

ESTOPPEL DEED AND OPTION AGREEMENT

BRENDAN CAPITAL CORPORATION, an Oregon corporation, Grantor, hereby conveys to Dan M. and Shirley C. McAuliffe, Grantee, the following described property, free of encumbrances except as set forth herein:

See EXHIBIT "A" attached hereto and incorporated herein by this reference

1. **Entire Land Sale Contract.** The Grantee herein as Seller and BRENDAN CAPITAL CORPORATION as Buyer entered into a Land Sale Contract dated May 17, 1989, for the sale and purchase of the above described property. A Memorandum of that contract was recorded May 18, 1989 at Volume No. M89, page 8586 in the Official Records of Klamath County, Oregon. Said Land Sale Contract is hereinafter referred to as the "security instrument".
2. **Default Under Land Sale Contract.** The obligation secured by said security instrument is in default and the entire unpaid balance, together with all accrued interest, costs of title search, court costs and disbursements, and Grantee's reasonable attorney fees, are now due and payable in full.
3. **Grantee's Acceptance of Deed in Lieu of Foreclosure.** Grantee has made demand upon Grantor to pay the unpaid balance of the obligation secured by said security instrument. Grantor is unable to pay said obligation and has requested that Grantee accept an absolute deed of conveyance of the property in satisfaction of the obligation secured by said security instrument.
4. **Grantee's Agreement to Grant Option and Right of First Refusal.** In consideration of this deed, the Grantee has agreed to grant an option to repurchase the described real property on the terms hereinafter set forth and has further granted to Brendan Capital Corporation a right of first refusal to purchase the property upon the terms and conditions hereinafter set forth.
5. **Non-Merger of Security Interest.** This deed in lieu of foreclosure shall not effect a merger of the fee ownership and the lien of the described security instrument with respect to the claims or interest in the described property held by third parties. Grantee's security interest shall retain such priority as it had over the liens, claims and interest of third parties, prior to Grantee's acceptance and recording of this conveyance.
6. **Acceptance and Waiver of Deficiency Rights.** Grantee shall be deemed to have accepted this deed only upon Grantee's execution of the acceptance set forth below and Grantee's record-

ing of this instrument. By acceptance of this deed, Grantee covenants and agrees that he shall not seek, obtain or permit a deficiency judgment against Grantor on the obligation secured by said security instrument, and Grantee's right to a deficiency judgment is hereby waived.

7. **Instrument as Absolute Conveyance.** This deed is intended as an absolute conveyance of the title to the described property and a conveyance of all statutory rights of redemption and equity of redemption which Grantor may have therein. This instrument is not intended as a mortgage, trust deed or security of any kind. Grantee shall be entitled to possession of the above described property upon Grantee's acceptance of this deed. If Grantor or any other person or persons claiming by, through or under Grantor remains in possession of the described property following Grantee's acceptance of this deed, Grantor or such other person(s) shall be deemed a tenant at sufferance holding possession without any agreement to occupy and Grantee may recover possession of the property pursuant to ORS 105.105 et seq.

8. **Miscellaneous.** This instrument shall benefit and be binding upon the parties, their heirs, successors and assigns. As used herein, the singular shall include the plural, and the plural the singular. The masculine shall include the feminine and neuter as the context requires. This instrument and the rights of the parties hereunder shall be governed by the laws of the State of Oregon.

9. **Separate Legal Representation.** Neither party is acting under any misapprehension as to the legal effect of this deed. Each party has had ample opportunity to consult independent legal counsel prior to execution and acceptance of this instrument.

10. **Actual Consideration.** The true and actual consideration for this conveyance is other than cash and consists of the release and waiver by Grantee of any right to recover a money judgment which survives the sale after a decree of foreclosure, or a deficiency award against Grantor; and additional consideration in Grantee granting Grantor an option and right of first refusal as hereinafter set forth.

11. **Grant of Option.** Grantee, as part of the consideration herein recited, the receipt and adequacy of which is hereby acknowledged, hereby grants to Brendan Capital Corporation the option to purchase the property described above for the price and upon the terms hereinafter stated:

11.1 **Duration of Option.** The option may be exercised at any time until 11:59 p.m. on the last day of the third year, three (3) years following the date hereof.

