When recorded return to preparer

DELAWARE COUNTY IOWA
FILED
2002 DE
BOOK 2002 PAGE 4601
DEBORAH
DELAWARE
36.00

Prepared by: Steven E. Zumbach, The Financial Center, 666 Walnut Suite 2000, Des Moines, IA 50309-3989, 515-243-7100

ROSEMARY KINLEY RIGHT OF FIRST REFUSAL
40 ACRE TRACT

AGREEMENT made Nov. 15, 2002 between Rosemary Kinley ("Grantor"); James J. Kinley, as spouse of Grantor, and Dennis J. Kinley, Lawrence H. Kinley, Michael T. Kinley, Kevin L. Kinley, John F. Kinley, Patricia A. Kinley and Matthew P. Kinley, (collectively, "Grantees").

In consideration of the payment to Grantor of One Dollar ($1.00) and other valuable consideration, receipt of which is hereby acknowledged, by Grantees, collectively, the receipt of which is hereby acknowledged, the parties agree as follows:

1. *Right of First Refusal.* Grantor grants to Grantees a right of first refusal for the purchase of the Grantor's interest in the forty (40) acre tract of real property (the "Property") located in the County of Delaware, State of Iowa, more particularly described as follows:

> The Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Thirty One (31), Township Eighty Seven (87) North, Range Five (5), West of the Fifth Principal Meridian, subject to easements of record.

Grantor and Grantees agree that if

(a) Grantor receives a bona fide offer from a third party for the purchase of all or any part of the Grantor's interest in the Property, which offer Grantor is willing to accept;

(b) Grantor intends to transfer all or any part of the Grantor's interest in the Property by gift; or

(c) the Grantor's interest in the Property is passed by reason of divorce or operation of law (other than as a result of the death of Grantor),

then Grantor will give Grantees written notice thereof, and will send Grantees a copy of the proposed contract of sale to such third party or of the circumstances by which the Grantor's interest in the Property will pass by gift or by reason of divorce or operation of law. Grantees, jointly and severally, shall have the right for sixty (60) days after the receipt of such notice to enter into a contract for the sale of the Grantor's interest in the Property (the "Purchase Contract") at a price equal to the average of two independent appraisals of the fair market value of the Grantor's interest in the Property (the "Option Price"), which right of Grantees shall be paramount to the rights of the third party. The

two independent appraisals of the Grantor's interest in the Property contemplated by this paragraph shall be conducted by Members of the Appraisal Institute, one of whom shall be selected by the Grantor, and one of whom shall be selected by the Grantees, collectively.

2. *Grantees' Exercise of Right of First Refusal.* In the event only one Grantee shall desire to exercise this option of first refusal, the Purchase Contract shall state that such exercising Grantee shall tender the full Option Price to the Grantor in exchange for the Grantor's interest in the Property. In the event more than one Grantee shall desire to exercise this option of first refusal, the Purchase Contract shall specify:

   (a) the portion of the Option Price to be paid by each exercising Grantee; and

   (b) whether the Grantor's interest in the Property is to be partitioned among such exercising Grantees (and which portion each exercising Grantee shall receive) or whether the exercising Grantees shall receive fractional interests in the Property as a whole (and in what proportion). In the event the exercising Grantees cannot agree on a method of allocating the Option Price or the manner in which such exercising Grantees shall take the Grantor's interest in the Property, each exercising Grantee shall pay a pro rata share of the Option Price and receive an equal fractional interest in the Grantor's interest in the Property as a whole.

   The right of one or more Grantees to exercise this right of first refusal shall be contingent on the contemporaneous granting by each exercising Grantee to all other exercising Grantees, the non-exercising Grantees, and the Grantor, collectively, of a right of first refusal in substantially the same form as this agreement for a period not to exceed the original expiration of this right of first refusal as provided in the following section.

