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Skagit County Auditor  
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## **RECIPROCAL EASEMENT AND JOINT MAINTENANCE AGREEMENT**

**Reference Nos.:**

Section, Township, and Range: Section 19, T 35N, R4E

Tax Parcel No./Account No.: 8056-000-001-0000

Grantors: Fast Break Enterprises Inc.

Grantees: Fast Break Enterprises Inc

Burfair LLC

JJMD Investments LLC

This agreement is being entered into on the dates set forth below, among FASTBREAK ENTERPRISES LLC ("FASTBREAK"), A Washington limited liability company, organized and existing under the laws of the State of Washington, having its principal office at 9440 Old Hwy 99 N. Road, Burlington, WA. 98233, Burfair LLC ("BURFAIR"), Washington limited liability company, organized and existing under the laws of the State of Washington, having its principal office at 840 Beltline Road, Suite 202, Springfield, OR. 97477 , and, JJMD INVESTMENTS LLC ("JJMD"), Washington limited liability company, organized and existing under the laws of the State of Washington, having its principal office at 9394 Old Hwy 99 N. Road, Burlington, WA. 98233.

### **RECITALS**

A. FASTBREAK is in the current owner of certain real property located in Skagit County, Washington that is located along the west side old Highway 99 north of the Cook Road I-5 interchange. This real property consists of three commercial lots, referred to as Lots 1, 2, and 3. This property and the lots are shown on the attached "Binding Site Plan No. PL-04-0916", which is incorporated by reference in this agreement as "Exhibit "A" attached hereto. Lot 3 contains a service station and car wash. The Espresso stand is owned and operated by FASTBREAK and is located on property owned by JJMD. Fastbreak Operations, Inc. is leasing Lot 3 and the building thereon from FASTBREAK.

B. JJMD is in the owner of certain real property located in Skagit County, Washington that is located along the west side old Highway 99 north of the Cook Road I-5 interchange. This real property consists of one commercial lot, referred to as 9394 Old Highway 99 N. Road, Burlington, Washington. This property is legally described in "Exhibit "B", attached hereto ("JJMD Property"). JJMD Property contains a restaurant. JJMD, Inc. is leasing the JJMD Property from JJMD.

C. Lots 1, 2, and 3 of Binding Site Plan No PL 04-0916 and the JJMD Property will be referred to collectively in this agreement as "the Subject Property."

D. Pursuant to a real estate excise tax free transfer in accordance with WAC 458-61-375(e), FASTBREAK will transfer Lot 1 to PAR FOUR INVESTMENTS, LLC, which will subsequently transfer Lot 1 to BURFAIR, which shall be the owner of Lot 1, as shown on the Binding Site Plan. By separate agreement PAR FOUR INVESTMENTS, LLC and SYCAN DEVELOPMENT CORPORATION shall be members of BURFAIR with their respective interests as 70% and 30%. Lot 1 is legally described in "Exhibit "C", attached hereto ("BURFAIR Property").

E. The parties to this agreement, their heirs, successors, and assigns, intend for Lots 1, 2, and 3 of Binding Site Plan No. 04-0916 and the JJMD property as described herein to be burdened by and subject to the reciprocal easements, covenants, conditions, maintenance requirements, and restrictions described herein.

F. The agreement is intended to satisfy the terms, provisions, and requirements of the Skagit County Code and the terms and conditions set forth in Binding Site Plan PL-04-0916

Now, therefore, in consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

## SECTION ONE

1.1 The definitions described below are incorporated in this agreement by this reference.

1.2 The term "building areas" shall include any building areas, designated or illustrated as such on any future site plans and/ or building permit applications affecting lots 1, 2 and 3 of the Subject Property and which have previously approved by Skagit County or have been submitted for approval by Skagit County for the construction of any building on the subject property.

1.3 The term "Common Areas" as used in this agreement shall mean those areas depicted on Binding Site Plan No. PL-04-0916. In addition, the term "Common Areas" shall mean any area not shown as a "building area" on any future site plans or building permit applications affecting Lots 1, 2, 3 of Binding Site Plan No. 04-0916 and JJMD Property and which are approved by Skagit County for the construction of any building on the subject property. Common areas shall include the common access road, sewer service and improvements, including the pumping station located just east of the carwash on Lot 3 and the drainage retention pond. The term "common areas" shall also include any portion of the building area that is or will be improved as a parking area.

1.4 Reference to "the Owners" shall mean FAST BREAK or JJMD or BURFAIR.



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## SECTION TWO

2.1 All parties to this agreement shall have the right to use the non-exclusive ingress, egress and utility easement recorded under Skagit County Auditor's File No. 200504200094 as depicted on Binding Site Plan No. PI-04-0916.

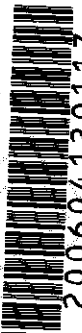
2.2 Subject to existing easements of record and those depicted on Binding Site Plan No. PI-04-0916, the Common Areas shall be used for roadways, walkways, access, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, and for the convenience and comfort of customers, invitees, and employees of all businesses and occupants of the buildings constructed within said Building Areas. The foregoing shall not be construed so as to forbid or prevent the granting of appropriate and proper easements for installation, repair, replacement of storm drains, utilities, sewers and other proper services necessary for the orderly development and operation of the Common Areas and the buildings to be erected upon the Building Areas. Requests for a grant of easement between the owners and lessees of the subject property for such purposes shall not be unreasonably withheld.

