

OPTION, EASEMENT AND RIGHT OF  
FIRST REFUSAL

January 30, 1992

FROM: Max M. Benedict and  
Georgia Benedict  
19619 Webber Road  
Klamath Falls, OR 97603

GRANTORS

TO: Joseph Randall Jertberg  
Laura Jean Marie Jertberg  
472-715 Johnson Road  
Susanville, CA 96130

GRANTEES

## RECITALS:

Grantors are the owners of certain real property in Klamath County, Oregon. Grantees desire to:

- (a) Obtain an Option to purchase a portion of Grantors' property;
- (b) Obtain an easement across a portion of Grantors' land to serve other land owned by Grantees; and
- (c) To obtain a First Right of Refusal to purchase other land owned by Grantors.

Grantors are willing to grant to Grantees the interest described above and the parties have heretofore entered into an Earnest Money Receipt dated December 14, 1991, which outlines the Agreement between the parties.

## A. GRANT

Grantors, in consideration of the payment to them of \$1,600 by Grantees, receipt of which is hereby acknowledged, do hereby grant and convey unto Grantees the following property rights:

1. **Grant of Option:** Grantors, for the consideration stated above, grant and convey to Grantees the sole and exclusive option to purchase the following described property, to-wit:

W1/2 NE1/4 SW1/4, Section 32, Twp. 39 S., Range 11 1/2  
EWM;

on the terms and conditions set forth in Section B, below.

2. **Grant of Right of First Refusal:** Grantors grant unto Grantees, for the consideration stated above, a preferential

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right under the circumstances set forth in Section C, below, to acquire the following described property, to-wit:

NE 1/4 ~~338~~ 340  
E1/2 NE1/2 SW1/4 and the SE1/4 SW1/4 of Section 32,  
Twp. 39 S., Range 11 1/2 EWM.

3. **Easement:** Grantors, for the consideration stated above, and on the terms and conditions set forth in Section D below, grant and convey unto Grantees a permanent easement 20 feet in width from the southerly point of the existing roadway easement across the northerly portion of the NE1/4 SW1/4 of Section 32, Twp. 39 S., Range 11 1/2 EWM to the property currently owned by Grantees in the NW1/4 SW1/4 of said Section, as more particularly shown on the map attached hereto as Exhibit A.

B. **TERMS OF GRANT OF OPTION:** The Option of Grantees to purchase the real property described in Section A.1., above, is granted subject to the following terms and conditions:

1. **Duration of Option:** This Option may be exercised at any time until 11:59 p.m. on the 30th day following:

(a) the receipt by Grantees of written notice from Grantors, or the survivor of them, that Grantors are prepared to sell said real property to Grantees; or

(b) the receipt by Grantees of notice from the personal representative, executor, trustee or claiming successor of Grantors' estate that Grantors are deceased. Said Notice shall be given by said personal representative (etc.) within 90 days after the date of death of the last surviving Grantor.

2. **Failure to Exercise Option:** If Grantees fail, for any reason, to exercise this Option in the manner set forth below, Grantees shall have no further claim against or interest in the property or against or in any of the money paid for the option, and all of such money shall remain the property of Grantors who shall have no further obligation to Grantees. Further, in the event of such failure to exercise, Grantees will cooperate in providing Grantors with any instruments which Grantors may reasonably deem necessary or advisable to be obtained from Grantees for the purpose of removing from the public record any cloud on Grantors' title to the property which is attributable in any manner to the grant or existence of this option.

3. **Exercise and Scope of Option:**

(a) This Option shall be exercised by Grantees' delivery to Aspen Title & Escrow, Inc., 525 Main Street, Klamath Falls, Oregon 97601, or another duly licensed title insurance and escrow agent in Klamath

County, Oregon of Grantees' promissory note and Trust Deed described below. Said Note and Trust Deed must be delivered to the escrow agent during the 30 day period described in Section B.1., above.

