

**RIGHT OF FIRST REFUSAL**DATE: DECEMBER 1<sup>st</sup>, 2000 ("Effective Date")

PARTIES: FREDERICK M. HAGEN and PATRICK G. HAGEN ("Owners")

**RECITALS**

A. Owners are the owners, as tenants in common, of a certain parcel of real property located in Klamath County, Oregon, as described as follows:

Lot 10 in Block 5 of ARROWHEAD VILLAGE, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon,

(the "Property").

B. Owners desire to grant to each other the right to purchase the interest of the other in the Property before the interest of the other is sold to third parties, and to provide a right for a surviving Owner to purchase the interest of a deceased Owner. Owners desire to evidence their agreement regarding this purchase right.

**AGREEMENT**

Therefore, in consideration of the Owners' mutual promises and agreements, and other good and valuable consideration passing to each one from the other, the receipt and sufficiency of which is here acknowledged, Owners agree as follows:

1. **Right of First Refusal.** Each Owner agrees not to sell, transfer, exchange, grant an option to purchase, lease, or otherwise dispose of the Owner's interest in the Property without first offering the Property to the other Owner on the terms and conditions set forth in this Agreement.

A. When an Owner receives from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Owner's interest in the Property, such Owner shall give the other Owner (the "Non-selling Owner") written notice (the "Notice") of the price, terms, and conditions of the offer and deliver a copy of the executed contract evidencing the offer (the "Offer") to the Non-selling Owner.

B. When the Non-selling Owner receives the Notice and a copy of the Offer, Non-selling Owner shall have the prior and preferential right to purchase the Owner's interest in the Property at the same price and on the same terms and conditions as are contained in the Offer, except that if Non-selling Owner exercises the right of first refusal by electing to purchase the Property then (1) the closing of the transaction contemplated by the Offer shall take place no earlier than 90 days after the date that Non-selling Owner elects to exercise the right of first refusal, and (2) Non-selling Owner shall receive a credit against the sale price of the Property in an amount equal to any brokerage commission that Owner may save by selling the Property to Non-selling Owner rather than the Third-Party Offeror.

C. Non-selling Owner shall have 15 days from the date Non-selling Owner receives the Notice and a copy of the Offer to notify Owner whether Non-selling Owner elects to purchase the Property pursuant to the terms of the Offer. If Non-selling Owner elects to exercise its right to purchase the Property, then, in addition to giving Owner written notice of its election within the 15-day period, Non-selling Owner also shall tender an amount equal to the earnest money deposit, if any, specified in the Offer, which will be held and used in accordance with the terms of the Offer.

**D.** If Non-selling Owner fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, then Owner shall be entitled to sell the Property according to the terms of the Offer to the Third-Party Offeror, subject to the terms of paragraph 1.E. below.

**E.** If Non-selling Owner fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, and for any reason Owner shall not sell or convey the Property to the Third-Party Offeror on the terms contained in the Offer within six months of Non-selling Owner's election not to purchase, then Owner must resubmit the Offer as well as any other offer to Non-selling Owner before selling the Property, and such offers shall be subject to Non-selling Owner's right of first refusal under this Agreement.

**2. Term.** The term of this Right of First Refusal commences as of the date of this Agreement and terminates on the earlier to occur of (1) the death of the survivor of the Owners, or (2) the consummation of a sale of the Property to a third party after Non-selling Owner has elected not to exercise its right of first refusal. Non-selling Owner shall cooperate in providing Owner with any instruments that Owner reasonably may require for the purpose of removing from the public record any cloud on title to the Property attributable in any manner to the grant or existence of this right of first refusal 8.

**3. Excluded Transfers.** The right of first refusal created by this Agreement shall not apply to any sale or conveyance of the Property by Owner to any trust, partnership, limited partnership, joint venture, corporation, or other entity in which Owner owns and controls at least a 51% ownership interest.

**4. Death of an Owner.** Upon the death of an Owner, the surviving Owner shall have the right, (the "Option"), to purchase the interest in the Property of the deceased Owner in accordance with the following terms and conditions:

**A. Exercise of Option.** This Option shall be exercised, if at all, by written notice (the "Exercise Notice") given by the surviving Owner within sixty (60) days after the date of death of the deceased Owner to the deceased Owner's personal representative, successor trustee, or to the person or persons who are entitled to inherit the deceased Owner's interest in the Property. Upon exercise of this Option, the surviving Owner (the "Purchaser") shall be obligated to purchase, and the deceased Owner's representative or heir (the "Seller") shall be obligated to sell, the deceased Owner's interest in the Property.

