

*ML 96777-KR*  
After recording, return to:  
Dutch Bros. L.L.C.  
300 North Valley Drive  
Grants Pass, OR 97526

**2013-004841**  
Klamath County, Oregon  
05/06/2013 02:04:37 PM  
Fee: \$82.00

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**AMENDMENT TO RIGHT OF WAY  
EASEMENT AGREEMENT  
("Agreement")**

**DATE:** April 30, 2013

**PARTIES:** Richard Darren Bogatay (as to Lot 1)  
680 Loma Linda Drive  
Klamath Falls, OR 97601

**"Lot 1 Owner"**

Dutch Bros. L.L.C., an Oregon  
limited liability company (as to Lot 2)  
300 North Valley Drive  
Grants Pass, OR 97526

**"Lot 2 Owner"**

Cave Income Properties, L.L.C., an  
Oregon limited liability company  
62 Puakukui Place  
Lahaina, HI 96761

**"Lot 3-5 Owner"**

(together, **"Owners"**)

**RECITALS:**

- A. Lot 1 Owner owns 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 5<sup>th</sup> Avenue adjacent to Lot 1 which inured thereto ("**Lot 1**").
- B. Lot 2 Owner owns, or will own contemporaneously with recording of this document in the official records of Klamath County, Oregon, Lot 2, Block 1, REPLAT NO. 1 OF A

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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 (“**Lot 2**”).

- C. Lot 3-5 Owner owns Lots 3, 4 and 5, 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 (“**Lots 3-5**”).
- D. John C. Gretlein and Catherine L. Gretlein, husband and wife, and William C. Fridinger and Gretchen M. Fridinger, father and daughter, predecessors in title to Lot 1 and Lot 2, and Cave Income Properties, LLC, an Oregon limited liability company, predecessor in title to Lots 3-5, entered into that certain Right of Way Easement Agreement fully executed September 29, 2000, and recorded October 4, 2000 in Volume M00 at Page 36380, Official Records of Klamath County, Oregon (the “**Easement**”).
- E. The Easement refers to Exhibits A, B, C and D but only Exhibit A and B were attached to the recorded copy of the Easement. The parties hereto affirm that Exhibits C and D were never part of the Easement.
- F. The properties described in Recitals A-C, above, are burdened and/or benefited by the Right of Way Easement described in the Easement.
- G. The parties hereto wish to replace the existing exhibits attached to the Easement with new exhibits.
- H. The parties hereto wish to clarify the division of maintenance expenses between the parties.
- I. The parties hereto wish to establish the party primarily responsible for performing maintenance on the Right of Way Easement.

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. All exhibits to the Easement are hereby deleted and the attached Exhibit A – Plat Map of Lots 1-5, Exhibit B – Legal Descriptions of Easements, Exhibit C – Site Plan for Ingress and Egress over Lots 2 and 3, are hereby substituted therefor.

2. Section 2.1 of the Easement is hereby deleted and the following substituted therefor:

“2.1 **Right of Way Easement.** Cave (Lot 3-5 Owner), as Grantor, hereby grants and conveys to Gretlein/Fridinger (Lot 1 Owner and Lot 2 Owner), as Grantees, the perpetual and non-exclusive Right of Way Easements described on Exhibit B and depicted on Exhibit C as ESMT B and ESMT C over the Cave Property (Lot 3). Gretlein/Fridinger (Lot 2 Owner), as Grantor, hereby grants and conveys to Cave (Lot 3-5 Owner), as Grantee, the perpetual and non-exclusive Right of Way Easement described on Exhibit B and depicted on Exhibit C as ESMT A over Lot 2.”

3. Maintenance expenses for the Right of Way Easement shall be divided as follows:

Lot	Percentage
1	25%
2	25%
3-5	50%

4. Lot 3-5 Owner shall be primarily responsible for maintaining the Right of Way Easement. Lot 3-5 Owner shall invoice the other Owners for their proportionate shares of actual expenses incurred in maintaining the Right of Way Easement in accordance with Sections 3.1 and 3.5 of the Easement, which amounts shall be paid to Lot 3-5 Owner within 15 days after receipt of the invoice. In the event Lot 3-5 Owner fails to maintain the Right of Way Easement as provided herein, any other Owner may perform such maintenance after first giving all other Owners not less than 30 days' notice of its intent, describing the required maintenance and an estimate of expenses to be incurred. Provided no Owner objects to such work being performed, the Owner providing notice shall perform the required maintenance in a timely manner and shall invoice the other Owners for their proportionate share of the actual expenses incurred, which amounts shall be paid to Owner performing the maintenance within 15 days after receipt of the invoice.

5. Owners agree that all amounts due to or from any Owner for maintenance of the Right of Way pursuant to the Easement have been fully paid and no Owner owes or is owed any amount therefor.

6. All provisions of the Easement are hereby ratified and confirmed.

#### **GENERAL PROVISIONS:**

1. 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 "PARTIES" section of this Agreement, but any addressee may change its address by written notice in accordance herewith.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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

9. 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.

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.

**LOT 1 OWNER:**

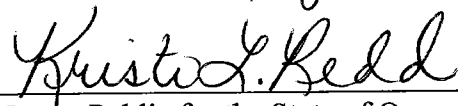


Richard Darren Bogatay

STATE OF OREGON           )  
                                          ) ss.  
County of Klamath         )

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

LOT 2 OWNER:

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

By: J. B.  
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

LOT 3-5 OWNER:

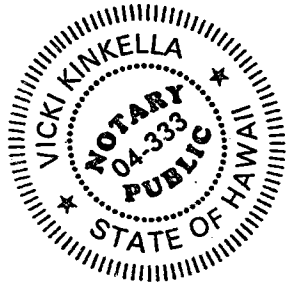
CAVE INCOME PROPERTIES, L.L.C.,  
an Oregon limited liability company

By: 

Name: Douglas D. Montmore  
Title: President

*HAWAII*  
STATE OF OREGON )  
*MAUI* ) ss.  
County of ~~Josephine~~ )

The foregoing instrument was acknowledged before me on April 30, 2013,  
by Douglas D. Montmore of Cave Income Properties, L.L.C., an Oregon  
limited liability company, on behalf of the company.



