

ESTOPPEL DEED AND OPTION AGREEMENT

BRENDAN CAPITAL CORPORATION, an Oregon corporation, Grantor, hereby conveys to Stephen P. Kendall, 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 April 27, 1989, for the sale and purchase of the above described property. A Memorandum of that contract was recorded at Volume No. M89, pages 7591 and 7592 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 recording 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:

Stephen B. Kendall
c/o Cameron F. Wogan
439 Pine
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 Grantors 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 \$11,322.24 to 5/10/91 plus 2.847/day until recorded.

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 14th day of May, 1991.

GRANTOR:

BRENDAN CAPITAL CORPORATION

By: John Dey

John Dey, Secretary

GRANTEE:

Stephen B. Kendall
Stephen B. Kendall

STATE OF OREGON; County of Klamath: ss.

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

Joni A. Utley
Notary Public for Oregon
My Commission Expires: 1-20-92

STATE OF OREGON; County of Klamath: ss.

The foregoing instrument was acknowledged before me this 14th day of May, 1991, by Stephen B. Kendall.

Joni A. Utley
Notary Public for Oregon
My Commission Expires: 1-20-92

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 14th day of May, 1991.

Stephen B. Kendall
Grantee

10607

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

Send all tax statements to: Stephen B. Kendall,

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:

10608

Exhibit "A"

A parcel of land situated in the most Northeasterly corner of that property described in Deed Volume M-66 on page 3136, all of which is in Lot 2 of Section 26, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the East line of Lot 2, 660 feet North of the Southeast corner of said Lot 2, thence West, 520.00 feet, along the North line of said parcel; thence South, 210.00 feet, parallel to the East line of said Lot 2; thence East 520.00 feet, parallel to the North line of said parcel, to the East line of Lot 2, thence North, 210.00 feet, along the East line of Lot 2 to the place of beginning.

KNOW ALL MEN BY THESE PRESENTS, That I, Antonio Mazzier

10609

have made, constituted and appointed, and by these presents do hereby make, constitute and appoint
Amelia Mazzier

my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to demand, sue for, recover, collect and receive all such sums of money, debts, rents, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me, to have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, and to compromise, settle and adjust and to execute and deliver acquittances or other sufficient discharges for any of the same; to bargain, contract for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession thereof and all deeds and other assurances in the law therefor and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, including my right of homestead in any of the same for such price, upon such terms and conditions and with such covenants as my said attorney shall think fit; to sell, transfer and deliver all or any shares of stock owned by me in any corporation for any price and receive payment therefor and to vote any such stock as my proxy; to bargain for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action, and to make, do and transact all and every kind of business of whatsoever nature or kind; for me and in my name and as hypothecations, bills of lading, bills, bonds, notes, evidences of debt, receipts, releases and satisfactions of mortgages, pledges, and other debts payable to me and other instruments in writing of whatever kind and nature which my said attorney in his discretion shall deem to be for my best interests; to have access to any safety deposit box which has been rented in my name, or in the name of myself and any other person or persons; to sell, discount, endorse, deliver and/or deposit all checks, drafts, notes and negotiable instruments payable to my order, to withdraw any moneys deposited in my name with any bank and generally to do any business with any bank or banker on my behalf; also

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or my said attorney's substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In construing this instrument and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on

Antonio Mazzier

Antonio Mazzier

STATE OF OREGON, County of Klamath

Personally appeared the within named

Antonio Mazzier May 2, 1991

and acknowledged the foregoing instrument to be

voluntary act and deed.

Before me

Notary Public for Oregon.

My Commission expires

3-3-90

(SEAL)

Power of Attorney

Antonio Mazzier

To

Amelia Mazzier

(DON'T USE THIS
SPACE; RESERVED
FOR RECORDING
LABEL IN COUNTIES
WHERE USED.)

AFTER RECORDING RETURN TO

Cameron F. Wogan
439 Pine Street
Klamath Falls, OR 97601

STATE OF OREGON

County of ss.

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____, on page _____, or as fee/file/instrument/microfilm/reception No. _____, Record of _____ of said County.

Witness my hand and seal of County affixed.

NAME

TITLE

By _____ Deputy

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Cameron F. Wogan the 5th day of June A.D., 19 91 at 4:28 o'clock P M., and duly recorded in Vol. M91 of Deeds on Page 10601

FEE \$68.00

Evelyn Biehn County Clerk

By Pauline Mueller