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Aspen 31770

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AGREEMENT TO CONVEY IN LIEU OF LIEN FORECLOSURE;  
OPTION AND RIGHT OF FIRST REFUSAL

\* \* \* \* \*

THIS AGREEMENT made and entered on the date below signed by and between, DONALD J. LEGGET and ELIDA LEGGET, husband and wife, hereinafter referred to as lien debtor, and JOHN VANMETER and LARRY DESPAIN, a co-partnership, doing business as VANMETER & DESPAIN WELL DRILLING, hereinafter referred to as lien creditor, subject to the terms, conditions, and covenants which follow.

1. Subject Matter. That on or about the 3rd day of December, 1984, lien debtors engaged lien creditor to drill a potable water supply on Lot 1, Block 3, Bella Vista Subdivision, Tract 1235, Klamath County, Oregon; the reasonable value of which lien debtors were to pay out of construction financing to be supplied by Pacific West Mortgage Co.. That subsequent thereto Pacific West Mortgage Co., breached its agreement with lien debtors and filed for bankruptcy in a cause entitled In Re: Pacific West Mortgage Company, Debtor, Case No. 385-028107.

As a result of the loss of construction financing, lien debtors have been unable to pay the reasonable value of the material and services provided in whole or in part. On or about the 6th day of September, 1985, lien creditors filed a suit against lien debtors entitled, John VanMeter and Larry DeSpain, dba VanMeter and DeSpain, Well Drilling v. Donald J. Legget and Elida Legget, husband and wife, Case No. 85-572-CV, in which lien

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creditors seek foreclosure of the construction lien against the real property in the subdivision.

2. Agreement. In compromise thereof lien creditor and lien debtors agree:

a. In lieu of proceeding to a Decree in Judgment of Foreclosure, lien debtors and lien creditors agree to a liquidation of the total sum presently due and owing as set forth below.

b. Lien debtors agree to convey real property in the subdivision in lieu of foreclosure.

c. Lien creditors agree to issue an option of repurchase by lien debtors in lieu of statutory rights of redemption.

3. Consideration.

A. Lien debtors and lien creditors acknowledge as of the date of this Agreement that lien debtors are indebted to lien creditors in the total sum of \$13,615.47, with interest thereon at the rate of 10 percent per annum from September 30, 1987, as set forth in the attached Exhibit "A". Lien debtors acknowledge that said sum is reasonable and lawfully due, and that lien debtors have no defense as to payment thereon. Lien creditors acknowledge that they shall: a) accept as payment in full the following described real property: Block 3, Lot 1; Block 4, Lot 1; Block 4, Lot 2; Block 4, Lot 3; all of Bella Vista Subdivision Tract 1235, in the County of Klamath, State of Oregon, which property shall be conveyed by lien debtors to lien creditors by



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good and sufficient warranty deed subject to the following exceptions.

- 1) Klamath County real property taxes as assessed which may remain a lien thereon.
- 2) Deed conditions and restrictions entered on the 14th day of August, 1987, volume M87, page 14651, of the Klamath County Deed Records.
- 3) Easements of records and those apparent on the land.

B. As and for further consideration lien creditors covenant and agree:

1. To dismiss with prejudice and without costs all of lien creditors claim against lien debtors in the cause entitled, John VanMeter and Larry DeSpain, dba VanMeter and DeSpain, Well Drilling v. Donald J. Legget and Elida Legget, husband and wife, Case No. 85-572-CV, to be done concurrently with the transfer of title to the subject property.

2. Issue an option to lien debtors to repurchase the above described real property so conveyed on the terms and conditions which follow.

4. Conditions Precedent. The parties acknowledge that as a condition precedent the closing of this transaction lien debtors must:

- A. Obtain the issuance by the State of Oregon, Department of Commerce, Subdivision Section, a Public Report as required by ORS 42.305 et seq.