3. *Term of Right of First Refusal.* This right of first refusal shall continue in effect until the first to occur of (a) the conveyance of the Grantor's interest in the Property in fee simple to one or more Grantees or to a third party pursuant to the provisions of this right of first refusal, and the execution of a successor right of first refusal if required by this agreement; (b) the expiration of thirty (30) years from the date of execution of this agreement; or (c) the death of the Grantor and all Grantees. Upon termination of this right of first refusal, Grantees shall deliver to Grantor a signed and acknowledged document stating that this right of first refusal has terminated and that Grantee expressly relinquishes all rights under this agreement.

4. *Death of Grantor.* This right of first refusal shall survive the death of the Grantor prior to the termination of this right of first refusal and shall be binding upon and inure to the benefit of any party ("Successor Grantor") to whom the Grantor's interest in the Property is transferred as a result of such death by bequest or testamentary disposition of the Grantor or by operation of law. Furthermore, if the Grantor's interest in the Property is transferred as a result of such death to a Successor Grantor who is neither a descendant of the deceased Grantor nor the surviving spouse of the deceased Grantor, then Grantees, jointly and severally, shall have the right for sixty (60) days after the receipt of notice that

the Grantor's interest in the Property has been transferred to enter into a Purchase Contract at the Option Price, which right of Grantees shall be paramount to the rights of the Successor Grantor. The provisions of this paragraph shall apply equally upon the death of any Successor Grantor.

5. *Permitted Transfers to Individuals.* Notwithstanding any other provision in this agreement, Grantor and any Successor Grantor shall be permitted to vest legal title in all or any part of the Property with such Grantor's spouse or descendants, provided that such spouse or descendants contemporaneously grants to the Grantees, collectively, a right of first refusal in substantially the same form as this agreement for a period not to exceed the original expiration of this right of first refusal.

6. *Permitted Transfers to Entities.* Notwithstanding any other provision in this agreement, Grantor and any Successor Grantor shall be permitted to vest legal title in all or any part of the Property with any corporation, general or limited partnership, limited liability company, or trust which such Grantor, such Grantor's spouse and such Grantor's descendants possess, in the aggregate, not less than One Hundred Percent (100%) equity ownership or present beneficial interest in such entity, and further provided that such entity contemporaneously grants to the Grantees, collectively, a right of first refusal in substantially the same form as this agreement for a period not to exceed the original expiration of this right of first refusal. In the event a transfer to an entity occurs pursuant to this section and the aggregate equity ownership or present beneficial interest of the Grantor, the Grantor's spouse and the Grantor's descendants in such entity subsequently falls below One Hundred Percent, there shall be a deemed transfer of the Property sufficient to implicate the provisions of Article 1 of this agreement.

7. *Grantor's Right to Encumber and Lease.* Notwithstanding anything to the contrary contained in this agreement, Grantor shall have the right, during the term of this right of first refusal, to mortgage or otherwise encumber the Property and to grant leases for all or parts of the Property, as Grantor sees fit and without the prior consent of the Grantees, however, Grantor may not lease all or any part of the Property for a term of more than five (5) years, including renewal periods, and may not grant any lessee an option to purchase all or part of the Property.

8. *Warranty of Title.* Grantor and Grantor's Spouse warrant and represent that they jointly hold good and marketable title to the Property, and that, contemporaneously with this agreement, Grantor's Spouse and Grantees are executing a right of first refusal in substantially the same form as this agreement. Grantor and Grantor's Spouse warrant and represent they have full authority to grant these rights of first refusal.

9. *Joinder of Spouse.* James J. Kinley, as spouse of Grantor, hereby relinquishes his statutory right of dower in the Grantor's interest in the Property.

10. *No Assignment by Grantees.* Grantees may not assign their rights under this right of first refusal agreement. Any direct or indirect assignment of a Grantee's rights under this agreement shall automatically terminate this right of first refusal as to that Grantee and all of that Grantee's rights hereunder.

