants to the Owner of Parcel 1, as the Benefited Site, for the use of Parcel 1 Occupants and Permittees, a non-exclusive easement for the construction, use and enjoyment of parking spaces and associated driveways in the area highlighted in orange and designated as "Additional Parking Area" on Exhibit C, subject to the terms and conditions contained in Section 3, below. Said easements exclude any use that would interfere with use of the Driveway Improvements by the Owner, Occupants or Permittees of Parcel 2, except as otherwise provided herein.

3. Additional Parking Area. The Owner of Parcel 1 shall have the right to construct, at its sole expense, parking spaces and driveways necessary to access such parking spaces within the Additional Parking Area on Parcel 2, subject to prior written approval from the Owner of Parcel 2 as to all aspects of site plan and construction, which approval shall not be unreasonably withheld, conditioned or delayed.

4. Easements Benefiting Parcel 2. The Owner of Parcel 1, as the Burdened Site, hereby grants to the Owner of Parcel 2, as the Benefited Site, for the use of Parcel 2 Occupants and Permittees, a non-exclusive easement for the use and enjoyment of, over, upon, across and through the Driveway Improvements located within Parcel 1, for pedestrian and vehicular ingress, egress and access, within and limited to those portions of Parcel 1 which are improved for vehicle driveway purposes. The Owner of Parcel 1, as the Burdened Site, hereby also grants to the Owner of Parcel 2, as the Benefited Site, for the use of Parcel 2 Occupants and Permittees, a non-exclusive easement for use and enjoyment of the parking spaces highlighted in pink and designated as "Parking Easement" on Exhibit C. Said easements exclude any use that would interfere with use of the Driveway Improvements by Occupants or Permittees of Parcel 1.

5. Non-Interference. No Owner shall permit, operate or install any parked vehicle, other object, or any improvements on such Owner's property which in any way unreasonably restricts or interferes with the reciprocal easements granted herein.

6. Nature of Easements and Rights Granted.

6.1 Easements Appurtenant. Each of the easements and rights granted or created herein is an appurtenance to the applicable Benefited Site, and none of such easements or rights may be transferred, assigned or encumbered except as an appurtenance to the applicable Benefited Site.

6.2 Nature and Effect of Easements. All of the easements, covenants, restrictions and provisions contained in this Agreement:

6.2.1 create equitable servitudes upon the Parcel 1 and Parcel 2 properties in favor of the other property;

6.2.2 constitute covenants running with the land; and

6.2.3 shall bind every Person or entity having any fee, leasehold or other interest in any portion of either property at any time or from time to time, to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

6.3 Transfer of Title. The acceptance of any transfer or conveyance of title from any Owner of all or any part of its interest in its property shall be deemed, without any further action by the grantor or the grantee, to:

6.3.1 require the grantee to agree not to use, occupy or allow any lessee or occupant of such property to use or occupy the property in any manner which would constitute a violation or breach of any of the easements and covenants contained herein; and

6.3.2 require the grantee to assume and agree to perform each and all of the obligations of the conveying party under this Agreement with respect to all (or the applicable portion of) such property which will be conveyed to such grantee.

6.4 Successors. The obligations set forth in this Section 5 shall be binding on any successors or assigns of the named parties.

7. Maintenance, Insurance and Taxes. The respective Owners of Parcel 1 and Parcel 2 shall continue to be responsible for and pay or cause to be paid all maintenance, insurance and taxes, including, without limitation, real estate taxes and special assessments, applicable to such properties, regardless of the easements and interests granted or created by this Agreement.

8. Maintenance. The Driveway Improvements shall be maintained in a manner that preserves their appearance as an integral facility serving Parcel 1 and Parcel 2 reasonably free of defects and serviceable to both Owners. Notwithstanding the maintenance provisions of Section 7 above, the Owners of Parcel 1 and Parcel 2 shall share responsibility for all maintenance (including repair and replacement, as appropriate) associated with the Driveway Improvements provided, however, that the Owner of Parcel 1 shall be solely responsible for all maintenance (including repair and replacement, as appropriate) of that portion of the Driveway Improvements located within the Additional Parking Area. Prior to making any arrangements for maintenance of the Driveway Improvements (including the Additional Parking Area), the Owner proposing to undertake such maintenance shall provide notice to the other Owner not less than fifteen (15) days prior to the commencement of any such work. Any notice provided shall include reasonably detailed information concerning the nature and scope of the proposed maintenance work and the estimated cost thereof, and shall request the other Owner's concurrence in the proposed work. Should the Owner receiving the request disagree with the nature and/or scope of such proposed maintenance, the Owner to whom such notice is provided may request that the Owner providing such notice meet and confer to discuss and, if possible, come to an agreement on the nature and scope of such proposed