- B. Clear the following judgments:

1) A judgment in favor of East Side Electric and against Shasta Wood Products, Donald J. Legget, in the amount of \$9,036.34 entered on the 10th day of April, 1981, book 35, page 633, line 3, of the Klamath County Lien Records, subordinated by trust deed recorded August 17, 1984, in book M84, page 14242, and by subordination agreement dated December 13, 1983, recorded August 17, 1984, in book M84, page 14212;

2) A judgment in favor of Western Bank and against Donald J. Legget, in the amount of \$9,063.00 entered on the 25th day of January, 1982, book 37, page 381, line 2, of the Klamath County Lien Records, subordinated by trust deed recorded August 17, 1984, in book M84, page 14242; and by subordination agreement dated December 13, 1983, recorded August 17, 1984, in book M84, page 14212;

3) A judgment in favor of Western Bank and against Donald J. Legget, in the amount of \$2,173.50 entered on the 5th day of January, 1983, book 37, page 547, line 2, of the Klamath County Lien Records, subordinated by trust deed recorded August 17, 1984, in book M84, page 14242; and by subordination agreement dated August 9, 1984, recorded August 17, 1984, in book M84, page 14208;

4) A judgment in favor of Riverside Engineering, and against Donald J. Legget, Case No. 85-528-CV, in the amount of \$36,028.04 plus service charge of 2 percent per month from January 1, 1985, until paid.



5) Lien and suit for Foreclosure of Construction Lien in Circuit Court, John VanMeter and Larry DeSpain, dba VanMeter and DeSpain, Well Drilling v. Donald J. Legget and Elida Legget, husband and wife, Case No. 85-572-CV, filed September 6, 1985.

6) Satisfaction of that certain trust deed dated December 9, 1983, recorded August 17, 1984, in which Donald J. Legget and Elida Legget, husband and wife, were the grantors, Pacific West Mortgage Company was the beneficiary and Neal H. Bell was the trustee, recorded in Volume M84, page 14242, of Klamath County Deed Records.

7) Release of Collateral Assignment of Vendors' Interest recorded August 17, 1984, which Donald J. Legget and Elida Legget, husband and wife were the grantors, and Electrical Construction Co., Western Bank, Heaton Steel & Supply Co., were the beneficiaries, as recorded in volume M84, page 14216, Klamath County Deed Records.

5. Time of Closing. The parties hereto acknowledge and in consideration of the efforts being made by debtors to effect closing of the above, this agreement shall be irrevocable to and including October 30, 1987, after which creditors' acceptance shall remain effective until and unless revoked by written notice received by debtors through their attorney Bradford J. Aspell, Aspell & Della-Rose, Attorneys at Law, 122 South Fifth Street, Suite 100, Klamath Falls, Oregon 97601.

6. Subdivision Report. It is further expressly agreed and understood by the parties hereto that notwithstanding creditors'

interest in the subject real property arising out of security interest retained in the lot to be conveyed, creditor shall not be deemed a "subdivider" pursuant to ORS 92.305(13) and that creditors rights therein shall remain subject to ORS 92.405, and the rights of disclosure thereunder, notwithstanding the fact that creditor herein:

A. Will not be acquiring the property for purposes other than resale.

B. Will not be relying upon any disclosures contained therein other than the approval of the offering by the State of Oregon.

7. Costs and Disbursements. Lien creditors herein covenant and agree that all costs of dismissing the above entitled legal action, together with the costs of title insurance if requested, shall be paid by lien creditors herein, subject to reimbursement by lien debtors upon their exercise of the option described in paragraph 8 below.

8. Option. For a period of one year from the date of this agreement, or to and including the 30th day of June, 1988, lien debtors grant irrevocable option to lien debtors to purchase one or more of the lots conveyed herein in the following order:

First Lot: Block 4, Lot 1

Second Lot: Block 4, Lot 2

Third and Fourth Lot: (which shall not be separately apportioned).



The purchase price to exercise the options herein shall be as follows:

First Lot: 1/3 of total consideration shown in the attached Exhibit "A", plus interest of 10 percent per annum from October 1, 1987, until paid.

Second Lot: 2/3 of the total consideration plus interest then accumulated from September 30, 1987, as calculated on the daily outstanding balance.

Third and Fourth Lot: total consideration plus accumulated interest from October 1, 1987, as calculated on a daily unpaid balance.

9. Notice of Intent to Release Lot. Notwithstanding the above, after the expiration of the option herein, lien debtors shall be granted a first right of refusal to purchase one or more of the subject lots, on the same terms and conditions as lien creditors may elect to sell the property to a third party. In the event that lien creditors receive an offer which they wish to accept, they shall give lien debtors, not less than 10 days prior written notice of the offer, and of their intention to sell. Said notice to be effective shall include a copy of the written offer to purchase (which may at lien creditors option have the names, addresses, information relating to identities of the purchasers deleted which shall at minimum provide:

A. That an offer has been made by a third person to purchase subject property;

B. The price to be paid;

- C. The terms, conditions and restrictions of closing;
- D. The terms of deferred payment (if any) and method of securing the unpaid balance.

