

OPTION TO PURCHASE AND PURCHASE AGREEMENT

THIS AGREEMENT is made as of Nov 13, 2001 (to be dated as of the date of Seller's signature) by and between Krista A. Sutphin ("Seller"), and C. A. Galpin ("Buyer").

WHEREAS, Seller is the owner of certain real property situated in or near the City of Klamath Falls, County of Klamath, State of Oregon, consisting of approximately 2.32 acres and which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"); the Property shall include: i) all abutting rights in existing municipal improvements in any street adjacent to the Property; ii) all right, title and interest of Seller to the land underlying any street, road, avenue, or alley bordering on the Property, to the center line thereof, if any; iii) all right, title and interest of Seller in any award made or hereafter made for such underlying interest; iv) any unpaid award for damage to the Property or condemnation thereof; and v) any right to an award by reason of a change in grade or location of any adjoining street or alleyway by a public authority; and

WHEREAS, Buyer has requested the exclusive right and option to purchase the Property;

NOW, THEREFORE, for good and valuable consideration hereinafter specified, the sufficiency of which is hereby acknowledged, Seller hereby grants to Buyer the exclusive right and option for a term of one hundred eighty (180) days from the date hereof to purchase the Property for the sum and upon the terms and conditions as follows:

I. PRICE AND TERMS OF PAYMENT

The purchase price for the property shall be Three Hundred Five Thousand-Dollars (\$305,000) computed at \$3.018 per square foot based on 2.32 useable acres" (the "Purchase Price"), which shall be paid as follows:

A. Five Thousand Dollars (\$5,000) paid by Buyer, as "Down Payment", in the form of a Promissory Note due within 10 days following the full execution of this Agreement. The Down Payment shall be paid directly to Seller.

B. The remaining Purchase Price shall be paid by Buyer to Seller upon consummation of the transaction ("Closing").

II. ESCROW

On the day prior to Closing, as defined below, Buyer and

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Upon recording return to: Sam Gressett, Commercial Realty Advisors
744 Cardley Avenue, Suite 100, Medford, OR 97504-6124

Seller shall deliver signed instructions to the Escrow which shall provide for closing as provided herein. The "Close of Escrow" or the "Closing" shall be the date Seller's warranty deed is recorded. Concurrently with Seller's execution of the escrow instructions, Seller shall execute a warranty deed to convey title of the Property to Buyer, and Escrow shall hold the warranty deed until the Close of Escrow. In the event of any inconsistency between the escrow instructions and this Agreement, this Agreement shall control, notwithstanding the fact that either party may have intentionally or inadvertently executed such inconsistent instructions.

III. BROKERAGE FEES

Seller is aware that Sam Gressett may be assigned a portion of Buyer's rights hereunder, or may become a member of a limited liability company (LLC) which will acquire the rights of Buyer hereunder. Seller is aware the Sam Gressett is a licensed real estate sales person in the State of Oregon.

IV. SURVEY

Buyer shall, at its own expense have a certified survey of the Property. Said survey shall be prepared by a registered land surveyor. If the survey reveals that the actual area is more or less than the approximately of 2.32 acres shown above, the Purchase Price to be paid hereunder shall remain the same.

V. RIGHT OF ENTRY

Buyer or its authorized representative(s) shall have the right, at any time after the execution by both parties of this Agreement and at Buyer's sole cost and expense, to enter on the Property for any lawful purpose, including but not limited to making such surveys and site analyses, including soil tests.

VI. ZONING

This Agreement and, if Buyer exercises the option to purchase, Buyer's obligation to purchase the Property is conditioned upon Buyer obtaining all governmental approvals necessary for Buyer's development of the Property, on terms and conditions acceptable to Buyer. Application for such approvals shall be made in the name of either Seller or Buyer as may be required under the governing land use ordinances. Buyer shall pursue such approvals with due diligence and keep Seller informed of Buyer's progress with respect to the applications. This condition is for the benefit of Buyer and may be waived by Buyer, at its discretion.

Seller shall cooperate with all efforts and actions undertaken by Buyer which Buyer determines to be necessary to secure governmental approvals, including, without limitation, the execution of applications and authorizations for filing with the

appropriate governmental authorities, all without cost to Seller.