maintenance work. Should the Parties fail to come to an agreement regarding the nature and scope of such maintenance or, should either of the Owners decline to meet and confer regarding such maintenance, the provisions of Section 13.8 shall apply. (In the event that emergency maintenance is required and cannot reasonably be delayed for the 15-day notice period, the Owner proposing emergency maintenance work shall make a reasonable effort to notify the other Owner of the proposed work and to obtain that Owner's concurrence prior to the commencement of such maintenance work.) Each of the Owners and either one of them individually, shall exercise reasonable judgment in arranging for such maintenance to the Driveway Improvements at reasonable cost. The Owner making any such arrangements shall make payment to any vendor or contractor performing such maintenance and shall be entitled to reimbursement of the other Owner's share of the maintenance expense so incurred in accordance with this Section. The Owners shall share such reasonable expenses for maintenance of the Driveway Improvements on a 50/50 basis; that is, each Owner shall be responsible for fifty percent (50%) of such maintenance expenses. Within ten (10) days after delivery of a statement documenting reasonable maintenance costs incurred in accordance with this Section, an Owner shall reimburse the other Owner for the share of Driveway Improvements maintenance expenses due in accordance with this Section. Each Owner shall be responsible for all maintenance associated with any objects or improvements (such as planters) owned by such Owner, and properly placed within the easement area, at the Owner's sole expense.

9. Damage to Driveway Improvements and Easement. Each Owner shall refrain from causing any damage (damage being herein defined as any damage other than ordinary wear and tear) to the Driveway Improvements and the easements described herein and shall immediately repair any such damage caused by Occupants or Permittees associated with an Owner, at such Owner's sole cost and expense. If an Owner fails to perform any such required repairs, the other Owner, upon ten days' prior written notice to the non-performing Owner, may cause such repair work to be performed with a right of reimbursement for all sums reasonably necessary and properly expended to remedy such failure. Within ten days after delivery of a statement documenting such reasonable repair costs incurred, the non-performing Owner shall reimburse the other Owner. If the non-performing Owner fails to pay any reimbursement due, the Owner who has incurred the repair costs shall have the immediate right to record a lien against the non-performing Owner's property benefited by this Agreement, in addition to all other rights and remedies permitted at law or in equity. The aforesaid lien shall be treated as a construction lien pursuant to Oregon law.

10. Liability Insurance. Each Owner shall maintain a policy of general liability insurance ("Liability Insurance") with adequate single and combined liability limits in force at all times, insuring all activities, conditions, operation and usage on or about either Owners' property which is burdened by an easement pursuant to this Agreement. Such Liability Insurance shall be issued by insurance companies with a reliable general policyholder's rating and financial rating and qualified to do business in Oregon. Each Owner shall, upon request of the other, provide evidence to the other Owner of Liability Insurance coverage in accordance with this section.

11. Indemnification. To the extent not covered by the Owners' policies of Liability Insurance: (a) the Owner of Parcel 1 shall defend, indemnify and hold the Owner of Parcel 2 and all of its employees or agents harmless from any and all claims, demands, or liability arising from alleged acts or omissions by the Owner of Parcel 1 or its employees or agents, or the negligent maintenance, construction, or dangerous condition of the Driveway Improvements located on Parcel 1; and (b) the Owner of Parcel 2 shall defend, indemnify and hold the Owner of Parcel 1 and all of its employees or agents harmless from any and all claims, demands, or liability arising from alleged acts or omissions by the Owner of Parcel 2 or its employees or agents, or the negligent maintenance, construction or dangerous condition of Driveway Improvements located on Parcel 2.

12. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, commercial overnight courier with written verification of receipt or by telecopy facsimile. A notice shall be deemed given: (a) when delivered by personal delivery (as evidenced by the receipt); (b) two business days after deposit in the mail if sent by registered or certified mail; (c) one business day after having been sent by commercial overnight courier (as evidenced by the written verification of receipt); or (d) on the date of confirmation if telecopied. Notices shall be addressed as set forth in the first paragraph of this Agreement, but any addressee may change its address by written notice in accordance herewith.

13. General Provisions.

13.1 Entire Agreement. This Agreement (including Exhibits attached) constitutes the entire agreement and understanding between the parties with respect to the subject matter contained herein, and supersedes any prior agreement and understanding about the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by the parties hereto.

13.2 Headings. The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

13.3 Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

13.4 Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

13.5 Waiver. No waiver of any breach of any of the easements, covenants and/or agreements herein contained shall be construed as, or constitute, a

waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.

13.6 Successors and Assigns. Each covenant and condition contained in this Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns, except as otherwise provided herein.

13.7 Recording. A fully executed counterpart of this Reciprocal Easement Agreement shall be recorded in the Office of the County Recorder of Klamath County, Oregon.

13.8 Attorneys' Fees and Costs. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled, including the fees and costs incurred in enforcing any judgment which may be obtained in said action.

13.9 Arbitration.

13.9.1 Arbitrable Claims. To the fullest extent permitted by law, all disputes between the Owners relating in any manner whatsoever to this Agreement ("Arbitrable Claims") shall be resolved by arbitration.

13.9.2 Procedure. Arbitration of Arbitrable Claims shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as amended from time to time ("AAA Rules"), as augmented in this Agreement. Arbitration shall be initiated as provided by the AAA Rules, although the written notice to the other party initiating arbitration shall also include a statement of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all Arbitrable Claims. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither party shall initiate or prosecute any lawsuit or administrative action in any way related to any Arbitrable Claim. Notwithstanding the foregoing, either party may, at its option, seek injunctive relief. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS, INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO TRIAL BY JURY AS TO THE MAKING, EXISTENCE, VALIDITY OR ENFORCEABILITY OF THE AGREEMENT TO ARBITRATE.

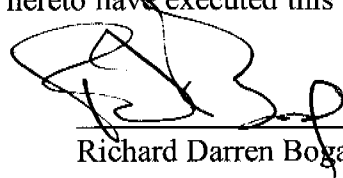
13.9.3 Arbitrator Selection and Authority. All disputes involving Arbitrable Claims shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the

notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify the AAA and request selection of an arbitrator in accordance with the AAA Rules. The arbitrator shall have authority to award equitable relief, damages, costs and attorneys fees to the same extent that, but not greater than, a court would have. The fees of the arbitrator shall be split between both parties equally. The arbitrator shall have exclusive authority to resolve all Arbitrable Claims, including, but not limited to, whether any particular claim is arbitrable and whether all or any part of this Agreement is void or unenforceable. The arbitrator shall be obligated to apply Oregon law.

13.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BOGATAY:


Richard Darren Bogatay

STATE OF OREGON)
County of Klamath ss.

The foregoing instrument was acknowledged before me on May 1, 2013, by Richard Darren Bogatay.


Notary Public for the State of Oregon
Commission Expires: 11/16/2015

DB:

DUTCH BROS. L.L.C.,
an Oregon limited liability company

By: J. Boersma
Travis Boersma, Member

STATE OF OREGON)
) ss.
County of Josephine)

The foregoing instrument was acknowledged before me on April 30, 2013,
2013, by Travis Boersma, member of Dutch Bros. L.L.C., an Oregon limited liability
company, on behalf of the company.



Katy Gitan Burris
Notary Public for the State of Oregon
Commission Expires: June 6, 2014

EXHIBIT A

Parcel 1

Lot 1, Block 1, REPLAT NO. 1 OF A PORTION OF SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, together with that portion of vacated 5th Avenue adjacent to Lot 1 which inured thereto.

EXHIBIT B

Parcel 2

Lot 2, Block 1, REPLAT NO. 1 OF A PORTION OF SUNNYSIDE ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXHIBIT C

The Driveway Improvements

