

RECORDING COVER SHEET (Please print or type)

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2018-014659**Klamath County, Oregon****12/06/2018 01:44:01 PM****Fee: \$132.00**

*This space reserved for use by
Recording Office*

After recording return to:

ORS 205.234(1)(c)

Helen C. Nelson

Evashevski Elliott PC

PO Box 983

Albany OR 97321

1. Title(s) of the transaction(s)

ORS 205.234(1)(a)

Landowner's Buy-Sell Agreement

2. Direct party(ies) / grantor(s)

Name(s) & Address(es)

ORS 205.234(1)(b)

Frank Caputo

3520 Takena Street SW

Albany OR 97321

3. Indirect party(ies) / grantee(s)

Name(s) & Address(es)

ORS 205.234(1)(b)

Barry L. Ohling

Tina M. Ohling

2571 SE Ermine

Albany OR 97321

4. True and actual consideration:

ORS 205.234(1) Amount in dollars or other

\$.00

Other:

5. Send tax statements to:

ORS 205.234(1)(e)

No change

6. Satisfaction of lien, order, or warrant:

ORS 205.234(1)(f)

☐ FULL☐ PARTIAL**7. The amount of the monetary obligation imposed by the lien, order, or warrant:**

ORS 205.234(1)(f)

\$.00

8. Previously recorded document reference:**9. If this instrument is being re-recorded complete the following statement:**

ORS 205.244(2)

"Rerecorded at the request of

to correct

previously recorded in book _____ and page _____, or as fee number _____."

LANDOWNER'S BUY-SELL AGREEMENT

THIS AGREEMENT is made on October 31, 2018, by and between Frank Caputo ("Caputo") and Barry L. Ohling and Tina M. Ohling ("Ohlings").

RECITALS:

A. The parties own property commonly known as 139964 Pine Creek Loop, Crescent Lake, Oregon 97733, more particularly described as in Exhibit A hereto and by this reference incorporated herein.

B. The parties wish to reduce to writing their agreement relating to the division of ownership of that property and the sale by any owner of the owner's interest.

AGREEMENT:

- 1 -

Each owner owns an undivided interest in the property as tenant(s) in common in the following percentages:

<u>Party</u>	<u>Percentage</u>
Frank Caputo	50%
Barry L. Ohling and Tina M. Ohling, husband and wife	50%

The owners are only tenants in common (except as to the entireties interest of the Ohlings as between themselves) and are not partners for any purpose.

For the avoidance of doubt, the Ohlings own the following parts of the dwelling house located on the property:

An undivided one-half (1/2) interest in the property and the entity of the dwelling that is on the right hand side of the residential unit as you face this unit (further described as a two (2) bedroom with a loft) together with an undivided one-half (1/2) interest in the common entry, laundry room and the garage building. For the avoidance of doubt, a separate self-contained garage building has been

constructed on the property, Caputo has the exclusive use of the new garage, and the Ohlings have the exclusive use of the old garage.

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Each owner agrees that the owner will not sell, assign, convey or otherwise, in any manner, dispose of or encumber any part of the owner's interest in the property except in the manner provided herein. Any attempted transfer in violation of this agreement shall be void. Any transfer pursuant to this agreement shall cause the transferee to be bound by all the terms of this agreement.

Notwithstanding any other provision contained herein, an owner may transfer all or any part of the owner's ownership interest by sale, gift or otherwise to or for the benefit of a spouse or any lineal descendant, including a guardian or trustee for any of them, without the consent of the other parties hereto. In the event of such transfer, the transferee shall receive and hold the ownership interest subject to the terms and conditions of this agreement. Such transfer shall be evidenced by the deed signed by the owner making the transfer. By accepting the benefits of ownership, each transferee agrees that the interest transferred shall be subject to all of the terms and provisions of this agreement.

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First Right of Refusal. An owner shall not, at any time sell, contract to sell, transfer, exchange, grant an option to sell, or otherwise dispose of the property (or any portion thereof or interest therein) to anyone other than the other owner, unless the owner shall have first communicated to the other owner, by written notice, a written offer to sell the property to the other owner, which offer (hereafter called the Owner's Offer) shall specify, in commercially reasonable detail, the price, terms and conditions upon which the owner is willing to sell the property.

The other owner shall have a period of 30 days, following the giving of the Owner's Offer notice, within which to accept the Owner's Offer by giving the owner written notice of acceptance. If the Owner's Offer is accepted, the parties shall be obligated to close the sale in accordance with the terms of the Owners' Offer. Closing shall occur within 30 days following acceptance or within such longer closing period as may be specified in the Owner's Offer.

