

**AFTER RECORDING RETURN TO:**

Patrick and Kimberly Knowlen  
243 Grimes Street  
Eugene, OR 97402



**2014-008761**

**Klamath County, Oregon**

**08/22/2014 11:13:09 AM**

**Fee: \$72.00**

**RESTATEMENT  
AND  
WAIVER OF AGREEMENT**

Among: Paul Johnson ("Paul");  
Susan Johnson ("Susan");  
Dan Smith ("Dan"); and  
Patrick Morgan Knowlen and Kimberly Lynn Knowlen, Trustees of the  
Knowlen Living Trust dated April 16, 1997 (the "Knowlens")

Dated: August 8<sup>th</sup>, 2014

**Recitals**

- A. Dan is the owner of certain improvements and personal property designed cabin "C-4" located on Lot 3, Tract X, U.S. Forest Service Subdivision of Odell Lake Recreation Unit as filed in the official plat thereof in the office of the County Clerk, Klamath County, Oregon. Lot 3 is herein referred to as "the Property." Paul and Susan are owners of certain improvements and personal property located on the same Lot 3 and designated cabin C-3.
- B. Dan intends to sell to Knowlens an undivided 50% interest in the improvements and personal property designated cabin C-4.
- C. On November 13, 1998, Paul and Susan, as well as Dan's predecessor in ownership of the C-4 cabin property entered into a Sale and Joint Use Agreement Recorded at Vol. M98, pages 45741 through 45745, Official Records of Klamath County, Oregon (the "1998 Agreement"). The 1998 Agreement sets forth certain obligations regarding the use and transfer of the C-3 and C-4 cabin properties located on Lot 3.
- D. Pursuant to a form of Express Waiver of Right to Purchase, and Ratification of Sale and Joint Use Agreement As To and By Purchaser dated July 26, 2007 (the "2007 Agreement"), Paul and Susan waived certain restrictions set forth in the 1998 Agreement thereby permitting sale of the C-4 cabin property to Dan by Dan's predecessors in interest. The 2007 Agreement provided that the 1998 Agreement was to "... apply to all successors, assigns, transferees and heirs of the Parties interests in the Property from today forward." The 2007 Agreement was not recorded in the Official Records of Klamath County, Oregon.
- E. In order to restate, revise and consolidate the agreements of the parties with respect to their respective interests in the C-3 and C-4 cabin properties of Lot 3 the parties enter this Agreement.

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## AGREEMENT:

1. Recitals. The recitals appearing above are incorporated herein by this reference.
2. Waiver and Consent. Paul and Susan hereby waive any first right of refusal or purchase option related to the sale by Dan of an undivided 50% interest in the C-4 cabin property to the Knowlens. Paul and Susan hereby consent to that sale. In addition Paul and Susan waive any right of first refusal or purchase option as applied to any transfer between Dan and the Knowlens respecting cabin C-4.
3. Forest Service Permit. The parties acknowledge that Dan is the designated holder of the U.S. Forest Service Special-Use Permit allowing occupancy of Lot 3. Dan agrees to act, in his capacity as the permit holder, in the best interests of the parties to maintain the permit and to seek renewals as necessary and feasible to allow the continued occupancy of Lot 3 by the parties. If Dan dies or otherwise ceases to hold any interest in Lot 3 the parties designate the Knowlens, or their successor, to seek issuance of the Forest Service permit for Lot 3. All parties agree to comply with all the terms and conditions of the permit as well as regulations and laws pertaining to use of the Property.
4. Revocation. The 1998 and 2007 Agreements are hereby revoked and superseded by this Agreement.
5. Removal or Condemnation. If the Forest Service permit for Lot 3 is terminated or if the U.S. Forest Service elects to purchase the property, or if the U.S. Forest Service elects to remove the improvements on the Property, any amounts paid by the government as consideration for the improvements on the Property shall be allocated to the parties based on the determined value of the improvements removed in proportion to the real market value determined for property tax purposes.
6. Maintenance, Repairs and Expenses. The parties agree to maintain the improvements on the C-3 and C-4 cabin properties they respectively occupy in good condition and repair and neither shall make any alterations or improvements to the exterior thereof without first obtaining the consent of the other. All parties are responsible for the cost of maintaining and repairing the common areas and items, such as septic tank repair, water pump repair and dock repair or modification. These common expenses and any permit fees or governmental charges other than property taxes (those being separately billed to the C-3 and C-4 properties) shall be paid 50% by the owners of the C-4 cabin property and 50% by the owners of the C-3 cabin property. Except as necessary to prevent injury to persons or property, repairs to the common areas, e.g., the dock, must be agreed upon by the parties in advance and no work may be commenced nor material purchased without the express consent of the other parties. If one party (or guest of one party) causes damages to the common area, the party who caused (or whose guest caused) the damage shall be responsible for the costs of making necessary repairs. Firewood shall be stacked away from the cabins and personal property shall be stored out of sight when the cabins are not being used. No party shall permit any lien or encumbrance of the Property.