2.3 The parties establish and create for the benefit of the Building Areas and for the benefit of the various owners, lessees and/or occupants of the subject property, their employees, customers, and invitees, a mutual reciprocal and nonexclusive easement, right and privilege to use the Common Areas (as defined in this agreement) for roadways, walkways, ingress and egress. The owner of each property subject to this agreement shall be responsible to construct sufficient parking on their respective properties to meet the parking needs of the business or businesses located on their property. The owners, lessees, or occupants shall have the right to post signage on their portion of the Subject Property to enforce the intent of this parking restriction which is that employees, customers and invitees of the businesses on each of the properties park on the respective properties.

2.4 Employees of any business located upon the subject property shall not be permitted to park in the Common Areas, except in those areas designated as employee parking areas. The owner, lessee or occupant of the subject property upon which a business is located, shall designate employee parking areas in sufficient numbers to accommodate the number of employees who may be employed at the business each day. The owner, lessee, or occupant shall locate those designated employee parking areas within the owner's, lessee's or occupant's portion of the Subject Property. The primary purpose of the common area, is to provide for parking for the customers, invitees and employees of those businesses located within the Building Areas of the Subject Property; for ingress and egress, and for the servicing and supplying of such businesses.

2.5 The Owners covenant and agree that they will not permit any future lease, occupation or use of Lot 2 that may interfere with or unreasonably limit or impinge upon Lot 1 and Lot 3's ingress and egress to and from its building areas, or which may interfere with or limit the parking of motor vehicles within the common areas.

2.6 No building or structure shall be constructed on Lots 1 and 2, except within the Building Areas and any such buildings or structures shall be solely for commercial purposes of the type usually found in rural freeway service zoning or those uses approved by Skagit County and the lessees occupying the same shall be primarily retail and service



lessees of the type normally associated with a rural freeway service zone.

2.7 All buildings constructed within and upon the subject property shall be designed and built in conformity with sound architectural and engineering standards, and all such buildings will be of first quality construction and shall conform to all applicable building codes and state, county or city requirements.

### SECTION THREE

3.1 The cost of maintaining, improving, and repairing the common access road and the drainage retention pond shall be shared equally among all the Owners. The cost of sewer service and/ or repair and maintenance shall be prorated among the respective Owners according to use. Any cost or expansion the sewer service or system, or other Common Area, required solely by the Owner's use of any particular lot, shall be borne by the respective Owner.

3.2 When any building is constructed within Subject Property, the Common Areas on the Lot on which any such building is constructed, shall be developed in accordance with a site plan approved by Skagit County and Owner (or its successor), and shall be constructed at the expense of the Owner, Lessee or Occupant, of said Lot, as applicable, pursuant to the terms of the lease agreement(s) executed by and between the Owner, Lessee, or Occupant. Following completion of any of the improvements of the Common Areas as described, all Common Areas shall be maintained by the respective Owner or Lessee of the property in good condition and repair, as provided by the terms of any lease or other agreement between Owner and Lessee. The maintenance of Common Areas shall include, without limiting the generality of the foregoing, the following:

- a. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;
- b. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- c. Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and hues;
- d. Operating/keeping in repair, and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
- e. Maintaining all perimeter walls in a good condition and state of repair; and
- f. Maintaining, all landscaped areas and making such replacements of shrubs and other landscaping as is necessary or as may be required by the terms of the binding site plan approved by Skagit County.

3.3 All portions of the Common Areas shall be maintained as outlined above at the expense of the respective Owner, Lessee and/or Occupant to the extent described in the lease or other agreement between the Owner and any Lessee. To the extent that any portion of Binding Site Plan No. PL 04-0916 has not been leased, the cost of maintaining the Common Areas not contained within leased premises shall be borne by the Owner.



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3.4 The size and arrangement of the Common Areas shall not be changed, except by mutual agreement between the Owner and all Lessees.

3.5 Subject to the mutual agreement of the Owners and the Lessees of the Subject Property, a third party may be appointed as an agent of said parties to maintain the Common Areas in the manner above outlined. Said third party may receive from such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners and lessees of the Common Areas. The consolidation of the Subject Property for maintenance purposes may be terminated by any one of the parties to this agreement, including Owner, Lessees or occupants of any portion of the subject property. In the event the consolidation of Common Area maintenance is terminated, then the Owner and/or Lessee and/or occupant of each parcel of the Subject Property shall maintain their respective Lot or Lots as set out-above.

#### SECTION FOUR

4.1 The easements, restrictions, benefits and obligations hereunder shall create mutual covenants, benefits and servitudes upon all portions of the property described in Exhibits A and B, and shall "run with the land." This Agreement shall create privity of contract and estate with and among all owners, grantors, grantees, lessors and lessees of all or any part of the Subject Property including their respective heirs, representatives, successors and assigns.