If the governmental approval is not obtained on or before the expiration of the term of the option, this Agreement, at Buyer's option, shall terminate and be of no further force or effect, and Seller shall ~~return to Buyer the~~ Down Payment. *retain the* (KAS)

VII. FEASIBILITY STUDY: EXERCISE OF OPTION AND EXTENSION

A. Feasibility Study. For a period of one hundred eighty (180) days from the date of the Agreement, Buyer shall have the right to enter onto the premises at reasonable times, and for reasonable purposes consistent with this Agreement. Buyer shall have the right, but shall not be obligated, to conduct wetlands studies, soil borings and soil analysis, to study water and sewer location availability and to conduct any other engineering, or environmental studies, title search and surveys which at Buyer's sole discretion Buyer may determine are necessary. Buyer shall also have the right during said 180-day period to conduct marketing, or other analysis, in order to determine the feasibility of this project. In the event that Buyer, in Buyer's sole and absolute discretion, determines that the premises are not appropriate for development in accordance with its intentions, Buyer may, upon written notice to the Seller within said 180-day period, void this Agreement and have no further obligation hereunder. In the event that Buyer so notifies Seller, ~~all deposits made in accordance with this Agreement shall be returned to Buyer~~, this Agreement shall become null and void and the parties shall have no further obligation to each other. If Buyer shall fail to give Seller written notice of Buyer's intention to cancel this Agreement, this provision shall be deemed satisfied or waived. *Buyer shall be solely responsible for all financial liabilities, if any, created by any and all studies.* (KAS) A

B. Exercise of Option Extension. Prior to the expiration of the term of the option, this option may be exercised by Buyer upon notice thereof to Seller at 3710 Schooler Court, Klamath Falls, Oregon 97603. Said notice shall be postmarked on or before 12:00 midnight of the 179th day following the date of this Agreement. Buyer shall have the right to extend the period of this option for an additional sixty (60) days by giving Seller written notice of extension in the aforesaid manner and within the aforesaid time, and paying to Seller at the time of the notice additional down payment in the amount of Three-Thousand Dollars (\$3,000). The additional down payment shall become part of the Down Payment, *which shall be non-refundable.* (KAS)

VIII. TITLE INSURANCE; TIME OF CLOSING A

Within thirty (30) days of the date of this Agreement, Buyer shall deliver a commitment for title insurance (the "Commitment") issued or underwritten by the title insurance company underwriting title insurance policies for the Escrow. Within thirty (30) days of receipt of the Commitment, Buyer shall give notice to Seller of any defects in or good faith objections to

the title as so evidenced ("Title Objections"), and Seller shall, within thirty (30) days of receipt of said notice notify Buyer whether Seller will remove the Title Objections on or before Closing. Seller shall be obligated to remove all liens and encumbrances securing the payment of money, except for the lien of real property taxes for the current year in which the Closing occurs, which shall be pro-rated between Seller and Buyer as of Closing; such liens and encumbrances are deemed Title Objections, and no notice is necessary in order for Seller to be obligated to remove such liens and encumbrances. The existing lease between Seller, as lessor, and Trendwest Development Company, now known as Jeld-Wen, Inc., as lessee, ("Lease") shall not be a Title Objection. Upon closing, Seller shall assign to Buyer all of Seller's rights pursuant to the Lease, and rents and deposits thereunder shall be pro-rated. If seller fails to notify Buyer that Seller will remove such Title Objections, the Down Payment shall be returned to Buyer, this Agreement shall become null and void and the parties shall have no further obligation to each other, unless within thirty (30) days following Seller's notification, Buyer notifies Seller that it removes its objections to the Title Objections which Seller has refused to remove.

Seller's obligations under this Agreement and Seller's obligation to sell the Property to Buyer, if the option to purchase is exercised, are subject to the waiver by Jeld-Wen, Inc., of its right to exercise its right of first refusal to purchase the Property, as provided in the Lease. If Jeld-Wen, Inc., exercises its right of first refusal, this Agreement shall terminate and become null and void, the Down Payment shall be refunded to Buyer, and the parties shall have no further obligation to each other. If Jeld-Wen, Inc. waives its right of first refusal, or if the right expires, this condition on Seller's obligations shall be deemed satisfied.

Prior to Closing, Buyer will not act in any manner which interferes with the rights of Jeld-Wen, Inc., under the Lease, and Buyer will take no action which causes Seller to breach Seller's obligations to Jeld-Wen, Inc., under the Lease. From and after Closing, Buyer shall perform all of Seller's obligations under the Lease.

