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ELEANOR E. WIMBROUGH F 8
COUNTY RECORDER LF 19**RECORDING AT REQUEST OF
AND WHEN RECORDED RETURN TO:**Judy Merlini
c/o Calistoga Realty Co. Inc.
1348 C Lincoln Ave.
Calistoga, CA 94515**AGREEMENT FOR MAINTENANCE
OF ROADWAY EASEMENT****1. PARTIES**

This Agreement for Maintenance of Roadway Easement ("Agreement") is entered into on November 30, 1989, by and between Judy Merlini and Vernon Neil Smith.

2. FACTS

2.1 The Sale. Judy Merlini has sold, or will sell, to Vernon Neil Smith certain real property located in Napa County, which is more particularly described on EXHIBIT A attached hereto and incorporated by reference as though set out in full ("Vernon Neil Smith Property"). Judy Merlini has retained ownership to certain real property located adjacent to Vernon Neil Smith's Property. Judy Merlini's Property is more particularly described on EXHIBIT B and EXHIBIT C attached hereto and incorporated by reference as though set out in full (the "Merlini Properties")

2.2 Easements. Under the terms of a Purchase Agreement, Judy Merlini has sold, or will sell, to Vernon Neil Smith certain real property described on EXHIBIT A, concurrently, Judy Merlini retained a right of way for road and utility purposes across the Vernon Neil Smith property to Judy Merlini's adjacent parcels.

2.3 Purpose. Judy Merlini and Vernon Neil Smith desire to set forth their rights and obligations with regard to the repairs, maintenance and improvement of the right of way.

3. ROAD IMPROVEMENT

The parties agree that the roadway shall be maintained as a paved road. The parties further agree to share the costs of any maintenance or improvement of the road required by local or state laws relating to public safety and not arising out of voluntary improvements of the road by either party under Section 7 or any improvement by any party to its property or the increase or change in use by either party of its property.

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4. ALLOCATION OF COSTS

4.1 Ordinary Repairs. The cost of ordinary and usual repairs and maintenance required from time to time because of normal wear and tear shall be shared equally by Judy Merlini and Vernon Neil Smith as to that portion of the roadway identified on the map attached hereto as EXHIBIT D and incorporated by reference as though set out in full. It is intended by the parties that the portion of the roadway which shall be borne equally by all parties originates at State Highway 128, running northeast approx. 700 ft. to the north end of parcel # 11-400-03 (Merlini). The cost of ordinary and usual repairs for the portion of the road which lies beyond that point, running northeast approx. 40 ft., shall be borne solely between the owner of parcel # 11-400-02 (Smith) and the owner of parcel # 17-200-07 (Merlini).

4.2 Extraordinary Repairs and Improvements. Except as specifically provided under Section 7, neither party shall undertake any extraordinary repair, maintenance, rebuilding or improvements to the roadway without the prior written consent of the other party. The parties shall share the costs of extraordinary repairs and improvements in the manner described in Section 4.1 above.

4.3 Damage to Roadway by A Party to This Agreement. Should either party, either individually or through the acts of its family members, guests, contractors, or employees, cause unusual damage to the roadway, through accident or negligence, whether immediately or over time, such responsible party shall repair such damage promptly at its own expense. Upon establishment of the responsible party hereto, such responsible party's failure to repair such damage within thirty (30) days may result in the work being accomplished in accordance with the ordinary and usual maintenance procedures set forth above and the responsible party shall reimburse the other party contributing to the costs of such work plus interest at ten percent (10%) from the date of the expenditure and reasonable attorney's fees and costs incurred in enforcing this Section 4.3.

5. ROAD MAINTENANCE FUND

5.1 Creation of the Fund. Judy Merlini and Vernon Neil Smith shall establish a fund for maintenance of the roadway when it becomes necessary (the "Fund"). The amount of money to be deposited in the Fund shall be mutually agreed by both parties. Contributions shall be proportionate, using the formula outlined in section 4.1 above.

