

**M06-00272**

Klamath County, Oregon

01/05/2006 03:49:20 PM

Pages 9 Fee: \$101.00

**RECORDING COVER SHEET  
OTHER THAN FOR LIENS OR  
CONVEYANCES,** PER ORS 205.234

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON  
PRESENTING THE ATTACHED INSTRUMENT FOR  
RECORDING. ANY ERRORS IN THIS COVER SHEET  
DO NOT AFFECT THE TRANSACTION(S) CONTAINED  
IN THE INSTRUMENT ITSELF.

**AFTER RECORDING RETURN TO:**

Enter Party to be Returned to	William P. Brandsness
Enter address	411 Pine Street Klamath Falls, OR 97601

**1. NAMES(S) OF THE TRANSACTION(S),** described in the attached instrument and required by ORS 205.234(a).

Note: Transaction as defined by ORS 205.010 "means any action required or permitted by law to be recorded including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property."

AGREEMENT OF TENANTS IN COMMON AND RIGHT OF FIRST REFUSAL

**2. DIRECT PARTY,** name(s) of the person(s) described in ORS 205.125(1)(b) or  
**GRANTOR,** as described in ORS 205.160.

Virginia L. Gion and U.S. Bank, N.A., Trustees of the Robert and Virginia Family Bypass Trust utd 12/21/00 ("Gion")  
And  
Raymond D. Rickards and Gail H. Rickards ("Rickards")

**3. INDIRECT PARTY,** name(s) of the person(s) described in ORS 205.125(1)(a) or  
**GRANTEE,** as described in ORS 205.160.

**AGREEMENT OF TENANTS IN COMMON  
AND  
RIGHT OF FIRST REFUSAL**

**PARTIES:** Virginia L. Gion and U.S. Bank, N.A., Trustees of the Robert  
and Virginia Family Bypass Trust utd 12/21/00 ("Gion")

Raymond D. Rickards and Gail H. Rickards ("Rickards")

**RECITALS**

**A.** The Parties are the owners as tenants in common of a certain parcel of real property located in Klamath County, Oregon, as described in Exhibit A attached to and made a part of this Agreement (the "Property").

**B.** Prior to June 1994 Gion was the owner in common with a third party. On or about June 28, 1994 Rickards purchased the undivided interest of the third party and became a tenant in common with Gion.

**C.** Prior to the purchase of the undivided interest by Rickards, Rickards and Gion entered into an informal written agreement concerning the ownership of the Property.

**D.** Gion has maintained a dwelling upon the Property as a family retreat. Rickards have made substantial improvements to the Property in the nature of a dwelling house and related outbuildings.

**E.** The Parties desire to make a more formal agreement concerning the ownership of the Property and to grant to each other a right of first refusal to purchase the Property as follows:

**OWNERSHIP AGREEMENT**

**1. Gion Property.** Gion shall have the exclusive use of that portion of the Property lying west of Fort Creek upon which their dwelling is enclosed by an existing fence. Gion shall maintain the Gion Property and the existing fences enclosing the Gion Property.

**2. Rickards Property.** Rickards shall have the exclusive use of that portion of the Property lying east of Fort Creek upon which their dwelling is enclosed by an existing fence. Rickards shall maintain the Rickards Property and the existing fences enclosing the Rickards Property.

**3. Usage Acres.** The "Usage Acres" shall be all of the remaining property not in the exclusive use of Gion or Rickards. The Usage Acres shall be for the use in common of the Parties. However, Rickards shall have the use of the Usage Acres for agricultural purposes and shall be responsible for the care of livestock placed thereon and Gion shall not conduct any activity thereon which substantially interferes with such use. No improvements or renovations, which in any way changes the nature of the Usage Acres, including but not limited to ground disturbance, erection of buildings and removal of trees, shall be done without the written consent of both Parties. In consideration of the use of the Usage Acres by Rickards, Rickards agrees to maintain the exterior fences and to pay the Property Taxes.

**4. Maintenance of Exterior Fences.** Exterior fences shall be those common fences owned by both Parties hereto on the exterior of the Property that are not the enclosure fences for either the Gion Property or the Rickards Property. Rickards shall maintain the exterior fences to the Property in a good and husbandman like manner.

**5. Payment of Property Taxes.** Rickards shall pay when due all taxes and assessments that are levied against the Property, but Rickards may elect to pay taxes and assessments in accordance with any available installment method. If Rickards objects in good faith to the validity or amount of any tax, assessment, or lien, Rickards, at Rickards' sole expense, may contest the validity or amount of the tax or assessment or lien, provided that Gion's interest in the Property is not jeopardized. Rickards shall otherwise keep the Property free from all tax liens that may be lawfully imposed on the Property, other than the lien of current taxes not yet due. The Property is classified and specially assessed as exclusive farm use. Rickards will use their best efforts to maintain the exclusive farm use classification. Both parties shall be responsible for and shall pay when due any additional taxes, penalties, or interest resulting from any disqualification of the Property from such classification and special assessment in proportion to the assessed value of their individual dwellings. In the event Gion improves the dwelling upon the Gion Property, which results in an increase in Property Taxes, Gion shall be responsible for and pay the resulting increase.

