

## O P T I O N   A G R E E M E N T

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This option given this 14th day of September 1979,  
by FRED G. HESS and EDITH M. HESS, hereinafter referred to as  
Hess, and DONALD P. THERIAULT and EUNICE I. THERIAULT, herein-  
after referred to as Theriault.

1. GRANT OF OPTION. Hess, in consideration of the sum  
of \$4,000.00 received from Theriault, receipt of which is hereby  
acknowledged, gives Theriault the exclusive option to purchase  
upon the following terms and conditions certain real property  
in Klamath County, Oregon, described as follows:

A tract of land situated in the W 1/2  
NW 1/4 of Section 28 Township 40 South,  
Range 10 E.W.M., more particularly de-  
scribed as follows: Beginning at the  
West corner of said Section 28; thence  
Northerly along the West line of said  
Section 28 to its intersection with the  
Southerly right of way line of the  
Southern Pacific Railroad; thence South-  
easterly along said Southerly right of  
way line to the Westerly right of way  
line of the U.S.B.R. 5-H Drain; thence  
southwesterly along the said Westerly  
right of way line to the South line of  
the W 1/2 NW 1/4 of said Section 28;  
thence Westerly along said South line  
to the point of beginning.

2. CONDITIONS. This option is subject to the following  
conditions which must be met during the term of this option. In  
the event the conditions cannot be met by the end of the term of

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the option, Hess agrees to return the consideration for the option to Theriault, immediately upon the expiration of the term of the option:

a. Septic tank approval by the Department of Environmental Quality of the State of Oregon or any successor agency having the same authority.

b. Release of the property from that certain mortgage given by Hess to the State of Oregon represented and acting by the Director of Veterans Affairs, dated April 2, 1976, recorded April 7, 1976, Volume M76, Page 4876, Mortgage Records of Klamath County, Oregon.

c. Release of mortgage given by John E. Hess and Blossom Hess, husband and wife, to Laurence C. Jespersen et al., dated April 2, 1976, recorded April 7, 1976, Volume M76, Page 4939, Mortgage Records of Klamath County, Oregon, to secure the payment of \$6,100.00.

By assignment dated May 25, 1978, recorded May 24, 1979, Volume M78, Page 11046, Mortgage Records of Klamath County, Oregon, Jespersens assigned their interest to Paul D. Hess and Helen E. Hess.

d. Release of agreement between Laurence C. Jespersen et al., and John E. Hess et al., dated April 5, 1976, recorded April 7, 1976, Volume M76, Page 4942, Deed Records of Klamath County, Oregon.

e. Release of Contract of Sale between John E. Hess

and Blossom Hess, husband and wife, Seller; and Fred G. Hess and Edith M. Hess, husband and wife, Buyer, dated April 18, 1977, recorded April 22, 1977, Page 6912, Deed Records of Klamath County, Oregon.

By assignment dated April 27, 1978, recorded August 2, 1978, Volume M78, Page 16766, the vendors interest in said contract was assigned to Bob L. Bell and Iris M. Bell, husband and wife.

3. TERM OF OPTION. The within option shall commence on September 14, 1979, and shall expire on September 14, 1981.

4. PURCHASE PRICE. Upon exercise of the option, the purchase price shall be \$26,000.00, against which shall be credited the \$4,000.00 paid for this option.

a. Upon payment of the purchase price to Hess as aforesaid, Hess agrees to apply the proceeds of sale first to the mortgage referred to in Paragraph 2(c) and the contract of sale referred to in Paragraph 2(e) and, if funds are required to do so, to the release of the mortgage referred to in Paragraph 2(b).

5. FAILURE TO EXERCISE OPTION. If Theriault does not exercise this option as herein provided, and the conditions set forth in Paragraph 4 are met, the sum of \$4,000.00 paid by Theriault shall be retained by Hess, and neither party shall have any further claims against the other concerning this agreement.

6. EXERCISE OF OPTION. This option shall be exercised in the following manner:

a. The delivery by Theriault to Hess in the sum of \$22,000.00, or;

b. Written notice of their intention to exercise the option which shall be mailed to Hess at Route 1, Box 631-C, Klamath Falls, Oregon 97601.

7. WARRANTIES AND COVENANTS. The following warranties and covenants shall survive the closing of this transaction:

a. Warranty of Title. Hess warrants the title of the real property subject to the exceptions set forth in the preliminary title report which is attached hereto marked Exhibit "B" and incorporated herein by reference.