In the event that lien debtors do not exercise the right of first refusal to purchase, lien creditors may sell the subject property free and clear of any claims of lien debtors without further notice to them, however should the price, terms, conditions or restrictions placed on closing or terms of deferred payment be changed, lien debtor will be entitled to further notice as specified herein. This right of first refusal shall continue to and including the 30th day of June, 1989, at which time the right will be extinguished.

10. Memorandum of Right of First Refusal. Upon request of lien debtors, lien creditor shall execute a Memorandum of Right of Option and Right of First Refusal for recording at lien debtors expense.

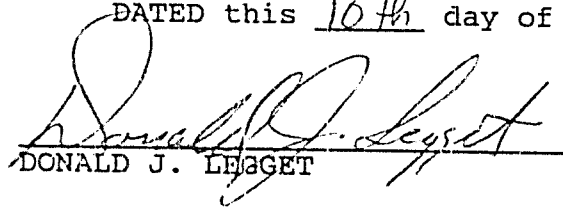
11. Notice to be Effective. Notice to be effective pursuant to the terms of this agreement shall be in writing, and hand delivered or, if mailed by first class mail, postage prepaid, registered or certified as addressed to lien debtors as follows: JIM & ELIDA LEGGET, 4861 Laverne Street, Klamath Falls, Oregon 97603, or if said address should be later amended by written notice to lien creditors. In the event notice is posted notice shall be deemed received on the 5th day following the date of mailing.

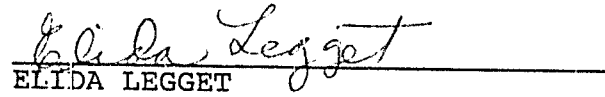


12. Attorneys Fees. In the event suit or action is instituted to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover from the other party such sum as the Court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in duplicate.

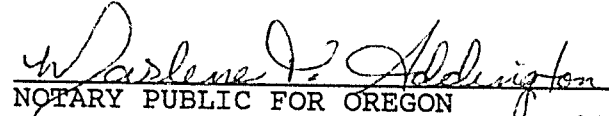
DATED this 10th day of March, 1988.

  
DONALD J. LEGGET

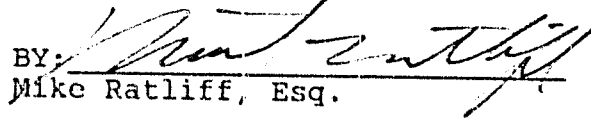
  
ELIDA LEGGET

STATE OF OREGON     )  
                              : ss.  
County of Klamath    )

Personally appeared before me the above named individuals, DONALD J. LEGGET and ELIDA LEGGET, husband and wife, and acknowledged the foregoing to be their voluntary act and deed.

  
NOTARY PUBLIC FOR OREGON  
My commission expires: 3-22-89

APPROVED AND ACCEPTED:

BY:   
Mike Ratliff, Esq.

L. 5921

Larry Delpain

John A. Van Meter

STATE OF OREGON     )  
                              : ss.  
County of Klamath    )

Personally appeared before me the above named creditor,  
Larry Delpain and John A. Van Meter, and  
acknowledged the foregoing to be their voluntary act and deed.

Donald R. Crane

NOTARY PUBLIC FOR OREGON

My commission expires: 6-12-89

APPROVED AND ACCEPTED:

BY: Donald R. Crane

Donald Crane, Esq.



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## ITEMIZATION

Contract price	\$ 6,682.25
Interest 1-15-85 to 1-14-86	1,202.76
Interest 1-15-86 to 1-14-87	1,202.76
Interest 1-15-87 to 9-30-87	854.70
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	\$ 9,942.47

## Costs

Title Report	\$ 175.00
Filing Fee	96.50
Service Fees	332.50
Foreclosure Report	450.00
Lien Prep & Filing	19.00
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	\$ 1,073.00

Attorney Fees	\$ 2,600.00
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\$ 13,615.47

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 15th day  
 of April A.D., 19 88 at 4:15 o'clock P M., and duly recorded in Vol. M88,  
 of Deeds on Page 5912.

Evelyn Biehn County Clerk  
 By Bernetha A. Hebert

FEE \$55.00

EXHIBIT "A"