(b) This option may be exercised only with respect to the entirety of the property, and nothing contained herein shall be construed as permitting Grantees to purchase less than all of the property pursuant to this Option.

(c) Upon exercise of this Option, Grantees shall be obligated to purchase the property from Grantors, and Grantors shall be obligated to sell the property to Grantees, for the price and in the manner hereinafter set forth.

4. Purchase Price; Payment:

(a) If Grantees exercise this Option, the purchase price for the property shall be the sum of \$16,000.

(b) The purchase price for the property shall be payable as follows: Grantees shall be given credit for the \$1,600 paid by Grantees upon execution hereof.

(c) The balance of the purchase price of \$14,400 shall be payable in monthly installments of not less than \$306.00 per month, including simple interest on the unpaid principal balance of 10% per annum. Interest shall begin to accrue on the date the sale is closed. The first payment shall be due and payable on or before the 30th day after closing and subsequent payments shall be due and payable on the 30th day of each month thereafter until the principal balance and interest are paid in full. Grantees shall not prepay any portion of the principal and interest during the first 36 months after the sale is closed. Payment of Grantees' note shall be secured by a Trust Deed (Stevens-Ness standard form) which shall be a first lien on the subject property.

5. Closing.

(a) The purchase of the property shall be closed in escrow at Aspen Title & Escrow Company, and the costs of escrow shall be paid by Grantees.

(b) Closing shall occur as soon as possible following exercise of this option by Grantees and, in any event, not later than the 35th day following the date of exercise of this option.

(c) At closing, Grantors shall deliver to Grantees a duly executed and acknowledged statutory warranty deed conveying the property to Grantees free and clear of all liens and encumbrances.

(d) Real property taxes, charges and assessments shall be prorated between the parties as of the date of closing.

(e) The transaction shall be closed when Aspen Title Insurance Company, or any other mutually agreeable title insurance company is in a position to insure title with a standard Owners' policy of title insurance insuring title in Grantees free and clear of all liens and encumbrances. It shall be Grantees' responsibility to arrange for the issuance of such title insurance, which shall be at Grantees' expense.

(f) Promptly following exercise of this option, Grantees shall obtain a preliminary title report on the property and shall notify Grantors of any exceptions listed therein which, in the opinion of Grantees, should be removed in order to permit issuance of title insurance policies in the forms required above.

**C. TERMS OF GRANT OF RIGHT OF FIRST REFUSAL:**

The right of first refusal granted to Grantees herein above is granted subject to the following terms and conditions:

1. **Restriction on Transfer:** Grantors shall not agree to sell, contract to sell, transfer, exchange, grant an option to sell or lease, or otherwise dispose of the property described in Section A.2., above, to anyone other than Grantees, unless Grantors shall first notify Grantees in writing that they have a valid offer from a third person to purchase said property and allow Grantees 48 hours (from Grantees' receipt of said notice) to purchase the property on the same terms and conditions on which Grantors are willing to sell or lease to said third party. Said Notice shall include a true copy of the terms and conditions on which Grantors are prepared to sell or lease.

2. **Acceptance of Offer.** Grantees shall have 48 hours after their receipt of Grantors' Notice to agree to purchase or lease the property on the same terms and conditions as provided in Grantors' Notice. If Grantees exercise their right of first refusal, the sale or lease of the property shall be closed in the same manner and time as provided in the offer contained in Grantors' notice. Grantees shall give Notice to Grantors of the exercise of their right by personal deliver or deposit in the United States mail, by certified mail - return receipt requested postage prepaid, and addressed to Grantors at the address

provided in Grantors' Notice. If notice is given by Grantee by mail, it shall be deemed to have been given by Grantees upon deposit by Grantees in the U.S. mail.

3. **Sale to Third Party.** If Grantees fail to exercise their right of first refusal as set forth above, Grantors may proceed to sell or lease the property to the third party as provided in Grantors' notice. If the sale to the third party is completed, Grantees right of refusal provided by this Agreement shall be automatically extinguished and be of no further force or effect. If, however, the sale to the third party is not so consummated, Grantees' rights hereunder shall remain in full force and effect.