4.2 The ownership by one person or party of all or part of the Subject Property shall not result in a cancellation or partial cancellation of this Agreement through merger or otherwise. This Agreement shall remain in full force and effect notwithstanding any change in ownership of the subject property.

4.3 The provisions of this Agreement may be abrogated, modified, rescinded, or amended in whole or in part but only with the consent of the Owner(s) of the Subject Property and all lessees having a valid lease in effect upon a portion of the Subject Property at the time the modification is contemplated. Any such modification, rescission, or amendment shall be in writing, executed and acknowledged by all of said parties, duly recorded in the Skagit County Auditor's office. This Agreement may not otherwise be abrogated, modified, rescinded, or amended in whole or in part.

4.4 In the event of breach or threatened breach of this Agreement, any person or entity who or which has any interest in Binding Site Plan No. 04-0916, as owner, lessee, or otherwise, and any other record owner of the Subject Property shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach.

4.5 Each and every charge or burden imposed or that may be imposed upon the Subject Property or any part thereof, pursuant to any provision of this Agreement, is, and shall at all times be subject to and subordinate to the lien or charge of any mortgage or deed of trust made in good faith and for value, affecting the subject property or any part thereof or any improvements now or hereafter placed on the property. A breach of any of the covenants or conditions described in this agreement shall not defeat or render invalid the



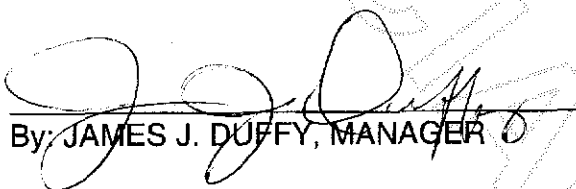
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lien or charge of any such mortgage or deed of trust; provided, however, that title to any said property acquired through sale under foreclosure of any such mortgage or deed of trust, whether foreclosure is affected by power of sale, judicial proceedings, or otherwise, shall be subject to all such charges and burdens affecting subject property; and further, provided that except to the extent set forth in this agreement, nothing contained in this paragraph shall impair the priority of this Agreement over the lien or charge of any such mortgage or deed of trust.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement day and date indicated below.

FAST BREAK ENTERPRISES LLC.

  
By: JAMES J. DUFFY, MANAGER

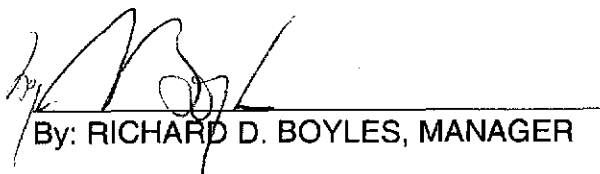
Date: April 12, 2006

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

APR 13 2006

Amount Paid \$ 0  
Skagit Co. Treasurer  
By PC Deputy

BURFAIR LLC.

  
By: RICHARD D. BOYLES, MANAGER

Date: April 12, 2006

JJMD INVESTMENTS, LLC.

  
By: JAMES J. DUFFY, MANAGER

Date: April 12, 2006



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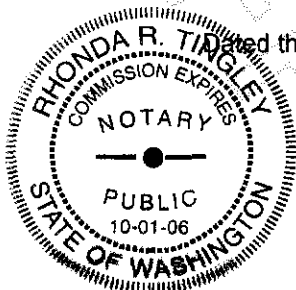
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STATE OF WASHINGTON

COUNTY OF SKAGIT

SS

I certify that I know or have satisfactory evidence that JAMES J. DUFFY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the manager of **FAST BREAK ENTERPRISES LLC** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated this 12<sup>th</sup> day of April, 2006.

Rhonda R. Tingley  
Notary Public  
Rhonda R. Tingley  
(Printed or Typed name)  
My Commission Expires: 10-1-06

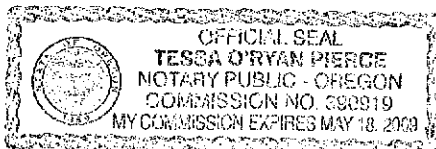
STATE OF OREGON

COUNTY OF LANE

SS

I certify that I know or have satisfactory evidence that RICHARD D. BOYLES is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the manager of **BURFAIR LLC** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12<sup>th</sup> day of April, 2006.



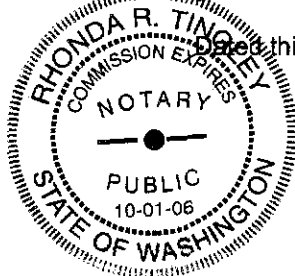
Tessa O'Ryan Pierce  
Notary Public for Oregon

STATE OF WASHINGTON

COUNTY OF SKAGIT

SS

I certify that I know or have satisfactory evidence that JAMES J. DUFFY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the manager of **JJMD INVESTMENT LLC** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated this 12<sup>th</sup> day of April, 2006.

Rhonda R. Tingley  
Notary Public  
Rhonda R. Tingley  
(Printed or Typed name)  
My Commission Expires: 10-1-06



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