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Recording Requested By and
When Recorded Return To:

Melinda Cauvin

State of Oregon, County of Klamath
Recorded 04/30/2004 2:25 p m
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Linda Smith, County Clerk
Fee \$ 36.00 # of Pgs 4

GRANT OF RIGHT OF FIRST REFUSAL

This Grant of Right of First Refusal (the "Agreement") is made this __ day of , 200__, by THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose address is 4245 North Fairfax Street, Arlington, VA 22203 (the "Conservancy"), to MELINDA CAUVIN, a single woman, and LOREN C. WALCH, a single man, whose address is 4745 Fern Valley Road, Medford, Oregon 97504 (the "Grantee"), on the basis of the following facts and circumstances:

A. The Conservancy is the owner in fee of certain real property (the "Property"), located in Klamath County, Oregon, and described more particularly as follows:

Property owned by the Conservancy on the date of this Grant in Sections 5, 8 & 9, T36S, R7E, W.M.

B. The Property is not currently being offered for sale, but the parties recognize the possibility that it may be offered for sale or other transfer at some later date.

C. The Grantee desires the opportunity to purchase the Property if and when it is offered for sale for any purpose other than for use and management as a nature preserve and to an entity that is not a nonprofit land conservation organization or a governmental entity.

D. The Conservancy has agreed to grant to the Grantee this right of first refusal as part of the Agreement for the Purchase and Sale of Real Estate entered into on November 15, 2001, as amended, between the Conservancy and the Grantee.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Conservancy hereby grants to the Grantee a right of first refusal with respect to the Property, as follows:

1. Grantee's Right to Purchase Property. The Grantee shall have the following rights:

a. If a proposed sale or transfer requires that the proposed owner continue to use and manage the Property as a nature preserve, or if the sale is to a bona fide nonprofit land conservation organization or governmental or tribal entity, the Grantee shall have no right of first refusal on the Property.

b. If a proposed sale or transfer will terminate the use and management of the Property as a nature preserve, the Grantee shall have a right of first refusal to purchase the Property for the same sale price and subject to the same terms and conditions of the proposed sale or transfer, except in the case of a proposed donation, in which case the sale price shall be determined as described in Paragraph 5 below.

c. Should the Conservancy choose to enroll some or all of the Property into the Wetlands Reserve Program administered by the Natural Resources Conservation Service and thereby convey a wetlands restoration easement to the Department of Agriculture, the Grantee shall have no right of first refusal as to the property so encumbered.

2. Notice of Proposed Sale or Transfer. The Conservancy shall give written notice of a proposed sale or transfer of the Property if at any time a) the Conservancy shall receive an acceptable bona fide offer to purchase the Property, or b) the Conservancy shall propose to transfer the Property other than in 1.a. above. The notice shall describe the Property subject to sale or transfer, and in the case of any proposed sale, shall also specify the proposed sale price, the name of the proposed purchaser, and all other terms and conditions of the proposed sale.

3. Grantee's Address. The written offer to the Grantee shall be delivered or sent by registered or certified mail to the Grantee at the address listed above. The Grantee shall provide all changes of its address for notification purposes in writing to the Conservancy at 821 S.E. 14th Avenue, Portland, Oregon 97214.

4. Grantee's Election to Purchase. The Grantee shall have thirty (30) days after the receipt of a notice of a proposed sale or transfer to give the Conservancy written notice of its election to purchase the Property described in the notice. If the Grantee does not exercise its right to purchase the Property within those thirty (30) days, the Conservancy shall be free to sell or otherwise dispose of the Property. Upon consummation of such sale or transfer, all of the rights of the Grantee under this Agreement with respect to that particular portion of the Property shall terminate; however, if the proposed sale or transfer does not occur, the Grantee's rights hereunder shall remain in effect with respect to any future proposed sale or transfer and such rights shall also remain in effect with respect to the balance of the Property not sold or transferred.

5. Determination of Sale Price. In the event of a proposed donation of the Property to a new owner for a purpose other than for continued use and management as a

nature preserve, the sale price shall be equal to the fair market value of the Property as of the date of which notice is given, and shall be payable in cash or upon such other terms as are acceptable to the Conservancy and the Grantee. If the parties are unable to determine the fair market value of the Property by mutual agreement, the parties will immediately retain a mutually-acceptable appraiser to determine the fair market value of the Conservancy's interest in the Property, and that appraiser's determination as to the fair market value of the Property shall be binding upon both parties. The parties shall split equally the cost of the appraiser's services.

6. Escrow Instructions. If the Grantee shall exercise its right to purchase the Property pursuant to this Agreement, the parties shall execute joint escrow instructions to a mutually-acceptable title insurance company (the "Escrow Company") to consummate the transaction in accordance with the terms and provisions hereof and of the proposed sale or transfer. The Conservancy shall prepare all proposed deeds necessary for closing.

7. Closing Date. Closing shall be held at the office of the Escrow Company on the first business day which is thirty (30) days following the date the Grantee exercises its right hereunder or the date fair market value of the Property is determined, whichever is later (the "Closing Date"). Upon exercise of its right of first refusal, the Conservancy shall provide to the Grantee a title commitment issued by the Escrow Company for the Property, pursuant to which the Escrow Company is prepared to issue to the Grantee a standard coverage owner's policy of title insurance in the amount of the total sale price, which policy shall be paid for by the Conservancy.

8. Title. At closing, the Conservancy shall execute and deliver a good and sufficient statutory warranty deed, conveying good, insurable and marketable title to the Property to the Grantee and its assigns, in fee simple free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions of record as are satisfactory to the Grantee, together with all other right, title and interest of the Conservancy in the Property.

9. Miscellaneous.

a. The provisions of this Agreement shall be deemed covenants running with the Property, and shall be binding upon and inure to the benefit of the Conservancy and the Grantee, their respective heirs, successors, personal representatives and assigns for the time period stated below.

b. Time is of the essence as to all of the terms, covenants and conditions herein contained.

c. This Agreement shall be construed according to the laws of the State of Oregon.

d. In case of suit or action being instituted to enforce compliance with any of the terms, covenants and conditions of this Agreement, there shall be paid to the

prevailing party its costs, and such other further sum as the court may adjudge as a reasonable attorney's fee, and in the event any appeal is taken from any judgment or decree in such suit or action, the prevailing party on such appeal shall likewise recover from the other party the costs and reasonable attorney's fees on such appeal.

10. Termination. This Agreement shall automatically terminate twenty (20) years after the Agreement Date.

11. Entire Agreement. This Agreement contains the entire understanding between the parties, and may not be modified, except in writing duly executed by both parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and respective assigns, subject to the foregoing provisions hereof.

IN WITNESS WHEREOF, the Conservancy has executed this Grant of Right of First Refusal on the 27 day of April, 2004.

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation

By [Signature]
Title V.P. Oregon Director

STATE OF Oregon)
) ss.
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this 27 day of April, 2004, by Russell Hoeflich, the V.P. & State Dir. of The Nature Conservancy, a District of Columbia non-profit corporation.



Jana Setzler
Notary Public in and for the State of Oregon
Residing at 821 SE 14th Ave.

My Commission expires on 11-16, 2004.