#### D. TERMS OF EASEMENT.

The Easement granted to Grantees hereinabove is granted subject to the following terms and conditions:

1. **Duration:** This easement granted hereby shall continue for so long as Grantees' option to purchase the real property described in Section A.1. is in effect. If Grantees fail to exercise said Option, then this easement shall be automatically be extinguished.

2. **Other Easements:** The Grant of this easement shall not affect in any manner the validity of any other existing easements held by the parties to this Grant or any third parties.

3. **Construction of Roadway.** This easement is for Grantees' benefit. Grantors shall have no liability or responsibility whatsoever for the construction or maintenance of the roadway.

4. **Use:** Grantees may use this easement for ingress and egress to their real property and for such other uses as do not unreasonably interfere with Grantors' use of Grantors' other real property. Neither party shall block the easement other than under emergency conditions.

#### E. GENERAL TERMS:

The Option, Right of Refusal and Easement granted hereinabove are subject to the following general terms:

1. **Assignment; Successors:** All of the terms, provisions and conditions hereof shall be binding upon an inure to the benefit of the heirs, successors and assigns of the respective parties.

2. **Notices:** Any notice given with respect hereto, 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 above set forth or to such other address as either party may hereafter specify by notice to the other.

3. **Default:** If either party shall fail or refuse to carry out any provision hereof, the other party shall be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance, if such other party has fully performed all of its obligations hereunder. Time is of the essence hereof.

4. **Attorney Fees.** In any suit or action brought upon or arising out of this agreement, and upon any appeal thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees to be fixed by the trial and appellate courts respectively.

5. **Grantors' Warranty.** Grantors warrant that they have the right to grant this Option, Right of Refusal and Easement, and will be able to deliver the warranty deed specified above.

WITNESS the hands of the parties:

Joseph Randall Jertherg  
Joseph Randall Jertherg

Max M. Benedict  
Max M. Benedict

Laura Jean Murie Jertherg  
Laura Jean Murie Jertherg

Georgia Benedict  
Georgia Benedict

STATE OF OREGON     )  
                                  ) SS  
County of Klamath )

Personally appeared the above named Max M. Benedict and Georgia Benedict and acknowledged the foregoing instrument to be their voluntary act and deed.



Vicki Lundgren  
Notary Public for Oregon  
My commission expires: 10-8-93

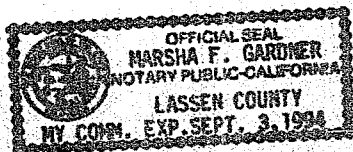
STATE OF California )  
                                  ) SS  
County of Lassen )



Personally appeared the above named Joseph Randall Jertberg and Laura Jean Murie Jertberg and acknowledged the foregoing instrument to be their voluntary act and deed.

Before Me:

2/26/92



Marsha F. Gardner  
Notary Public for Lassen County  
My commission expires: 9.3.94

After recording return to: William M. Ganong, Attorney at Law,  
635 Main Street, Klamath Falls, OR 97601.

EXHIBIT A to Jertbergs Offer  
dated December 14, 1991  
To Option Parcel #1, Acquire Right  
of First Refusal of Parcel #2, and  
Acquire Easement#3 all as shown on  
this Exhibit A.