## RIGHT OF FIRST REFUSAL

**1. Right of First Refusal.** The Parties agree not to sell, transfer, exchange, grant an option to purchase, or otherwise dispose of the Property or any part of, or interest in, the Property without first offering the Property to the other party on the terms and conditions set forth in this Agreement. As used in this Agreement, the term *sell* includes a lease of the Property with primary and renewal terms of more than five years in the aggregate.

**A.** When either party receives from a third party (the "Third-Party Offeror") a bona fide offer to purchase the Property, or a part of it, or an interest in it, that party shall give to the other party 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 other party.

**B.** When the other party receives the Notice and a copy of the Offer, the other party shall have the prior and preferential right to purchase the Property (or the part of or interest in the Property covered by the Offer, as the case may be) at the same price and on the same terms and conditions as are contained in the Offer, except that if other party 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 other party elects to exercise the right of first refusal, and (2) the other party shall receive a credit against the sale price of the Property in an amount equal to any brokerage commission that the selling party may save by selling the Property to the other party rather than the Third-Party Offeror.

**C.** The other party shall have 30 days from the date that the other party receives the Notice and a copy of the Offer to notify the selling party whether the other party elects to purchase the Property pursuant to the terms of the Offer. If the other party elects to exercise its right to purchase the Property, then, in addition to giving the selling party written notice of its election within the 30-day period, the other party 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 the other party fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, then the selling party 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 the other party fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement, and for any reason the selling party shall not sell or convey the Property to the Third-Party Offeror on the terms contained in the Offer within six months of the other party's election not to purchase, then the selling party must resubmit the Offer as well as any other offer to the other party before selling the Property, and such offers shall be subject to the other party's right of first refusal under this Agreement.

**F.** If the other party elects to purchase the Property and any element of the consideration specified in the Offer is not cash or deferred purchase money (e.g., an exchange of property or performance of covenants other than the payment of money), then the other party may elect to have the nonmonetary consideration appraised by an independent MAI appraiser and pay the selling party the cash value of the nonmonetary consideration in lieu of the performance of the nonmonetary obligations specified in the Offer.

**2. Term.** The term of this Right of First Refusal commences on the date of this Agreement and terminates on the consummation of a sale of the Property to a third party after the other party has elected not to exercise its right of first refusal. The other party shall cooperate in providing the selling party with any instruments that the selling party 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, pursuant to paragraph 8.

**3. Excluded Transfers.** The right of first refusal created by this Agreement shall not apply to any conveyance of the Property by a party to any trust in which that party owns 100% of the ownership interest. The right of first refusal created by this Agreement shall not apply to any sale or conveyance of the Property by a party to a lineal descendent of that party, however, a spouse of a lineal descendant shall not be entitled to gain an interest in the Property through an excluded sale or conveyance.

**4. 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 to the address of the party as disclosed by the records of the Klamath County Assessor. 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.

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

**6. Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns.

**7. 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.

**8. Recording.** The parties agree to join in filing a copy of this Agreement, to be filed for record in the Official Records of Klamath County, Oregon, to give notice to the public of the rights of the parties under this Agreement. Rickards shall pay the cost of recording.

**9. Entire Agreement.** This Agreement contains the final and entire understanding between the parties with respect to its subject matter and is intended to be an integration of all prior written documents, negotiations and understandings. No change or modification of this Agreement shall be valid unless it is in writing and is signed by both parties.

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

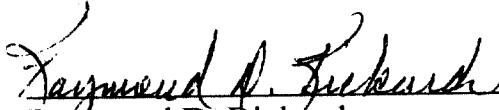
**11. Attorney Fees.** If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such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


**12. Remedies.** The parties acknowledge that damages alone may not be a reasonable remedy in the event of breach and the parties agree that in the event of breach by one of the parties will entitle the non-defaulting party any and all

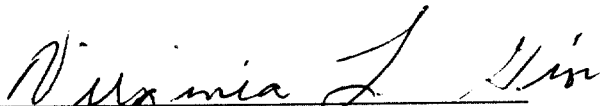
remedies available in law or equity, including but not limited to specific performance.

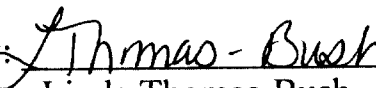
**13. Authority to Execute.** Each person executing this Agreement warrants his or her authority to do so.