Closing shall occur within thirty (30) days following Buyer's exercise of the option to purchase, or, in the event there remain Title Objections which Seller is obligated to remove on the date scheduled for Closing, such Closing shall occur on or before the expiration of 10 days following the date on which such Title Objections are removed. Title insurance shall be issued, at Buyer's expense, as of the date of Closing, and it shall evidence good and merchantable title to the Property in an amount equal to the Purchase Price.

IX. COVENANTS, WARRANTIES AND REPRESENTATIONS OF SELLER

Seller warrants and represents that at the time of closing:

- A. Seller shall have good and merchantable title to the Property, subject only to exceptions which are not Title Objections.
- B. Except for the Lease between Seller and Jeld-Wen, Inc., and a possible sublease ~~between~~ ^{by (KOS) Y} Jeld-Wen, Inc., there are no leases or tenancies affecting the Property, and Seller has no knowledge of any reservations, restrictions or conditions which would prohibit or restrict the erection of necessary structures or facilities for, or the operation of a retail center on the Property.
- C. Within fifteen (15) days following the date hereof, Seller shall provide to Buyer copies of all written leases, tenancies, and rental agreements in Seller's possession, or under Seller's control, affecting the Property in any manner whatsoever, and Seller shall advise Buyer fully as to all which are not written;
- D. To Seller's knowledge, with the possible exception of a building commonly known as the Burger Shoppe building, there are no structures on adjacent properties which encroach on the Property.
- E. To Seller's knowledge, with the possible exception of a building commonly known as the Burger Shoppe building, there are no structures on the Property which encroach on adjacent properties.
- F. To Seller's knowledge, the Property is not contaminated with, nor threatened with contamination from outside sources by any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority, or which is known to pose a hazard to health and safety and that the Property has never been used for a landfill, dump site, or storage of hazardous substances.

X. RISK OF LOSS

Pending Closing, the risk of loss or damage to the Property by fire or other casualty or its taking or damage by condemnation shall be on Seller. If any loss or damage occurs during such period then Buyer shall have the option of: (i) canceling and rescinding this Agreement and receiving a refund of all Down Payment, or (ii) in the event of condemnation or loss or damage to the Property with no third party being obligated to fully repair and remedy the loss or damage, accepting the Property with

and abatement of the Purchase Price in an amount equal to the condemnation award or the cost of replacement and repair, as the case may be; or (iii) in the event of loss or damage to the Property where a third party is obligated to fully repair and remedy the loss or damage, accept the Property with an assignment by Seller of all rights against such third party. Notwithstanding the foregoing, any loss or damage to the building commonly known as the Burger Shoppe shall not entitle Buyer to any of the benefits of this Paragraph X.

XI. TAXES AND ASSESSMENTS

Real property taxes, water rates and sewer charges and rents, if any, shall be prorated and adjusted on the basis of thirty (30) days to each month, Seller to have the last day, to the date of Closing. Taxes for all prior years shall be paid by Seller. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with the proration to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time such actual taxes are determined. Assessments, either general or special, for improvements complete prior to the date of Closing, whether matured or unmatured, shall be paid in full by Seller. All other assessments shall be paid by Buyer.

XII. CLOSING COSTS

The following costs shall be paid by Seller:

- (A) Expenses of placing title in proper condition;

The following costs shall be paid by Buyer:

- (A) Recording fees;
- (B) The escrow fee;
- (C) Title insurance premium; and
- (D) Preparation of Warranty Deed.

XIII. REMEDIES FOR BREACH

A. Buyer's Remedies. If Seller fails or refuses to comply fully with the terms of this Agreement, Buyer may, at its option, (i) terminate this Agreement and recover the Down Payment and all costs and expenses incurred by Buyer in connection with this Agreement and the attempted purchase of the Property; or (ii) proceed with this Agreement by seeking specific performance thereof, and if Seller's breach causes damage to Buyer, the recovery of such damages or an abatement of the Purchase Price in the amount of such damages.

B. Seller's Remedies. If Buyer fails or refuses to

which condition is under
seller's control
60267

complete the purchase of the Property in accordance with the terms and conditions of this Agreement, except for failure of Seller's title or any other condition precedent herein provided, Seller shall have the right to retain the Down Payment paid by Buyer as earned compensation. Such right shall be the sole and exclusive remedy available to Seller.