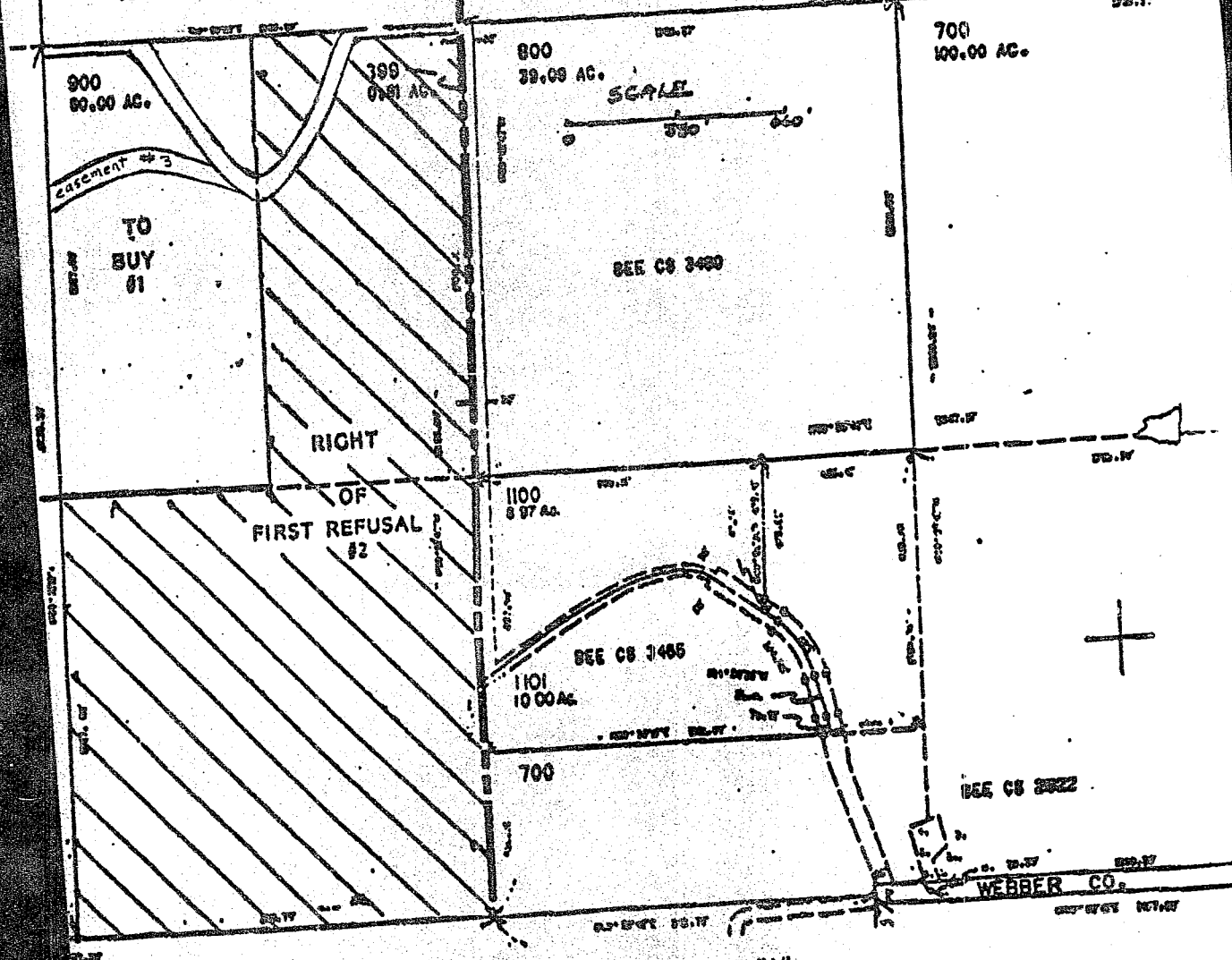
Parcels shown on this Exhibit A are  
illustrative only and not based on  
survey.

OFFERORS: Joseph Randall Jertberg Date 12/14/91

James Dean Marie Jertberg Date 12/14/91

OWNERS: Max M. Benedict Date 1/17/92

Georgia Benedict Date 1/17/92



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Wm. M. Ganong the 3rd day  
of March A.D., 19 92 at 12:30 o'clock P. M., and duly recorded in Vol. M92  
of Deeds on Page 4339

Evelyn Biehn, County Clerk

By Pauline M. Henderson

FEE \$45.00