8. LEASE. Hess warrants that Hess will not enter into any lease agreement for the use of the real property above described during the period of this option unless any such agreement should terminate prior to the possession date or closing date by reason of Theriault's exercise of this option.

9. CLOSING COSTS, PRORATES, CHARGES, ADJUSTMENTS, and CREDITS.

A. The closing escrow holder shall make all charges and credits between the parties as follows:

a. Theriault shall be charged with his share of prorates, recording fees, adjustments and credits, and the amount so charged shall be disbursed from the credit of Hess.

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b. Real property, taxes and assessments for the year of the exercise of the option shall be paid, if not otherwise paid. The fiscal year real property taxes for the year of the exercise of the option shall be prorated as of the closing date, to the extent that any real property taxes and assessments should be delinquent, or if there exists any personal property taxes which are a lien upon the real property as of the closing date. The closing escrow holder shall pay the same and charge such payment to Hess. Hess shall be responsible for all delinquent real property taxes and assessments; and personal property taxes and assessments which are a lien upon the real property as of the closing date, together with interest and other charges called for by the Tax Collector's Office on the closing date.

c. All premiums of title insurance to be issued by the closing escrow holder shall be charged to Hess.

10. CONDITION OF PROPERTY. Theriault has examined the property herein described and agrees that no representations of any kind has been made by Hess or any representative of Hess with respect to the condition of said property not contained in this option.

11. CONDEMNATION. In the event all or any portion of the real property described herein is taken or designated to be taken by condemnation proceedings or is sold to an entity having the power of condemnation in lieu of condemnation proceedings, prior to the exercise of this option, the purchase price shall be reduced by the amount so received by Hess.



12. DEFAULT. In the event of a default in the performance or observance of any of the provisions of this option, Theriault may enforce the terms of this option either by a suit in equity for its specific performance or an action at law for damages or by such other remedy that may be available, provided however that Theriault has fully performed all of the terms, covenants and provisions of the option to be performed by them.

13. ASSIGNMENTS. This option and all of the rights hereunder shall not be assigned by Theriault without written consent of Hess being first obtained. In the event of such assignment, the option shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

14. RIGHT OF FIRST REFUSAL. Should the Seller, during the option agreement term, or any extension thereof, elect to sell the adjacent 20 acres to the above described real property, Purchaser shall have the right of first refusal to meet any bonified offer or sale upon the same terms and conditions of such offer. Upon the Purchaser's failure to meet such bonified offer within 30 days after notice thereof from the Seller, the Seller shall be free to sell the premises or a portion thereof to such third person in accordance with the terms and conditions of his offer.

15. ATTORNEYS FEES. In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the Court may adjudge reasonable as attorneys fees at trial or on appeal of such suit or action, in addition to all

other sums provided by law.

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Fred G. Hess  
FRED G. HESS, Seller

Edith M. Hess  
EDITH M. HESS, Seller

Donald P. Theriault  
DONALD P. THERIAULT, Purchaser

Eunice I. Theriault  
EUNICE I. THERIAULT, Purchaser

STATE OF OREGON     )  
                                  ) ss.  
County of Klamath )

Personally appeared FRED G. HESS and EDITH M. HESS, husband and wife, and acknowledged the foregoing instrument to be his and her voluntary act and deed.

BEFORE ME:

Dat Rees  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 7-18-82

STATE OF OREGON     )  
                                  ) ss.  
County of Klamath )

Personally appeared DONALD P. THERIAULT and EUNICE I. THERIAULT, husband and wife, and acknowledged the foregoing instrument to be his and her voluntary act and deed.

BEFORE ME:

Dat Rees  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 7-18-82

AFTER RECORDING RETURN TO:

Mr. & Mrs. Fred G. Hess

Route 1, Box 631-C

Klamath Falls, Oregon 97601

OPTION AGREEMENT, PAGE SEVEN.

STATE OF OREGON; COUNTY OF KLAMATH; ss. .

I hereby certify that the within instrument was received and filed for record on the 3rd day of October A.D., 19 79 at 4:34 o'clock P M., and duly recorded in Vol M79 of Deeds on Page 23447.

FEE \$24.50

WM. D. MILNE, County Clerk

By Bernadette Ketch Deputy