

2007-016572

Klamath County, Oregon



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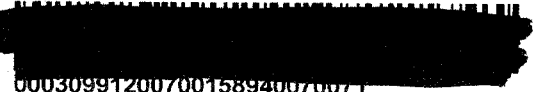
Fee: \$61.00

AFTER RECORDING, RETURN TO:

William M. Ganong  
Attorney at Law  
514 Walnut Avenue  
Klamath Falls OR 97601

2007-015894

Klamath County, Oregon



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Fee: \$51.00

**OPTION AGREEMENT  
AND  
AGREEMENT OF PURCHASE AND SALE**

DATE: September 7, 2007 ("Effective Date")

FROM: Norma B. Johnson, Trustee  
of the Norma B. Johnson Trust, uda 12-14-2004 ("Owner")  
125 N Eldorado Avenue  
Klamath Falls OR 97601

TO: Paul J. Newman, LLC, or assigns ("Optionee")  
18543 Devonshire #133  
Northridge CA 91324

RE-RECORDED TO INCLUDE EXHIBITS

**RECITALS**

Owner owns fee simple title to the real property described in Exhibit A attached hereto, together with all improvements situated on it. The real property and improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property and improvements, are collectively referred to herein as the "Property."

Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.

Owner has agreed to grant Optionee an exclusive option to purchase the Property, and the parties desire to evidence their agreement regarding the option.

The parties therefore agree as follows:

**AGREEMENT**

**Section 1. Grant of Option**

Owner, for and in consideration of the covenants, warranties, and agreements of Optionee set forth in this Agreement, grants to Optionee the sole and exclusive option to purchase the Property in the manner and for the price stated in this Agreement.

**Section 2. Option Terms**

**2.1 Term.** This Option shall commence on the date hereof and shall continue, unless terminated as provided in Section 5.2, below, until 120 days (or as extended as in accordance with Section 7.1, below) after Owner provides notice to Optionee that Optionee may exercise its Option to purchase as provided in Section 2.2, below.

**2.2 Notice of Right to Exercise Option.** Optionee shall have the right to purchase the Property at such time as NORMA B. JOHNSON has permanently vacated the Property for any reason, or upon Owner otherwise providing Notice to Optionee of its right to exercise the Option to purchase the Property. At such time as NORMA B. JOHNSON has permanently vacated the Property, or at such time as Owner determines prior to vacating the Property, Owner or its legal representative shall provide written notice to Optionee that the Optionee may exercise its Option to purchase the Property.

**2.3 Exercise of Option.** This option shall be exercised, if at all, by written notice (the "Exercise Notice") given by Optionee to Owner at any time within 120 days following the date that Owner provides via certified mail to Optionee the Notice of Right to Exercise the Option pursuant to section 2.2, above, which notice shall state that Optionee has elected to exercise this option. This option may be exercised only with respect to the entirety of the Property, and nothing contained herein shall be construed as permitting Optionee to purchase less than all of the Property pursuant to this option. Upon exercise of this option, Optionee shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

**2.4 Failure to Exercise Option.** If Optionee fails for any reason to exercise this option in the manner set forth herein, Optionee shall have no further claim against or interest in the Property. In the event of the failure to exercise the Option, Optionee shall provide Owner with any instruments that Owner reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this Option.

**Section 3. Consideration for Option.** In consideration for the grant of this Option by Owner, Optionee agrees and promises to:

**3.1 Performance of Terms.** Fully and timely perform each term and obligation of Optionee provided in this Agreement.

**3.2 Geothermal Hook Up.** Optionee is the owner of a geothermal well located on the real property described on Exhibit B attached hereto. Optionee agrees that on or before November 1, 2007, it shall connect Owner's personal residence located on the property to said geothermal well. Optionee shall pay all costs of installing such pumps, electrical service, pipelines, heat exchangers, and all other improvements reasonably required to complete the connection of Owner's heating system to said well. When complete, the system shall provide the quantity of water at such temperature as is required to maintain the temperature of Owner's personal residence at not less than 75° F during the coldest days of each year. If the temperature of the water decreases below that needed to maintain the residence at not less than 75°, both parties will split the cost of a small secondary supplemental heating system that will provide the required temperature within the residence.