7. Insurance. The parties agree to keep their respective improvements insured for fire and other casualty covered by a standard policy of fire insurance with extended coverage endorsements. Each party shall indemnify and defend the others from any claim, loss or liability arising out of or related to any activity of the party or their guests with respect to the use of the Property. The parties shall, either jointly or separately, maintain premises liability insurance with a responsible company with coverage for the injury to persons and damage to property with limits to be agreed upon by the parties. The insurance shall cover insurable risks arising directly or indirectly out of the use and occupancy of the Property.
8. Nuisance and Hazardous Materials. No party shall permit any nuisance on the Property including, but not limited to, excessive noise or loud music, bonfires, lighting of fireworks, loud machinery operation, or allowing presence of obnoxious or aggressive animals. No livestock or poultry shall be maintained on the Property. Flammable liquids maintained on the Property shall be stored in standard safety storage containers. No party shall cause or allow any substance to be brought upon or left on the Property which is commonly identified as a "Hazardous Substance" which might lead to groundwater or lake water pollution other than reasonable quantities of motor fuels, lubricants, cleaning fluids and paint related products. No party shall cause or permit the release of such materials at the Property or otherwise.
9. Purchase Options. If the owner or owners of either the C-3 or C-4 cabin property desire to sell that property, they shall first give written notice to the owner(s) of the other property who then shall have ninety (90) days after the receipt of such notice to purchase seller(s) property. The purchase price of the interest property shall be the "value" of the property, less any unpaid taxes, permit fees, or other charges or encumbrances against the property. For the purposes of this Agreement, the "value" shall be the price at which the property could be sold to a willing and qualified buyer considering the market conditions prevailing at the time of the proposed sale and allowing a reasonable period to market the property. If a value has not been agreed upon within thirty (30) days following notice of intent to sell, the purchase price for the selling parties' interest shall be determined by an appraisal or opinion of value. The parties shall jointly select a qualified appraiser or real estate professional to make the appraisal or opinion of value. If the parties cannot jointly select the person to make the appraisal, each party shall select a qualified real estate professional or appraiser and the two persons thus selected shall select a third real estate professional or appraiser who shall then make the appraisal. Any expense incurred in obtaining the appraisal shall be paid for by the parties equally. If the party to whom the notice of intent to sell was made does not accept the offer and complete the purchase of the other party's interest in the Property for cash within the ninety (90) day period allowed, the party desiring to sell shall be free to sell the interest to any third party at such price and on such terms as the selling party may be able to obtain; provided, however, that such third party (the new owner of the selling party's interest(s)) shall agree to become a party to this Agreement. The foregoing provision of this Agreement shall not apply to any transfer of an interest in the C-4 cabin property between Dan and the Knowlens.

10. Miscellaneous.

- 10.1. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon not only the parties hereto but also upon their respective successors, representatives, and assigns in accordance with the terms hereof; provided, however, that nothing contained in this Section 10.1 shall alter the restrictions above relating to assignment or transfer of an interest in the Property.
- 10.2. Ambiguities. The rule of contract interpretation that ambiguities, if any, in a writing be construed against the drafter, shall not apply.
- 10.3. Amendments or Waivers. Unless otherwise specified in this Agreement, no amendment or waiver of any provision hereof shall be effective unless in writing and signed and dated by each of the parties.
- 10.4. Waiver of Compliance; Consents. Any failure of any party to comply with any obligation, covenant, agreement, or condition herein may be waived by the party entitled to the performance of such obligation, covenant, or agreement or who has the benefit of such condition, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.
- 10.5. Governing Law. All matters with respect to this Agreement, including but not limited to matters of validity, construction, effect, and performance, will be governed by the laws of Oregon.
- 10.6. Venue. This Agreement has been made entirely within the State of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the Federal or State Courts in Deschutes or Lane County, Oregon.
- 10.7. Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties hereto as to the subject matter contained herein, including all documents incorporated herein by reference. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties with respect to the subject matter hereof.
- 10.8. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