11.2 Exercise and Scope of Option. The option shall be exercised by written notice from Brendan Capital Corporation to Grantee at any time during the option period, which notice shall specify that Brendan Capital Corporation has elected to exercise its option. This option may not be exercised after Grantee delivers to Grantor notice of a written offer to sell the property ("owner's offer") as specified in paragraph 11.7 A. below unless and until reinstated (as contemplated herein in paragraph 11.7 C.) after the sale related to the right of first refusal fails to close. The option may be exercised only with respect to the entirety of the property, and nothing contained herein shall be construed as permitting Brendan Capital Corporation to purchase less than all of the property pursuant to this option. Upon exercise, Grantee shall be obligated to sell the property to Brendan Capital Corporation and Brendan Capital Corporation shall be obligated to purchase the property from Grantor for the price and in the manner hereinafter set forth.

11.3 Purchase Price and Payment. If Brendan Capital Corporation exercises the option, the purchase price of the property shall be determined in accordance with the formula set out in this paragraph, which shall be paid in cash within ninety (90) days from the date notice of exercise of the option is delivered to the Grantee. The purchase price shall be at least equal to the balance due on the contract as of the date this instrument is recorded plus any additional, reasonable out of pocket expenses the Grantee may have incurred in holding the property. Said reasonable expenses shall include but not be limited to real property taxes and attorney fees or other foreclosure costs incurred by Grantee as a result of the original sale to Grantor. No interest shall be due or accrue from Grantor to Grantee on the original debt after the date this deed is recorded. Grantor shall be liable to Grantee for interest on any additional, reasonable out of pocket expenses incurred after the date this deed is recorded, but only if the option is exercised by Grantor. If the option is not exercised, Grantor shall not be liable to Grantee for any money whatsoever after the recording of this deed. In the event that Grantor should be liable to Grantee for interest on reasonable and additional expenses incurred after the recording of this deed, such expenses shall bear interest at the legal rate fixed by law on judgments.

11.4 Closing of purchase. The purchase of the property shall be closed in escrow at an escrow mutually agreed upon by the parties, and the cost of escrow shall be paid by Grantor. Title insurance shall be furnished by the Grantor at Grantor's expense. Taxes shall be prorated as of the date of closing and conveyance shall be by statutory warranty deed free and clear of all encumbrances except for easements and covenants benefiting the property which are acknowledged and accepted by Brendan Capital Corporation.

11.5 Notices. Any notice given with respect to this Agreement, or the subject matter thereof, whether or not required to be given, shall be deemed given when actually delivered or when deposited in the United States registered or certified mails, return receipt requested, in an envelope addressed as set forth below or to such other address as either party may hereafter specify by notice to the other. Notices to the Grantee shall be addressed as follows:

Dan M. and Shirley C. McAuliffe
c/o William L. Sisemore
540 Main Street
Klamath Falls, OR 97601

Notice to the Grantor shall be addressed as follows:

Brendan Capital Corporation
17356 Hill Road
Klamath Falls, OR 97603

11.6 Attorney Fees. If any suit or action is commenced upon or arising out of this Agreement or the subject matter thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees to be fixed by the trial and appellate courts respectively.

11.7 Right of First Refusal. In consideration of the covenants and terms of this Agreement, Grantee hereby grants to Brendan Capital Corporation a "right of first refusal" should Grantee receive a bona fide offer to purchase the property from any other buyer while the option period is still in effect upon the following terms and conditions:

A. Restrictions on Transfer. The Grantee shall not, at any time during the period of Grantor's option specified in paragraph 11.1 above, sell, contract to sell, transfer, exchange, grant an option to sell or lease, or otherwise dispose of the property, or any portion thereof or interest therein, to anyone other than Brendan Capital Corporation, unless Grantee shall have first communicated to Brendan Capital Corporation, by written notice, certified mail, return receipt requested, a written offer to sell the property to Brendan Capital Corporation, which offer (hereinafter referred to as the "owner's offer") shall specify, in commercially reasonable detail, the price, terms and conditions upon which Grantee is willing to sell the property. The terms of the owner's offer shall be the same as those contained in the offer of any other buyer who has made a bona fide offer to purchase acceptable to Grantee. The owner's offer procedure may not be used to invalidate Grantors' option. Unless the other buyer's offer is legitimate and a sale is consummated to that buyer within the time limits set out herein according to the terms of the owner's offer conveyed to Grantor, Grantor's option

shall remain in full force and effect for the duration of its term.

B. Acceptance of Owner's Offer. Brendan Capital Corporation shall have a period of sixty (60) days, following the giving of the Grantee's offer notice, within which to accept the owner's offer by giving Grantee written notice of acceptance. If the Grantee's offer is accepted, the parties shall be obligated to close the sale in accordance with the terms of the Grantee's offer. Closing shall occur within ninety (90) days following acceptance or within such other longer closing period as may be specified in the Grantee's offer.