**B. Purchase Price.** Upon exercise of the Option, the Purchaser shall obtain a certified appraisal of the Property at Purchaser's expense from an appraiser agreed upon by Purchaser and Seller. If the parties are unable to agree upon an appraiser, they shall request a judge of the circuit court of Klamath County to appoint an appraiser. The purchase price shall be one-half (½) of the appraised value of the Property without any discount.

**C. Payment of the Purchase Price.** The entire balance of the purchase price shall be paid in cash at closing.

**D. Closing.** Closing of the sale and purchase of the Property (the "Closing") shall occur within ninety (90) days after the date that the Exercise Notice is given. The escrow for the Closing shall be established at a title company selected by Purchaser. Prior to Closing, the Purchaser may obtain at Purchaser's expense a preliminary title report covering the Property. Purchaser shall have 10 days from receipt of the title report to review the report and to notify Seller, in writing, of any exceptions or encumbrances suffered by Seller's decedent or Seller which are not acceptable to Purchaser. Upon receiving such notice, Seller shall then have 15 days to either remove the exceptions or encumbrances or provide Purchaser with reasonable assurances of the manner in which the exceptions or encumbrances will be removed before closing. If the exceptions or encumbrances can

not be removed to Purchaser's satisfaction, Purchaser may terminate this Option. Seller and Purchaser shall each pay one-half (½) of the closing escrow fee. Seller shall pay the costs of recording the conveyance documents and Purchaser shall pay any title insurance premium. Other costs not otherwise provided for in this document shall be shared equally between Seller and Purchaser.

**E. Deed.** On the Closing Date, Seller shall execute and deliver to Purchaser a statutory warranty deed conveying Seller's interest in the property to Purchaser.

**F. Taxes.** Seller's share of the real property taxes for the current tax year shall be prorated as of the Closing Date.

**G. Representations.** The Property shall be sold without representations or warranties except such warranties as are contained in the statutory warranty deed, and shall be sold in "AS IS" condition.

**H. Possession.** Except for a temporary period of occupancy of a surviving spouse as may be provided in the deceased Owner's Will or Trust, Purchaser shall be entitled to exclusive possession of the Property on and after the Closing Date.

**I. Failure to Exercise Option.** If Purchaser does not exercise the Option provided in this Agreement, the Purchaser shall still have the Right of First Refusal granted hereunder until that right is terminated by his death.

**5. Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received three days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, addressed as follows:

To Owner: **FREDERICK M. HAGEN**  
28409 Nu-K-Sham  
Klamath Falls, OR 97601

To Non-selling Owner: PATRICK G. HAGEN  
1161 Petes Court  
Crofton, MD 21114

Notice given in any other manner shall be effective when it is received by the party for whom it is intended. Either party may change its address by giving 10 days' advance notice to the other party.

**6. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon.

**7. Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns. This right of first refusal is personal to each Owner, and neither Owner shall assign or otherwise transfer his rights under this Agreement without the prior written consent of the other Owner.

**8. Headings.** The captions and headings used in this Agreement are for reference only and shall not be construed to define or limit the scope or content of this Agreement.

**9. Waiver.** A failure by either Owner to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

10. **Attorney Fees.** If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court that hears the matter.

11. **Real Estate Commission.** Each Owner agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

12. **Statutory Disclaimer.** THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Executed as of the day and year first above written.

OWNERS:

Frederick M Hagen  
FREDERICK M. HAGEN

Patrick G Hagen 11-15-00  
PATRICK G. HAGEN

STATE OF OREGON           )  
  ) ss.  
County of Jackson        )

This instrument was acknowledge before me on December 1<sup>st</sup>, 2000, by FREDERICK M. HAGEN.



Lori Steen  
Notary Public for Oregon  
My Commission Expires: 7/1/01

STATE OF MARYLAND    )  
                                  ) ss.  
County of Anne Arundel )

This instrument was acknowledged before me on November 18, 2000, by PATRICK G. HAGEN.

Myra L. Kunk  
Notary Public for Maryland  
My Commission Expires: COMMISSION EXPIRES AUGUST 1, 2001