11. *Broker.* The parties warrant and represent that no broker brought about or participated in this right of first refusal agreement or transaction. Grantees, jointly and severally, shall indemnify and hold Grantor harmless against all liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising from any claims for brokerage on this transaction based on any act of Grantee. The warranties, representations, and agreements contained in this paragraph shall survive any conveyance of the Property pursuant to this right of first refusal agreement.

12. *Recording.* This agreement shall be executed in recordable form and, if one or more Grantee elects, may be recorded at such Grantees' expense with the Delaware County Recorder.

13. *Binding Effect.* Except as otherwise provided, this right of first refusal shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.

14. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

15. *Governing Law.* This agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

16. *Counterparts.* This agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. *Entire Agreement.* This agreement supersedes all prior agreements between the parties with regard to the subject matter hereof, and there are no other understandings or agreements between them. This agreement can only be modified by a written agreement signed by the Grantor (or Successor Grantor) and each Grantee then living.

In witness whereof, the parties hereto have executed and delivered this agreement as of the day and year first above written.

Rosemary J. Kinley
Rosemary Kinley, Grantor

11-15-2002
Date

James J. Kinley
James J. Kinley, Spouse of Grantor

11-15-02
Date

Dennis J. Kinley
Dennis J. Kinley, Grantee

19 Nov 02
Date

Lawrence H. Kinley, Grantee — Date: 11-21-02

Michael T. Kinley, Grantee — Date: 11-18-02

Kevin L. Kinley, Grantee — Date: 11-18-02

John F. Kinley, Grantee — Date: 11/19/02

Patricia A. Kinley, Grantee — Date: 11/20/02

Matthew P. Kinley, Grantee — Date: 11/18/02

STATE OF Iowa)
) SS:
COUNTY OF Linn)

On this 15 day of November, 2002 before me, a Notary Public, personally appeared Rosemary J. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

NOTARIAL SEAL IOWA
RONALD D. FADNESS
COMMISSION NO. 224765
MY COMMISSION EXPIRES
9/27/05

Ronald D. Fadness
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Linn)

On this 15 day of November, 2002 before me, a Notary Public, personally appeared James J. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Ronald D. Fadness
Notary Public

NOTARIAL SEAL IOWA
RONALD D. FADNESS
COMMISSION NO. 224765
MY COMMISSION EXPIRES
9/27/05

STATE OF Iowa)
) SS:
COUNTY OF Hamilton)

On this 19th day of November, 2002 before me, a Notary Public, personally appeared Dennis J. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Debra A Tjernagel
Iowa Notarial Seal
Commission Number 190436
My Commission Expires: 5-28-03

Debra A. Tjernagel
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Black Hawk)

On this 21st day of November 2002 before me, a Notary Public, personally appeared Lawrence H. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Marilyn J Wester
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Polk)

On this 18th day of November, 2002 before me, a Notary Public, personally appeared Michael T. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

LAURA R. WENCK
Commission Number 189183
My Commission Expires
March 14, 2003

Laura R. Wenck
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Polk)

On this 18th day of November, 2002 before me, a Notary Public, personally appeared Kevin L. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

LAURA R. WENCK
Commission Number 189183
My Commission Expires
March 14, 2003

Laura R Wenck
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Hamilton)

On this 19th day of November, 2002 before me, a Notary Public, personally appeared John F. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Debra A Tjernagel
Iowa Notarial Seal
Commission Number: 190436
My Commission Expires: 5-28-03

Debra A. Tjernagel
Notary Public

STATE OF Iowa)
) SS:
COUNTY OF Blackhawk)

On this 21st day of November, 2002 before me, a Notary Public, personally appeared Patricia A. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

Notary Public

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 18 day of November 2002 before me, a Notary Public, personally appeared Matthew P. Kinley, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

LAURA R. WENCK
Commission Number 189183
My Commission Expires
March 14, 2003

Notary Public

f:\wp\client docs\kinley\rofrs\rosemary\40.doc