C. Sale to Third Party. If Brendan Capital Corporation does not accept the Grantee's offer, the Grantee may then sell the property to any other party, provided that such sale must be consummated: (a) within ninety (90) days following the earlier of the expiration of the acceptance period for the Grantee's offer or the date of any written rejection of the Grantee's offer by Brendan Capital Corporation and (b) for and upon the same price, terms and conditions as those specified in Grantee's owner's offer (or for a greater price and upon terms and conditions more favorable to owner). If such a sale to another party is consummated, Brendan Capital Corporation's rights hereunder shall be automatically and forever extinguished. If, however, such a sale to another party is not consummated within the 90-day period, Brendan Capital Corporation's rights hereunder shall remain in full force and effect. Provided further, that the rights of Brendan Capital Corporation pursuant to the option agreement shall not be extinguished until the option period has passed unless the property is sold by Grantee after Grantor's refusal to make a timely purchase pursuant to the term of Grantor's right of first refusal.

11.8 Successors and Assigns. The option and right of first refusal contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

12. Termination of Rights. Notwithstanding any provision herein to the contrary, all rights of Grantor under this agreement, including but not limited to Grantor's option and right of first refusal, regarding the real property as described on Exhibit "A", shall automatically terminate unless Grantor has recorded in the deed records of Klamath County, prior to 11:59 p.m. on the last day of the third year, three years following the date hereof, notice of Grantor's exercise of its option, or notice of Grantor's exercise of its right of first refusal.

13. Balance Due. The balance due on the contract described in paragraph 1 hereof, for purposes of the option as set forth in

paragraph 11 hereof, is the sum of \$ 112,547.71

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

IN WITNESS WHEREOF the parties have executed this instrument effective on the 14 day of May, 1991.

GRANTOR:

BRENDAN CAPITAL CORPORATION

By:

John Dey, Secretary

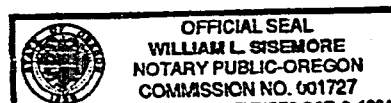
GRANTEE:

Dan M. McAuliffe
Dan M. McAuliffe

Shirley C. McAuliffe
Shirley C. McAuliffe

STATE OF OREGON; County of Klamath: ss.

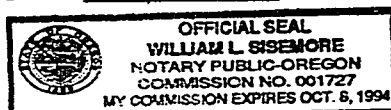
The foregoing instrument was acknowledged before me this 14 day of May, 1991, by John Dey who is the Secretary of BRENDAN CAPITAL CORPORATION, an Oregon corporation, on behalf of said corporation.



William L. Sisemore
Notary Public for Oregon
My Commission Expires: Oct 8, 1994

STATE OF OREGON; County of Klamath: ss.

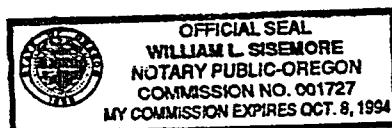
The foregoing instrument was acknowledged before me this 10th day of May, 1991, by Dan M. McAuliffe.



William L. Sisemore
Notary Public for Oregon
My Commission Expires: Oct 8, 1994

STATE OF OREGON; County of Klamath: ss.

The foregoing instrument was acknowledged before me this 10th day of May, 1991, by Shirley C. McAuliffe.



William L. Sisemore
Notary Public for Oregon
My Commission Expires: Oct 8, 1994

THE FOREGOING INSTRUMENT IS HEREBY ACCEPTED upon the terms and conditions set forth herein, with such acceptance to be effective upon the recording of this instrument.

DATED this 10 day of May, 1991.

Dan M. McAuliffe Shirley C. McAuliffe
Grantee Grantee

After recording return to: Brendan Capital Corporation,
17356 Hill Road, Klamath Falls, Oregon 97603.

Send all tax statements to: Dan M. and Shirley C. McAuliffe,
~~5140 Lombardy Lane, Klamath Falls, OR 97603~~
5140 Lombardy Lane, Klamath Falls, OR 97603

Name and address of person or entity holding lien or other interest created by this document: Brendan Capital Corporation,
17356 Hill Road, Klamath Falls, OR 97603

Tax account number of property: 3909-3500-1400

Exhibit "A"

All of Tract 18 of 400 Subdivision, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXCEPT any portion thereof in ditches and canals;

EXCEPT ALSO any portion thereof included in the railroad right of way;

EXCEPT ALSO any portion included in the road along the North line of said Tract 18.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Wm. L. Sisemore the 17th day
of May A.D., 19 91 at 4:37 o'clock P.M., and duly recorded in Vol. M91,
of Deeds on Page 9419.

FEE \$63.00

Evelyn Biehn . County Clerk

By Pauline M. Mulendore