5.2 Administration of the Fund. Vernon Neil Smith shall act as administrator of the Fund. Vernon Neil Smith shall collect and deposit the contributions into an interest bearing account from which sums may be withdrawn to meet the obligations required for the ordinary and usual maintenance of the roadway. The parties, from time to time, shall make periodic deposits into the Fund as sums are withdrawn for maintenance. The parties shall provide each other with evidence of expenditures for work performed on the roadway.

5.3 Dissolution of the Fund. If at some future date it is determined by the parties that the Fund should be dissolved, such remaining sums shall be withdrawn by Vernon Neil Smith from the account and returned to the parties in the same proportion as the

manner in which they were contributed. The Fund shall also be dissolved and returned in the event of public dedication and acceptance of the roadway by any governmental entity.

6. LIABILITY

6.1 Roadway Repairs. Except for voluntary improvements under Section 7, the parties shall equally share any liability for personal injury or property damage to any employee or contractor employed to make repairs on the portion of the roadway for which the parties equally share costs under Section 4.1.

6.2 Other Liabilities. Neither of the parties shall be obligated to share in any liability resulting from personal injury or property damage other than that attributable to the repairs, maintenance and improvements under Section 6.1.

6.3 Insurance. Each party shall be responsible for maintaining its own insurance covering such liability and indemnification.

7. VOLUNTARY IMPROVEMENTS

Voluntary improvements or upgrading made to the roadway by either party at its own cost and on its own property is expressly allowed and does not require the consent of the other party unless such voluntary improvement or upgrading will impair the other party's right or ability to use the roadway. Voluntary improvements or upgrading shall be improvements deemed by either party to facilitate or improve its personal use of or access to the roadway, including but not limited to, widening turn radius, installing turnouts, de-acceleration zones or altered rain drainage and driveway access.

8. ADDITION OF NEW PARCELS

The addition of new parcels or users for the roadway, whether through an act of subdivision or by unanimous consent of all parties, shall be conditioned upon such new parcel owner and/or new user making a contribution to the road maintenance fund as described herein and making an additional contribution to equal the cost of improvements that may be required by the County of Napa (including prospective requirements triggered by building permit application) to bring the road standard beyond the level then existing.

9. GENERAL PROVISIONS

9.1 Attorney's Fees. In the event of any action, including arbitration, at law or in equity regarding this Agreement, the losing party shall pay the prevailing party all reasonable attorney's fees and costs.

9.2 Arbitration / Small Claims Court. In the event of any dispute or controversy in this Agreement, the same shall be resolved at the election of the complaining party, either by binding arbitration in accordance with the rules and procedures of the American Arbitration Association, or by complaint in small claims court. Any cross-complaint or claim shall be brought within the same proceeding, unless the original complaint is

filed in small claims court and any such cross-complaint exceeds the jurisdictional limits of the small claims court, in which the entire dispute shall be resolved in arbitration as set forth above.

9.3 Partial Invalidity. Should any part of this Agreement be declared invalid, such decision shall not affect the validity of the remaining portions, which remaining portions shall remain in full force and effect as if this Agreement had been executed with the invalid portion therefore eliminated. It is hereby declared the intention of the parties that they shall have executed the remaining portions of this Agreement without including such part or portions which may be declared invalid.

9.4 Venue and Choice of Law. In any hearing, action or proceeding to enforce, interpret or resolve any conflict under this Agreement, whether by arbitration or otherwise, the same shall be venued and heard in the County of Napa and the terms of this Agreement shall be interpreted and governed by the laws of the State of California.

9.5 Obligations Run with the Land and binding Effect. This Agreement shall run with the lands described in EXHIBIT A, EXHIBIT B, and EXHIBIT C, and shall be binding upon and for the benefit of the parties and their respective heirs, assignees and successors in interest.

9.6 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the rights and obligations created. Any oral representations or modifications concerning this Agreement shall have no force or affect except a subsequent modification in writing signed by the party to be charged.

Judy S. Merlini

Judy Merlini

Vernon Neil Smith

Vernon Neil Smith

Witnessed by:

[Signature]
[Signature]

Witnessed by:

[Signature]
[Signature]

STATE OF CALIFORNIA,

COUNTY OF Napa) S.S.