If the other owner does not accept the Owner's Offer, the owner may sell the property to any other party, provided that such a sale must be consummated (a) within 60 days following the earlier of the expiration of the acceptance period for the Owner's Offer or the date of any written rejection of Owners' Offer by the other owner, and (b) for and upon the same price, terms and conditions as those specified in the Owner's Offer (or a greater price and upon terms and conditions more favorable to owner). If such a sale to another party is consummated, the other owner's rights hereunder shall be automatically

and forever extinguished as to that sale, but this agreement shall run with the land and remain binding on all owners. If, however, such a sale to another party is not consummated, the other owner's rights hereunder shall remain in full force and effect.

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4.1. Bankruptcy of a Party. In the event any party commences a voluntary case under the federal bankruptcy laws or permits the entry of a decree of order for relief against such party in an involuntary case under the federal bankruptcy laws, or makes an assignment for the benefit of creditors hereinafter referred to as the "Bankrupt Party" or files for divorce (cumulatively such events are referred to as the "Triggering Event"), the remaining parties shall have the option for a period of 90 days following the assessment of the fair Market Value by the appraiser in accordance with the method set out below, to purchase all of the Interest owned by the Bankrupt Party or divorcing party for its Fair Market Value as determined by appraisal.

4.2. Transfer. It is hereby agreed that the distribution of any Co-Owners interest in the Property pursuant to the terms of each Co-Owners trust or to the children or grandchildren of the Co-Owners is a permitted transfer under the terms of this agreement.

4.3. Upon the event of the death of a member, the co-owners shall have the option to purchase the deceased owners ownership interest. Such option shall be exercised, if at all, by written notice of election delivered: (i) to the personal representative of the deceased member within 120 days after his or her appointment; or (ii) to the deceased member's intestate heirs within 180 days after the deceased member's death, if there is no personal representative appointed within 60 days following the date of the deceased member's death at the Fair Market Value as set out below. For the purposes of this agreement, the death of the sole surviving grantor of a revocable trust which is a an owner of the property (but not the death of the first grantor to die) shall be treated as an event giving rise to the purchase option set forth in this paragraph for the member trust.

Notwithstanding the provisions of this paragraph to the contrary, if any two owners of the property are husband and wife, upon the death of one of them while they are married, the interest of that member shall automatically become the property of the surviving spouse who is also a co-owner

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Sale. Other than as set out in the event of transfer to family members, bankruptcy divorce or death of a party herein the Property may be sold only upon unanimous consent of all Co-Owners and upon terms and conditions reasonably

acceptable to both parties. If the Property is sold, the sales proceeds shall be paid in the following order of priority:

5.1. All costs and expenses of the sale (including but not limited to any real estate commission).

5.2. All taxes and expenses regarding the Property (including but not limited to real property taxes, bills, or debt secured by the Property).

5.3. Any remaining balance will be divided between the Co-Owners in proportion to their ownership interest at the date of the sale.

5.4. Any cash received from a Co-Owner and held solely for the benefit of the Property in an account established pursuant to this Agreement will be returned to the party contributing it, or if the cash is from some other source, it will be divided between the Co-Owners in proportion to their ownership interest at the date of the sale.

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Establishing the Fair Market Value of the Property. The parties will select an appraiser within 90 days of notice of the triggering Event. The appraiser so selected must determine the Fair Market Value, as defined below, of the Property and interest owned by the party triggering the valuation at the time of the Triggering Event based solely on their appraisal of the total value of the Property, cash held solely for the benefit of the Property, less all debts and expenses regarding the Property. "Fair Market Value" shall mean the most likely cash price at which the assets would change ownership between a willing buyer and a willing seller, both being fully informed of the relevant facts, and neither being under compulsion to buy or sell. The appraisal shall consider and discount for the sale of a minority interest in the Property or the lack of marketability of any Interest.

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Termination. This Agreement shall terminate on the earlier of:

- a. Closing of a sale of the Property to a third party purchasers; or
- b. Transfer of the entire interest of one or both Co-Owners to a party whether under the terms of the trust or otherwise, such that all ownership interests are then vested in one person or entity;

The parties agree that this Agreement shall be in full force and effect for the entire period of time that they own an interest in the Property, and if a party's interest is

transferred pursuant to the terms hereof or otherwise, that party's assignee shall be bound by the terms of this Agreement.

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8.1. Contributions of the Parties. The parties intend that to the maximum extent possible, expenses regarding the Property are to be paid in proportion to the party's percentage ownership interests in the Property, which as of the date of this Agreement is as set out above. "Expenses" shall mean any cost for insurance as more particularly described herein, repairs, maintenance, utility expenses, real property taxes, or any other expenses arising or accruing as a result of owning and operating the Property. Although the parties do not anticipate obtaining a loan secured by the Property ("Loan"), if the parties by unanimous consent obtain a Loan, the parties shall each pay their proportionate share of the Loan costs, expenses and repayments.