- 10.9. Attorney Fees. In any dispute involving the interpretation or enforcement of this agreement or involving issues related to bankruptcy (whether or not such issues relate to the terms of this lease), the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney fees, paralegal fees, costs, disbursements, and other expenses incurred by the prevailing party in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party shall include an amount estimated as the fees, costs, disbursements, and other expenses that will be reasonably incurred in collecting a monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.
- 10.10. Arbitration. Any controversy or claim arising out of relating to this Agreement, including without limitation, the making, performance, or interpretation of this Agreement, shall be settled by binding arbitration in Deschutes or Lane County, Oregon, in accordance with Oregon Revised Statutes, Section 36.600-36.740, and judgment on the arbitration award may be entered into any court having jurisdiction over the subject matter of the controversy.
- 10.11. Captions. The captions appearing as section headings are for convenience of reference only and shall not be used in any manner to construe or interpret this Agreement.
- 10.12. Execution in Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts and by the differently parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all counterparts, when taken together, shall constitute one and the same instrument. Signatures appearing in electronic versions of this Agreement shall be deemed the equivalent of a physical signature by the parties.
- 10.13. Recording. The parties agree to execute this Agreement in a form which may be recorded in the Official Records of Klamath County, Oregon and that this Agreement shall be so recorded.

First signed as of the date appearing above.

  
\_\_\_\_\_  
Paul Johnson

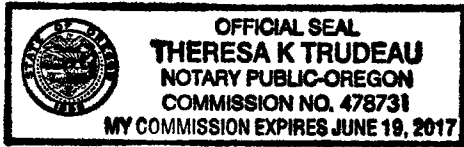
Dated: 8/19/14, 2014

  
\_\_\_\_\_  
Susan Johnson

Dated: 8/19/14, 2014

STATE OF OREGON            )  
                                      : ss.  
County of Deschutes        )

On this 19 day of August, 2014, personally appeared the above named Paul Johnson and acknowledged the foregoing instrument to be his voluntary act and deed.



Theresa K Trudeau  
Notary Public for Oregon  
My Commission Expires: 6-19-17

STATE OF OREGON            )  
                                      : ss.  
County of Deschutes        )

On this 19 day of August, 2014, personally appeared the above named Susan Johnson and acknowledged the foregoing instrument to be her voluntary act and deed.



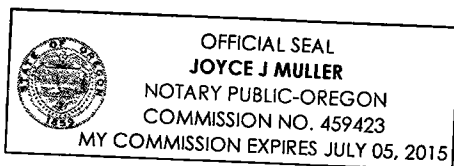
Theresa K Trudeau  
Notary Public for Oregon  
My Commission Expires: 6-19-17

Dan Smith  
Dan Smith

Dated: 8/8/2014, 2014

STATE OF OREGON            )  
                                      : ss.  
County of Benton        )

On this 8 day of August, 2014, personally appeared the above named Dan Smith and acknowledged the foregoing instrument to be his voluntary act and deed.



Joyce J Muller  
Notary Public for Oregon  
My Commission Expires: 7-5-15

Patrick Morgan Knowlen

Patrick Morgan Knowlen, Trustee of the  
Knowlen Living Trust

Dated: 8-8-2014, 2014

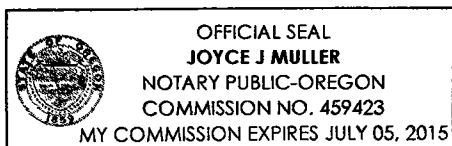
Kimberly Lynn Knowlen

Kimberly Lynn Knowlen, Trustee of the  
Knowlen Living Trust

Dated: 8-8-2014, 2014

STATE OF OREGON           )  
  : ss.  
County of Benton        )

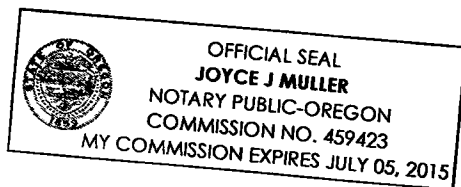
On this 8 day of August, 2014, personally appeared the above named  
Patrick Morgan Knowlen, Trustee of the Knowlen Living Trust dated April 16, 1997, and  
acknowledged the foregoing instrument to be his voluntary act and deed.



Joyce J Muller  
Notary Public for Oregon  
My Commission Expires: 7-5-15

STATE OF OREGON           )  
  : ss.  
County of Benton        )

On this 8 day of August, 2014, personally appeared the above named  
Kimberly Lynn Knowlen, Trustee of the Knowlen Living Trust dated April 16, 1997, and  
acknowledged the foregoing instrument to be her voluntary act and deed.



Joyce J Muller  
Notary Public for Oregon  
My Commission Expires: 7-5-15