Optionee shall pay all fees, costs, and expenses incurred in constructing said improvements, in maintaining said improvements, in delivering the geothermal fluid to Owner's residence, if appropriate, and returning the geothermal fluid to Optionee's well or other proper place of disposal.

The right of the Property to receive geothermal hot water from Optionee's well shall continue for a period of three years following the date that Owner provides the Notice of Right to Exercise Option provided in Section 2.2, above or until the Property is purchased under this Option Agreement, whichever occurs first.

**3.3 Option Money Payment.** Optionee shall pay the sum of \$5,000 to Owner upon the acceptable completion of the geothermal hook-up described in Paragraph 3.2 above.

**Section 4. Purchase Price**

**4.1 Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be \$170,000.

**4.2 Payment of Purchase Price.** The purchase price for the Property shall be payable as follows:

**4.2.1** Optionee shall be given credit for the Option Money actually paid by Optionee to

Owner pursuant to Section 3.3, above.

**4.2.2** The entire balance of the purchase price shall be paid in cash at closing.

## **Section 5. Remedies**

**5.1 Optionee.** If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of the Option Payment previously paid to Owner, or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner. Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

**5.2 Owner.** If Optionee breaches any term or provision of this Agreement, except Section 3.2, above, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain the Option Money Payment paid by Optionee. If Optionee breaches the terms of Section 3.2, Owner may terminate Optionee's right to purchase the Property and exercise any and all remedies at law and equity, excluding the right to sue for damages arising from Optionee's breach of said section.

**5.3 Other Remedies.** The limitations on remedies set forth in this section shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other for causing physical damage or injury to persons or property.

## **Section 6. Conditions Precedent to Closing**

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Conditions").

**6.1** On the Closing Date, the Title Company (defined below) shall be ready, willing, and able to issue, and shall issue to Optionee on recordation of the Owner's deed mentioned below, the title insurance policy required by Section 7.5.

**6.2** On or before the Closing Date, Owner shall have performed all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

## **Section 7. Closing**

**7.1 Time and Place.** Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Optionee, but in all events the Closing shall occur within 120 days after the date the Notice of Right to Exercise Option is given. However, if Closing cannot occur within 120 days due to no fault of Optionee, then the closing shall be extended up to an additional 120 days. If the fault for delayed closing lies with the Owner, then the Closing may be extended as long as necessary to accomplish the close. The escrow for the Closing shall be established at the office of AmeriTitle (the "Title Company"), at 300 Klamath Avenue, Klamath Falls, Oregon .

**7.2 Closing Obligations.** On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the reasonable instructions of Owner and Optionee.

**7.2.1** Owner shall deposit the following:

- (1) The Deed described in Section 8, duly executed and acknowledged;
- (2) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445;
- (3) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and
- (4) Such other documents and funds, including (without limitation) escrow instructions, as are required of Owner to close the sale in accordance with this Agreement.

**7.2.2** Optionee shall deposit the following:

- (1) The cash payment specified in Section 4.2.2 of this Agreement;
- (2) Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and
- (3) Such other documents and funds, including (without limitation) escrow instructions, as are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

**7.3 Costs.** Optionee and Owner each shall pay one-half of the escrow fee, the title insurance premium, and the recording fee for recording the Deed. Optionee shall pay all costs and fees related to any financing that Optionee may obtain to consummate the sale.

**7.4 Prorations.** All items of expense incurred by Owner with respect to the Property shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Optionee as of the Closing Date.

**7.5 Title Insurance Policy.** As soon as practicable after Closing, and in any event no later than 30 days after the Closing Date, the Title Company shall issue its standard form Owners's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Optionee, subject only to the standard printed exceptions, reservations, restrictions, easements, rights of way, and encumbrances of record as of the date of this Agreement and any encumbrance caused or permitted by Optionee.

#### **Section 8. Conveyance**

At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a Statutory Bargain and Sale Deed conveying the Property to Optionee, subject only to the Permitted Exceptions.