8.2. The parties agree to keep the buildings and personal property on said premises insured against loss by fire in an amount not less than the full insurable value with loss payable to the parties hereto as their interest appear at the time of loss. In the event of loss, the proceeds of such insurance are to be used for the purpose of repair or reconstruction of the damaged property. Subject to reimbursement by Caputo, Ohlings shall be responsible for obtaining and maintaining such insurance. Any amount received by the parties under said insurance in payment of a loss, which is not used for repair or reconstruction, shall be held for future repairs to the extent of the amount of the insurance payment received by the parties. All uninsured losses shall be borne equally by the parties.

Subject to reimbursement of one-half (1/2) of the costs by Ohlings, Caputo shall pay all real property taxes assessed against the property in a manner so as to maximize any reductions or discounts.

Each year when the property tax invoice and insurance invoices are received by either party, the receiving party will forward a copy to the other party and the other party shall immediately make payment of one-half (1/2) of such bill to the party that received the bill.

In the event of non-payment of a real property tax or insurance invoice (or one parties portion thereof) by either party within thirty (30) days of the due date, the other party may make payment on behalf of the non-paying party, and the payment made shall become a debt due from the defaulting party to the non-defaulting party, plus interest at nine percent (9%) per annum. The debt will continue to accrue interest and be due and owing and shall be paid, if not before, from the proceeds of sale of the defaulting parties interest in the property.

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The property governed by this agreement cannot be physically divided or partitioned. Each of the parties irrevocably waives, during the term of this agreement, any right the party may have to maintain any action for partition with respect to any of the property.

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10.1. Administration. Each party shall be responsible for the maintenance and management of the interior portions of their separate unit as well as for the private exterior portions such as patios and decks and their landscaping. They are also responsible for all maintenance and repairs to their separate outbuildings or garages.

All decisions concerning common area maintenance and/or repairs shall be made jointly with the agreement of both parties.

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11.1. Amendments; Modification. Amendments to this Agreement may be proposed by any party. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all the parties. No modification or amendment of any provision of this Agreement will be binding on any party unless it is in writing and signed by all the parties.

11.2. Governing Law. This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of Oregon (without regard to principles of conflicts of law).

11.3. Parties in Interest. Subject to the limitations on transfers of Co-Ownership interests set forth in section 3, 4 and 5 of this Agreement, each and every covenant, term, provision, and agreement is binding on and inures to the benefit of the parties and their heirs, successors, assigns, and legal representatives.

11.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter of this Agreement. There are no agreements, understandings, restrictions, representations, or warranties between the parties other than those in this Agreement or referred to or provided for in this Agreement.

11.5. Attorney Fees. In the event of any arbitration, suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), including any issues peculiar to bankruptcy, the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the

prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the arbitrator, court or courts, including any appellate courts, in which the matter is tried, heard, or decided.

11.6. Further Effect. The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

11.7. Severability. If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

11.8. Notices. All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid, directed to the addresses first shown above for each party or to any other address that a party may specify by notice given in conformance with these provisions to the other parties.

11.9. Arbitration. Any controversy or claim arising out of, or relating to this Agreement, or the making, performance, or interpretation of this Agreement, shall be settled by arbitration in Albany, Oregon, in accordance with provisions and procedures set forth in ORS Chapter 36, including local court rules established pursuant to that Chapter, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Arbitration shall be commenced by written notice of a demand for arbitration given in accord with the notice provisions of this agreement. The cost and expenses of the arbitration shall be payable equally by the parties, in advance of arbitration, to the arbitrator. Upon entry of an arbitration award, the losing party shall reimburse the prevailing party for the amounts so advanced and such amounts shall be included by the arbitrator in the amount awarded to the prevailing party.

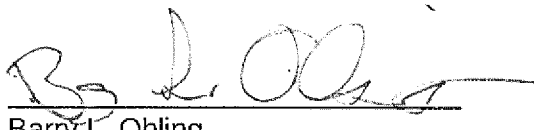
11.10. Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. One or more signatures to this Agreement may be signed and faxed to the other party with the original signed document to follow promptly by mail. Faxed signatures shall be considered original signatures for the purpose of this document.

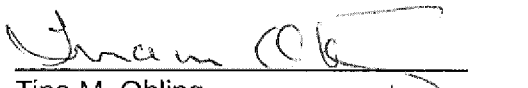
11.11. Representation. All parties are advised to consult a lawyer before signing. Helen C. Nelson, Evashovski Elliott PC, is only representing Frank Caputo exclusively regarding this Agreement. All other parties should seek independent legal representation prior to the execution of this Agreement. The parties have received no

representations about the tax consequences of this Agreement from Ms. Nelson and have had the opportunity to seek the advice of their independent tax counsel regarding this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first hereinabove set forth.


