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## RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_, SELLER, whose mailing address is \_\_\_\_\_ and \_\_\_\_\_, BUYER, whose mailing address is \_\_\_\_\_.

In consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), paid by Buyer to Seller, receipt whereof is hereby acknowledged, Seller grants to Buyer the exclusive right of first refusal (the "Right") to purchase the real estate (including the improvements located upon it), commonly known as \_\_\_\_\_ in the city or town of \_\_\_\_\_, in the County of \_\_\_\_\_, Indiana, more particularly described as follows, to-wit:

\_\_\_\_\_

(Hereinafter called the "Real Estate")

THIS AGREEMENT is subject to the following terms and conditions:

1. Seller shall not hereafter, directly or indirectly, transfer, sell, assign or in any manner dispose of the whole or any part of any interest of any kind in the whole or any part of the Real Estate described above except strictly in accordance with this Agreement.
2. Seller shall not hereafter transfer all or any part of its interest in the Real Estate described above without first offering in writing to sell said interest to Buyer at the same price and upon the same terms as Seller has received in a bona fide offer to

purchase all or any portion of said interest in the Real Estate. Seller's offer to sell said interest to Buyer shall (a) be accompanied by a written statement of the name and address of the person or persons to whom the interest in the Real Estate will be sold pursuant to the bona fide offer to purchase, (b) fully state the price and terms upon which said interest shall be sold, and (c) be accompanied by a copy of the bona fide written offer. Buyer shall have 30 days [*unless otherwise provided in this Agreement*] following the receipt of such offer within which to accept in writing all or any interest so offered. In the event Buyer shall fail to accept the interest so offered within thirty (30) days [*unless otherwise provided in this Agreement*], Seller shall thereafter be free to sell only the interest so offered which was not accepted by Buyer to the person and at the price and upon the terms specified in the written statement which accompanied the offer to Buyer. Provided, however, that if said sale is not completed within 30 days [*unless otherwise provided in this Agreement*] after the last day that Buyer could accept Seller's offer pursuant to this paragraph, then Seller shall not transfer, sell, or assign any interest in said Real Estate without again complying with the terms and conditions of this Agreement.

3. Any notice, acceptance or other document given or required to be given under the provisions of this Agreement shall be in writing and given to the other party at the other party's address set forth above, or at such other address as a party may designate in a notice. Notice shall be deemed given when (a) personal service of the notice is made upon the party to be notified; (b) the notice is deposited in the United States Mail, first class postage prepaid; (c) deposited, all fees prepaid with a private overnight courier service; (d) e-mail or facsimile transmission with the date and time stamped thereon. Refusal by a party to accept delivery of a notice (whether by mail or otherwise) cannot defeat the giving of a notice.

4. If Buyer exercises the Right, the transaction shall be upon terms no less favorable to Buyer as the terms contained in the bona fide written offer received by Seller. Unless otherwise agreed in a writing between Seller and Buyer, all terms of the bona fide written offer are incorporated into the Seller's offer to the Buyer.

5. If Seller, fails or is unable to perform any of the obligations imposed on Seller by this Agreement or to satisfy any of the conditions precedent set forth herein, Buyer shall have the following rights and remedies:

- a) to recover from Seller any damages which Buyer has suffered by reason of default by Seller;
- b) in the case of Seller's failure or inability to convey marketable title or to provide title insurance, to recover from Seller upon demand, all sums paid by Buyer to Seller behalf under this Agreement;
- c) to waive any of the obligations or conditions without prejudice to Buyer's rights hereunder not so waived;
- d) to recover from Seller all reasonable costs or expenses, including but not limited to attorney's fees and expenses incurred by Buyer in enforcement of this Agreement; and
- e) to pursue such other remedies as are available at law or in equity including the right to enforce this Agreement by suit for specific performance.

The exercise or attempted exercise by Buyer of any right or remedy available under this Agreement shall not preclude Buyer from exercising any other right or remedy so available nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies, so that no such right or remedy shall be exclusive of any other right or remedy, and each and every other such right and remedy shall be cumulative and in addition to any other right or remedy available under this Agreement.

6. If Buyer fails to exercise the Right, all sums paid by Buyer to Seller under this Agreement shall be retained by Seller free of any claim of Buyer, and neither Buyer nor Seller shall have any further claim against the other. If Buyer, having exercised the right, fails to complete the purchase after Seller has performed all agreements to be performed under this Agreement and has satisfied all conditions precedent to the closing, Seller shall be entitled to all rights and remedies contained in the bona fide written offer (if any) referenced in paragraph 4.

7. This Agreement may/may not [*strike one*] be assigned by Buyer, whether before or after exercise of the Right.

8. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of Seller and Buyer.

9. This Agreement shall terminate upon the mutual written agreement of the parties. This Agreement shall be construed and interpreted according to the laws of the State of Indiana. This Agreement may not be altered or amended except by a writing signed by all parties hereto.

10. This Right shall terminate on the later of \_\_\_\_\_ or \_\_\_\_\_.

11. ADDITIONAL COVENANTS:

IN WITNESS WHEREOF, the Seller and Buyer have executed this instrument in duplicate on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

**BUYER**

**SELLER**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ SS:

Before me a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and also appeared \_\_\_\_\_ and each acknowledged execution of the foregoing Right of First Refusal Agreement to be his/her/their voluntary act and deed.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_ Signature \_\_\_\_\_  
Resident of \_\_\_\_\_ County Printed \_\_\_\_\_, Notary Public

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ SS:

Before me a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and also appeared \_\_\_\_\_ and each acknowledged execution of the foregoing Right of First Refusal Agreement to be his/her/their voluntary act and deed.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_ Signature \_\_\_\_\_  
Resident of \_\_\_\_\_ County Printed \_\_\_\_\_, Notary Public

This instrument prepared by: \_\_\_\_\_ Attorney at Law  
Mail to:

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I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

\_\_\_\_\_