C. Attorney's Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

XIV. NOTICES

Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses, or such future address as may be designated in writing, and to any successor or assignee of either party, at the address stated in the notice of succession or assignment.

<u>If to Buyer:</u> C. A. Galpin 990 N. Phoenix Rd., Suite 105 Medford, OR 97504	<u>If to Seller:</u> Krista A. Sutphin and 3710 Schooler Court Klamath Falls, OR 97603
<u>With a copy to:</u> Chuck Martinez c/o Commercial Realty Advisors 744 Cardley Ave., Suite 100 Medford, OR 97504	<u>With a copy to:</u> Richard Fairclo 280 Main St. Klamath Falls, OR 97601

XV. ASSIGNMENT AND SUCCESSION

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, administrators, executors, and assigns of the respective parties. All rights hereunder may be assigned without restriction, provided that notice of each assignment shall be given in writing to the other party.

XVI. TIME OF ESSENCE: ACCEPTANCE

Time is expressly declared to be of the essence of this Agreement. Seller shall have ten (10) days from date of receipt of this Agreement to accept and agree to the terms and conditions herein, provided that Buyer may, in writing, extend the time for acceptance.

XVII. MODIFICATION: ENTIRE AGREEMENT EXPRESSED

No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

This constitutes the entire agreement between the parties. Neither party shall be bound by any term, conditions, statements, or representations, oral or written, not herein contained. It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto.

XVIII. CONDITION OF PROPERTY

It is understood and agreed that the Buyer, or its representative, has made an inspection of the property prior to the execution of this Agreement, and based on that inspection and information which may have been provided by the Seller as to the condition of the property, has entered into this Agreement. Seller hereby warrants and guarantees that the property will remain in its present condition, as of the execution of this Agreement to and including the day that title to said property is transferred to Buyer, subject to the remaining terms and conditions of this Agreement and the Lease.

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 AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.390 IN ALL ZONES. 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 AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

SELLER:

+ Krista A. Sutphin
Krista A. Sutphin

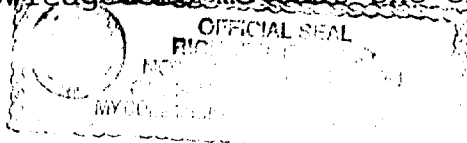
BUYER:

C.A. Galpin
C.A. Galpin

STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

Nov. 13, 2001

Before me, personally appeared KRISTA A. SUTPHIN, and acknowledged ~~to me~~ that she executed the within document.

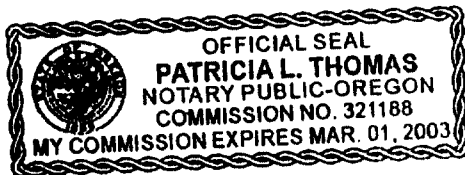


Notary Public for Oregon

STATE OF OREGON)
) ss.
COUNTY OF JACKSON)

October 30, 2001

Before me, personally appeared C.A. GALPIN, and acknowledged to me that he executed the within document.



Patricia L. Thomas
Notary Public for Oregon

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 2:

The following described real property situated in Klamath County, Oregon:

Beginning at a point 534.8 feet East of the Northwest corner of the NE1/4 SW1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; Thence South 500.4 feet to the North boundary of the State Highway; thence South 46 degrees 07' East along the Northerly boundary of said highway and 30 feet at right angles Northerly from its centerline, a distance of 287.2 feet, more or less, to the Southwesterly corner of that certain tract of land deeded to Myrtle M. McWithey by deed recorded on page 479 of Volume 137, Deed Records of Klamath County, Oregon; thence in a Northwesterly direction along the Westerly boundary of said tract of land 700 feet, more or less, to the quarter section line; thence West 146.0 feet more or less to point of beginning, in the NE1/4 SW1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

SAVING AND EXCEPTING THEREFROM that portion deeded to the State of Oregon, by and through its State Highway Commission, dated March 27, 1973, recorded April 4, 1973 in Volume M73, page 3948, Deed Records of Klamath County, Oregon.

State of Oregon, County of Klamath
Recorded 11/27/01 11:14 a. m.
In Vol. M01, Page 60261
Linda Smith, County Clerk
Fee \$ 66⁰⁰ # of Pgs 10