Frank Caputo
3520 Takena Street SW
Albany, Oregon 97321
(541) 926-3638

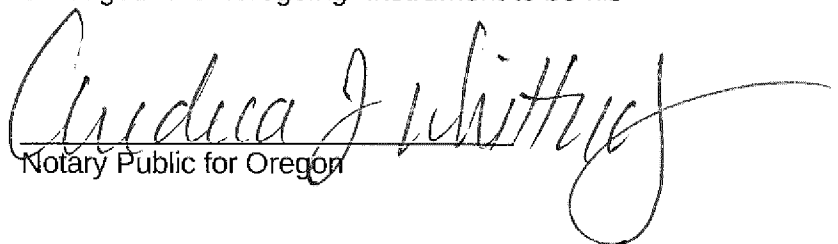

Barry L. Ohling
Address: 2571 S.E. Ermine
Albany OR 97322
Telephone: 541-619-0943

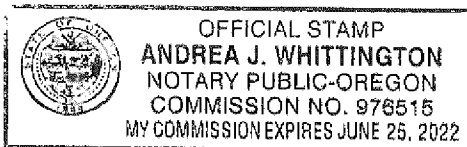

Tina M. Ohling
Address: 2571 Ermine St, SE
Albany OR 97322
Telephone: 541-619-0844

STATE OF OREGON)
) ss.
County of)

Personally appeared on this 27th day of November, 2018 the above named Frank Caputo and acknowledged the foregoing instrument to be his voluntary act and deed.

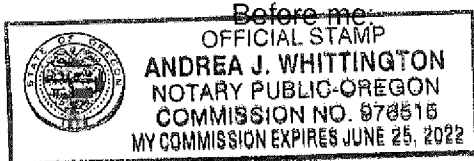
Before me:

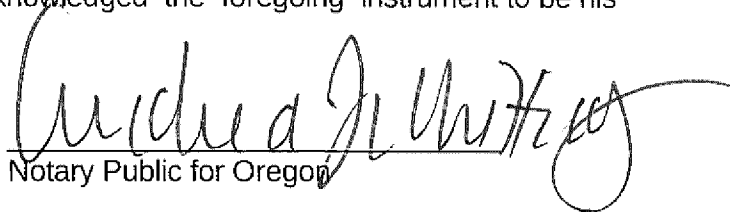

Notary Public for Oregon



STATE OF OREGON)
) ss.
County of)

Personally appeared on this 31st day of October, 2018 the
above named Barry L. Ohling and acknowledged the foregoing instrument to be his
voluntary act and deed.

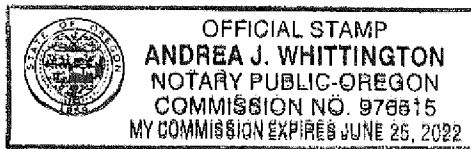



Notary Public for Oregon

STATE OF OREGON)
) ss.
County of)

Personally appeared on this 31st day of October, 2018 the
above named Tina M. Ohling and acknowledged the foregoing instrument to be her
voluntary act and deed.

Before me:



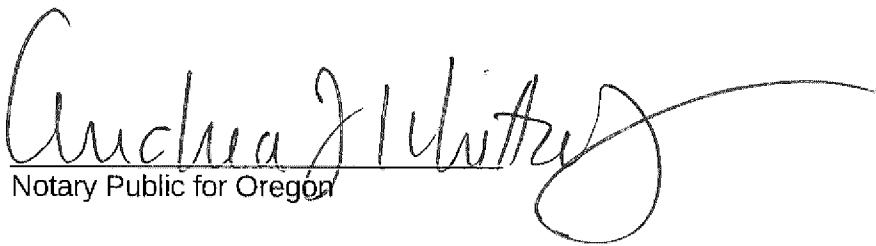

Notary Public for Oregon

EXHIBIT A

Lot 4 in Block 4 of Tract No. 1052 Crescent Pines, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Also beginning at the Southeast corner of Lot 4 , Block 4 of Tract No. 10 5 2, Crescent Pines, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon; thence North 89 °41'20" West 180.85 feet to the Southwest corner of said Lot 4; thence South 0°18'40" West 200 feet, more or less, to a point on a line 5.0 feet Northerly of the North bank of Crescent Creek; thence Northeasterly along a line 5.0 feet Northerly of said bank to its intersection with the East line of Section 18, Township 24 South, Range 7 East of the Willamette Meridian; thence North 1°0 3 '43". East 70 feet, more or less, to the point of beginning.