*HAWAII*  
Notary Public for the State of Oregon  
Commission Expires:

**VICKI KINKELLA**  
My commission expires 6/27/2016

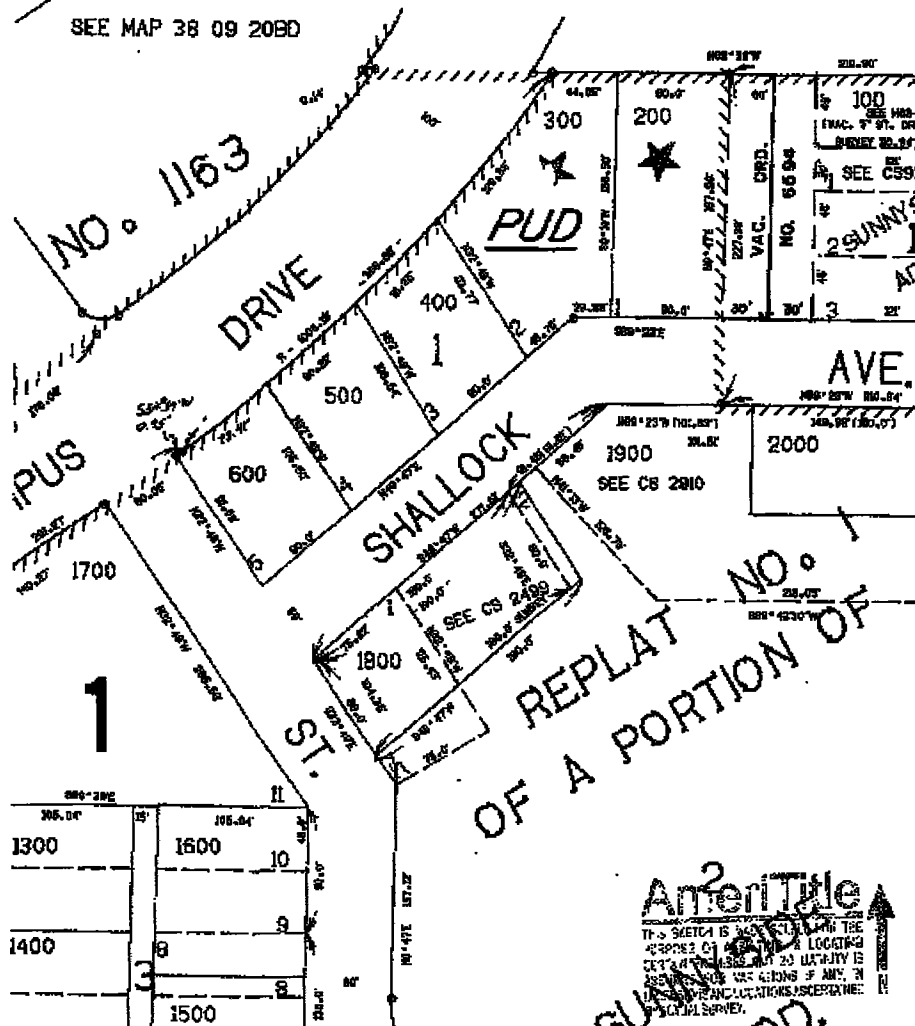
EXHIBIT A

Plat Map of Lots 1-5

AMATEL COUNTY

1"=100'

SEE MAP 38 09 20BD



AnterTitle  
SUNNY  
10.



## EXHIBIT B

### Legal Descriptions of Easements

**ESMT A:** A portion of Lot 2, Block 1, Replat No. 1 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, situated in the NE ¼ SW ¼ Section 20, T.38S., R.9E., W.M., being more particularly described as follows:

Beginning at the westerly corner of said Lot 2; thence northeasterly 24.08 feet along the arc of a 1005.19 foot radius curve to the left, the chord of which bears N40°32'05"E 24.08 feet; thence 102.05 feet along the arc of a non-tangent 33.88 foot radius curve to the right, the chord of which bears S26°28'16"E 67.62 feet; thence S71°20'39"W 16.09 feet to the intersection with the southwesterly property line of said Lot 2; thence along said southwesterly property line N32°49'00"W 56.38 feet to the point of beginning.

**ESMT B:** A portion of Lot 3, Block 1, Replat No. 1 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, situated in the NE ¼ SW ¼ Section 20, T.38S., R.9E., W.M., being more particularly described as follows:

Beginning at the northerly corner of said Lot 3; thence southwesterly 66.81 feet along the arc of a 1005.19 foot radius curve to the right, the chord of which bears S43°07'31"W 66.80 feet; thence N62°51'58"E 7.19 feet; thence N55°50'46"E 32.92 feet; thence N51°28'31"E 24.85 feet to the northeasterly line of said Lot 3; thence N32°49'00"W 13.70 feet to the point of beginning.

**ESMT C:** A portion of Lot 3, Block 1, Replat No. 1 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, situated in the NE ¼ SW ¼ Section 20, T.38S., R.9E., W.M., being more particularly described as follows:

Beginning at the easterly corner of said Lot 3; thence N32°49'00"W 30.00 feet; thence S48°47'00"W 32.52 feet; thence S32°49'00"E 30.00 feet; thence N48°47'00"E 32.52 feet to the point of beginning.

### Site Plan for Ingress and Egress over Lots 2 and 3