Robert and Virginia Family Bypass  
Trust 12/21/00

  
Raymond D. Rickards

  
Gail H. Rickards

By:   
Virginia L. Gion, Trustee  
U. S. Bank, N.A., Trustee

By:   
Linda Thomas-Bush,  
Vice President

STATE OF OREGON                    )  
  ) ss.  
County of Klamath                    )

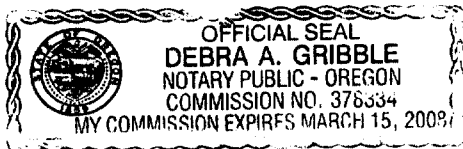
Personally appeared before me the above-named Raymond D. Rickards and Gail H. Rickards and acknowledged the foregoing instrument to be their voluntary act.



Karen A. Baker  
Notary Public for Oregon  
My Commission expires: 9-20-09

STATE OF OREGON                    )  
  ) ss.  
County of Klamath                    )

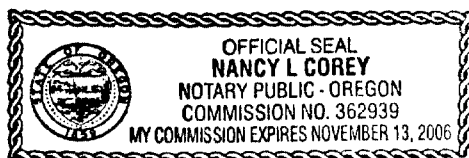
Personally appeared before me the above-named Virginia L. Gion, Trustee of the Robert and Virginia Family Bypass Trust utu 12/21/00 and acknowledged the foregoing instrument to be her voluntary act.



Debra A. Gribble  
Notary Public for Oregon  
My Commission expires: 3-15-08

STATE OF OREGON                    )  
  ) ss.  
County of Lane                    )  
~~County of Klamath~~

Personally appeared before me the above-named Linda Thomas-Bush, Vice President of U. S. Bank, N.A., Trustee of the Robert and Virginia Family Bypass Trust utu 12/21/00 and acknowledged the foregoing instrument to be her voluntary act.



Nancy L. Corey  
Notary Public for Oregon  
My Commission expires: 11-13-06



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1**

The W1/2 E1/2 SE1/4 SE1/4 and the W1/2 SE1/4 SE1/4 of Section 27, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 2**

A portion of the NW1/4 of Section 35 and the NE1/4 of Section 34, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of the NW1/4 of the NW1/4 of Section 35, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon; thence South 89 degrees 45' 11" West, along the North line of said Section 35, a distance of 1328.40 feet more or less to the Northwest corner of said Section 35; thence South 89 degrees 52' 28" West, along the North line of Section 34, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, a distance of 379.40 feet; thence South 00 degrees 07' 32" East, a distance of 30.00 feet; thence North 89 degrees 52' 28" East, on a line parallel to and 30.00 feet distant from the North line of said Section 34, a distance of 379.50 feet more or less to a point on the East line of said Section 34; thence North 89 degrees 45' 11" East, on a line parallel to and 30.00 feet distant from the North line of said Section 35, a distance of 1328.44 feet more or less to a point on the East line of the NW1/4 of the NW1/4 of said Section 35; thence North along the East line of the said NW1/4 of the NW1/4 a distance of 30.00 feet to the point of beginning.

**PARCEL 3**

A parcel of property located in the NE1/4 of the NW1/4 of Section 35, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the intersection of the Westerly right of way line of Highway 62 and the North line of Section 35, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon; thence South 89 degrees 45' 11" West, along the North line of said Section 35, a distance of 176.00 feet more or less to the Northwest corner of the NE1/4 of the NW1/4 of said Section 35; thence South 00 degrees 09' 55" East, along the Westerly line of said NE1/4 of the NW1/4 of said Section 35, a distance of 259.5 feet; thence North 89 degrees 45' 11" East, parallel to the North line of said NE1/4 of the NW1/4, a distance of 259.04 feet more or less to a point on the Westerly right of way line of Highway Number 62; thence Northwest along said Westerly right of way line, a distance of 271.83 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM a parcel of property located in the NE1/4 of the NW1/4 of Section 35, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning on the West line of the NE1/4 of the NW1/4 of Section 35, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, said point of beginning being South, a distance of 30.00 feet from the Northwest corner of said NE1/4 of NW1/4; thence South 00 degrees 09' 55" East, along the Westerly line of the said NE1/4 of the NW1/4 a distance of 229.5 feet; thence North 89 degrees 45' 11" East, parallel with the North line of said NE1/4 of the NW1/4, a distance of 259.04 feet more or less to a point on the Westerly right of way line of Highway Number 62; thence Northwest along said right of way line, a distance of 240.95 feet, more or less, to a point 30.00 feet Southerly from the North line of the NE1/4 NW1/4 when measured at right angles to the North line of said NE1/4 of the NW1/4; thence South 89 degrees 45' 11" West, on a parallel to and 30.00 feet distant from the North line of said NE1/4 of the NW1/4, a distance of 185.6 feet more or less to the point of beginning.