On the 12th day of December, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian Durnian

proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as a witness thereto, who being by me duly sworn, depose and said: That he resides at 1348C Lincoln, Colistoga, Ca.

that he was present and saw Judy Merlini and Vernon Neil Smith personally known to him to be the person described in, and whose name is subscribed to the within and foregoing instrument.

Execute the same and that all of the above named parties thereto as a witness to said execution.

Signature *[Signature]*

Stamp

CAL/576 Witness (Rev. 6-82)



FOR NOTARY SEAL OR STAMP

Official Seal
LINDA McDOWELL
NOTARY PUBLIC, CALIFORNIA
NAPA COUNTY
My Comm. Expires July 31, 1991

EXHIBIT A

The land referred to in this report is situated in the State of California, County of Napa, CITY OF CALISTOGA, and is described as follows:

PARCEL ONE:

Commencing at the point of intersection of the Northwestern line of that certain 41.85 acre parcel of land described in the Deed from George B. Winslow and wife to Josephine E. Brown by Deed of record in Volume 43 of Official Records, at page 15, records of said Napa County, with the Northeastern line of the Road or Highway leading from Calistoga to Healdsburg; and running thence North $37-1/4^{\circ}$ East along the Northwestern line of said 41.85 acre parcel of land 1131.7 feet to the most Southern corner of the 0.55 acre parcel of land hereintofore conveyed to C. K. Corokos by Deed of record in Volume 72 of Official Records at page 248, said Napa County Records; thence Easterly along the Southern line of said 0.55 acre tract of land 210 feet to the most Eastern corner thereof; thence South $53-3/4^{\circ}$ East 38.8 feet; thence South $37-1/4^{\circ}$ West 616.7 feet; thence North $53-3/4^{\circ}$ West 133.8 feet; thence South $37-1/4^{\circ}$ West 700 feet to the Northeastern line of the aforesaid road or Highway; thence North $53-3/4^{\circ}$ West along the said line of said Road or Highway 15 feet to the point of commencement.

PARCEL TWO:

The portion conveyed to Edward J. Taylor, et ux, by the Boundary Line Agreement and Deed recorded July 14, 1982 in Book 1247 at page 769, Napa County Records.

EXCEPTING THEREFROM that portion conveyed to John Stolec, et ux, by the Boundary Line Agreement and Deed, recorded July 14, 1982 in Book 1247 at page 769, Napa County Records.

APN 11-400-02

EXHIBIT D**PARCEL ONE:**

Commencing at a redwood tree on the northerly bank of a small creek from which stake an ash tree about 16 inches in diameter marked with a blaze about four feet above the ground, which bears North 59° East 25 feet distant, the said stake being at the northerly end of third course in the description of the 30 acre tract of land secondly described in a deed from Hattie A. Sharp to L. D. Batchelder, dated December 29, 1915 and of record in Libre 115 of Deeds, page 272, Napa County Records; thence from said stake along the boundary of said 30 acre tract South 34- 1/2° west 87 links to a stake in the fence marked (B-C); thence South 54 degrees East 422 feet, or 6.39 chains to a stake by the fence on the easterly line of land now or formerly of F.S. Crouch; thence along the said easterly line North 37-1/4 degrees East 4.03 Chains to a corner of said 30 acre tract in the middle of a small creek; thence up the middle of said creek and along the boundary line of said 30 acre tract, North 88-1/2° west, 1.50 chains North 62-1/2° West 1.90 chains; South 82-1/2° West 2.90 chains, and North 54-1/2° West 1.40 chains to the point of commencement.

EXCEPTING THEREFROM that portion conveyed to George Erickson, et ux, by deed which recorded July 10, 1947 in Book 271 of official Records at page 487, Napa County Records.

PARCEL TWO:

COMMENCING at the most Southern corner of the 1.50 acre tract of land described in the Deed to L. D. Batchelor of record in Book 116 of Deeds, At page 148, said Napa County Records; running thence South 37° 15' West 94.44 feet; thence North 63° 45' West 78.0 feet; thence North 37° 15' East 94.78 feet; thence South 54° East 78.02 feet to the point of commencement.