#### **Section 9. Covenants of Owner**

Owner acknowledges that the covenants of Owner contained in this Agreement, including the covenants contained in this Section 9 (the "Covenants"), are material inducements to Optionee to enter into this Agreement. The Covenants specifically delineated in this section are the following:

**9.1 Maintenance.** Before the Closing Date, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.

**9.2 Ownership.** During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it. Additionally, Owner shall not use the Property as collateral for any loans nor in any way encumber the property. Property shall be maintained "free and clear".

#### **Section 10 Waiver**

Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

#### **Section 11. Successors and Assigns**

Subject to the limitations on Owner's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Owner and Optionee. Optionee may assign its interest in this Option Agreement and the Property to any person or entity, without the prior written consent of Owner, provided the assignee accepts in full and without reservation all the provisions of this Agreement. Optionee shall promptly give Owner Notice of any such

assignment.

**Section 12. Notices**

All notices required or permitted to be given shall be in writing and shall be deemed given and received on personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: Norma B. Johnson Trust  
125 N Eldorado Avenue  
Klamath Falls OR 97601

To Optionee: Paul J. Newman, LLC.  
18532 Devonshire #133  
Northridge CA 91324  
and  
William & Robin Foulon  
1711 Main Street  
Klamath Falls, OR

The foregoing addresses may be changed by written notice, given in the same manner.

**Section 13. Attorney Fees**

If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

**Section 14. Real Estate Commission**

Each party agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other party against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

**Section 15. Risk of Loss**

Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Owner shall give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 days after receipt by Optionee of written notice from Owner of such casualty or condemnation, and Owner will return to Optionee the Option Money Payment previously paid. If Optionee does not elect to terminate this Agreement, then this Agreement shall continue in force and, if Optionee exercises the Option and the Property is conveyed to Optionee, then all interest of Owner in and to any insurance proceeds or condemnation awards that have not been applied by Owner to repair the damage and may be payable to Owner on account of such casualty or condemnation shall be assigned to Optionee at Closing.

**Section 16. Integration, Modification, or Amendments**

This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and Optionee, in writing.

**Section 17. Representation**

Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 13, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.

**Section 18. Counterparts; Pronouns**

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Optionee. With respect to any pronouns used, each gender used shall include the other gender and the singular and the plural, as the context may require.

**Section 19. Governing Law; Interpretation**

This Agreement shall be governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law, and (2) the balance of this Agreement remain in full force and effect.

**Section 20. Time Is of the Essence**

Time is of the essence of this Agreement.

**Section 21. Authority to Execute**

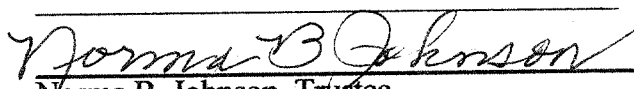
Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

**Section 22. Statutory Disclaimer**

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES 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 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

Executed on the day and year first above written.

OWNER:

  
Norma B. Johnson, Trustee  
of the Norma B. Johnson Trust, uda 12-14-04

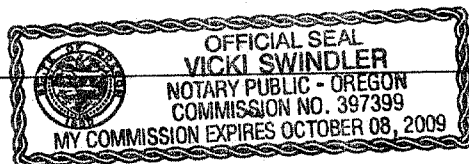
Paul J. Newman, LLC.

William Foulon  
By: William Foulon, Its Operating Manager

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me this 7th day of <sup>September</sup> ~~August~~, 2007 by Norma B. Johnson, Trustee of the Norma B. Johnson Trust, uda 12-14-04.

Vicki Swindler  
Notary Public for Oregon



STATE OF OREGON, County of Klamath) ss.

On September 7, 2007 before me personally appeared William Foulon, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as Operating Manager of Paul J. Newman, LLC., and that by his/her signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

Vicki Swindler  
Notary Public for Oregon

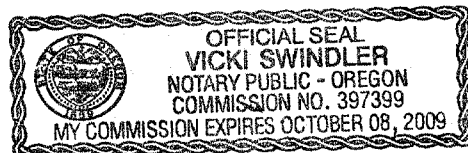


EXHIBIT A  
LEGAL DESCRIPTION

Lots 2, 3 and 4, Block 4, WILLIAMS ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. LESS AND EXCEPT the North 10 feet of Lot 2, Block 4, WILLIAMS ADDITION. ALSO LESS AND EXCEPT the following:

A portion of Lots 2, 3 and 4, in Block 4, WILLIAMS ADDITION to the City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the East line of Lot 2, Block 4, of said WILLIAMS ADDITION, said point being South 01 degree 36' 00" West, 10.00 feet from the Northeast corner of Lot 2; thence North 88 degrees 44' 52" West, 36.00 feet along a line parallel with and 10 feet Southerly of the North line of said Lot 2; thence South 01 degrees 36' 00" West 109.68 feet along a line parallel with and 36 feet Westerly of the East line of said Block 4, to a point on the South line of Lot 4; thence South 88 degrees 45' 51" East 36.00 feet along said South line to the Southeast corner of Lot 4; thence North 01 degree 36' 00" East 109.67 feet along the East line of said Block 4 to the point of beginning.

LESS AND EXCEPT a portion of Lot 4, Block 4, WILLIAMS ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, and being more particularly described as follows:

Beginning at a point on the South line of Lot 4, Block 4 of said Williams Addition, said point being North 88 degrees 45' 51" West 36.00 feet from the Southeast corner of Lot 4; thence North 88 degrees 45' 51" West 42.70 feet along said South line of Lot 4; thence North 01 degree 36' 00" East 3.65 feet; thence South 88 degrees 45' 51" East 42.70 feet along a line parallel with and 3.65 feet Northerly of the South line of said Lot 4; thence South 01 degree 36' 00" West 3.65 feet along a line parallel with and 36 feet Westerly of the East line of Lot 4 to the point of beginning.

TOGETHER WITH that certain well agreement between Richard F. Bogatay and Tamyra Bogatay, husband and wife; and Gerald V. Breedlove, recorded February 1, 1991 in Book M91 at page 3800, and re-recorded March 15, 1991 in Book M91 at page 4769, Microfilm Records of Klamath County, Oregon.

Klamath County Assessor's Parcel No.: R3809-028CD-11400

More commonly referred to as: 125 Eldorado Blvd.  
Klamath Falls OR 97601



EXHIBIT B  
LEGAL DESCRIPTION

PARCEL 1

The South half of Lot 5 and all of Lots 6 and 7 in Block 4, WILLIAMS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

ALSO the North half of Lot 5 in Block 4, WILLIAMS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 2

A portion of Lot 4, Block 4, WILLIAMS ADDITION to The City of Klamath Falls, in the County of Klamath, State of Oregon, and being more particularly described as follows:

Beginning at a point on the South line of Lot 4, Block 4, of said Williams Addition, said point being North 88° 45' 51" West, 36.00 feet from the Southeast corner of Lot 4; thence North 88° 45' 51" West 42.70 feet along said South line of Lot 4; thence North 01° 36' 00" East 3.65 feet; thence South 88° 45' 51" East 42.70 feet along a line parallel with and 3.65 feet Northerly of the South line of said Lot 4; thence South 01° 36' 00" West 3.65 feet along a line parallel with and 36 feet Westerly of the East line of Lot 4 to the point of beginning.

PARCEL 3

A portion of Lots 2, 3 and 4 in Block 4, WILLIAMS ADDITION to the City of Klamath Falls, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County Oregon, being more particularly described as follows:

Beginning at a point on the East line of Lot 2, Block 4, of said WILLIAMS ADDITIONS, said point being South 01° 36' 00" West, 10.00 feet from the Northeast corner of Lot 2; thence North 88° 44' 52" West, 36.00 feet along a line parallel with and 10 feet Southerly of the North line of said Lot 2; thence South 01° 36' 00" West 109.68 feet along a line parallel with and 36 feet Westerly of the East line of said Block 4, to a point on the South line of Lot 4; thence South 88° 45' 51" East 36.00 feet along said South line to the Southeast corner of Lot 4; thence North 01° 36' 00" East 109.67 feet along the East line of said Block 4 to the point of beginning.

Klamath County Assessor's Parcel No.: R3809-028CD-11402, 11401, 11600,  
11700, and 11500

More commonly referred to as: 1711 Main Street  
Klamath Falls OR 97601

Parcel 1:

South half of Lot 5 in Block 4	11600
Lots 6 and 7 in Block 4	11700
North half of Lot 5 in Block 4	11500

Parcel 2: 11402

Parcel 3: 11401