PARCEL THREE:

That portion conveyed to Edward J. Taylor, et ux, by the boundary Line agreement a Deed recorded July 14, 1982, in Book 1247 at page 769, Napa County Records.

EXCEPTING THEREFROM that portion conveyed to John Stolec, et ux, by the Boundary Line Agreement and Deed, recorded July 14, 1982 in Book 1247 at page 769, Napa County Records.

APN 17- 200-07

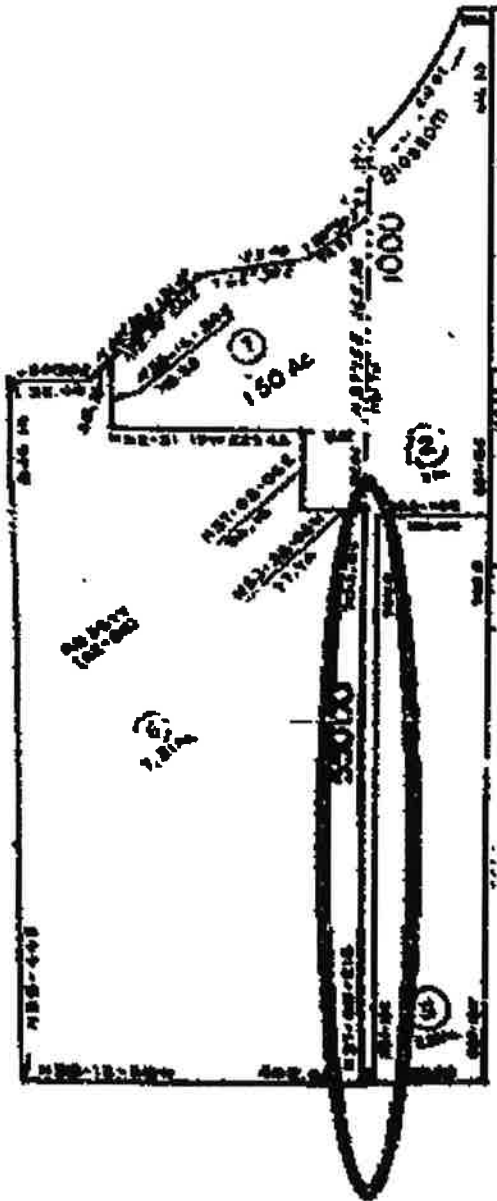
EXHIBIT C

Commencing at a point on the northeastern line of the County Road leading from Calistoga to Healdsburg, distant thereon south 52 degrees 54 minutes east 15.00 feet from the intersection thereof with the northwestern line of that certain 41.81 acre tract of land conveyed to Josephine E. Brown by Deed of Record in Volume 43 of Official Records, at page 15, Napa County Records, set point being also the most Southernly corner of premises conveyed to Charles H. Fowler by Deed of Record in Volume 78 of Official Records, Page 6, said Napa County Records; and running thence from said point of commencement and along the southeasterly line of premises so conveyed to Fowler, the following courses and distances: North 37 degrees 15 minutes East 700.00 feet ; South 53 degrees 45 minutes East 133.80 feet; South 37 degrees 15 minutes East 700 feet, North 52 degrees 54 minutes West 133.80 feet to the point of beginning.

Containing 2.15 acres more or less.

EXHIBIT D
RIGHT OF WAY DESCRIPTION

Commencing at the point of intersection of the Northwestern line of that certain 41.85 acre parcel of land described in the Deed from George B. Winslow and wife to Josephine E. Brown by Deed of record in Volume 43 of Official Records, at page 15, records of said Napa County, with the Northeastern line of the Road or Highway leading from Calistoga to Healdsburg; and running thence North 37-1/4 degrees East along the Northwestern line of said 41.85 acre parcel of land 740.52 feet, thence South 53-3/4 degrees East 15.0 feet, thence South 37-1/4 degrees West 740.52 feet, thence North 53-3/4 degrees West along the said line of said Road or Highway 15.0 feet to the point of commencement.



END OF DOCUMENT