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Recording Requested By:
Aspen Title & Escrow, Inc.
525 Main Street
Klamath Falls, OR 97601

2008-014293

Klamath County, Oregon



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10/20/2008 11:08:11 AM

Fee: \$86.00

When Recorded Return To:
Klamath Tribes
Joe Kirk, Tribal Chairman
PO BOX 436,
501 Chiloquin Blvd. Or 97624

Until requested otherwise, send all tax statements:
Lititia Josephine Kirk
P O Box 69622
Portland, Or 97201

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

COVER SHEET

DOCUMENT: Option Agreement

GRANTOR: Lititia Josephine Kirk

GRANTEE: The Klamath Tribes, a federally recognized, sovereign
Indian Nation

CONSIDERATION: \$150,000.00

Legal Attached : see attached Exhibit A

886-ATE

OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement") is executed as of the 11th day of September, 2008 (the "Effective Date"), by and between Lititia Josephine Kirk, an enrolled member of the Klamath Tribes, ("Owner") and THE KLAMATH TRIBES, a federally recognized, sovereign Indian nation ("Optionee").

RECITALS

A. Owner is the owner of that certain real property located in Klamath County, comprising approximately 90 plus acres of river frontage property adjacent to property owned by Optionee, and more particularly described on Exhibit A and Exhibit A-1 (the "Property").

B. Owner desires to sell the Property to Optionee for a sum certain contingent the timing of Optionee's exercise of the option as provided in this Agreement: (1) in the event Optionee exercises the option within twelve (12) months of the Effective Date, then Optionee shall pay Owner ONE MILLION FIVE-HUNDRED THOUSAND DOLLARS AND NO/100 (\$1,500,000), or (2) in the event Optionee exercises the option after twelve (12) months of the Effective Date, but during the Term (defined herein) or Extended Term (defined herein), Optionee shall pay owner ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO/100 (1,700,000).

C. Optionee desires to purchase the Property from Owner for the consideration indicated above on terms to be negotiated by the parties in good faith, however, prior to irrevocably committing to purchase the Property, Optionee desires to obtain financing.

D. To provide Optionee with sufficient time to obtain financing for the purchase of the Property, Optionee desires to secure this option to purchase for a period of eighteen (18) months together with a right to extend the option term for an additional six (6) months as provided by the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1. Grant of Option

For and in consideration of the sum of ONE-HUNDRED FIFTY-THOUSAND DOLLARS AND NO/100 (\$150,000) (the "Option Payment") paid to Owner by Optionee in immediately available funds, receipt of which is acknowledged by Owner, the Owner grants to Optionee the sole and exclusive option to purchase the Property in the manner and for the price stated in this Agreement. The Option Payment shall immediately become the property of the Owner, shall be non-refundable, but shall be applied against the Purchase Price at Closing.

Section 2. Option Terms

2.1 Term. The term of the Option (the "Term") shall commence on the Effective Date and shall continue for eighteen (18) calendar months, from the date of execution of this Agreement, unless sooner exercised.

2.2 Term Extension. Optionee may, at Optionee's election, extend the Term of the Option by six (6) months ("Extended Term"). Optionee's election to extend the Term as provided in the Section 2.2 shall be made by delivering to Owner, on or before the expiration of the Term, an additional Option Payment to be negotiated by the parties in good faith, payable in cash or cashier's check, together with a written notice declaring Optionee's intent to extend the option, provided that the period of the Extended Term shall not exceed six (6) months.

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 during the Term. 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, and subject to any further conditions of this Option.

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 or the Option Payment.

Section 3. Purchase Price

3.1 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be contingent on the timing of Optionee's Exercise Notice. If the Exercise Notice is effected within twelve (12) months of the Effective Date, then the Optionee shall pay a Purchase Price of ONE MILLION FIVE-HUNDRED THOUSAND DOLLARS AND NO/100 (\$1,500,000). If the Exercise Notice is effected after twelve (12) months of the Effective Date, but during the Term or Extended Term of this Agreement, then the Optionee shall pay a Purchase Price of ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO/100 (1,700,000).

3.2 Payment of Purchase Price. The Purchase Price for the Property shall be payable as follows:

3.2.1 The Purchase Price shall be paid by Optionee to Owner in the amount of dollars set forth in Paragraph 3.1 of this Agreement, payable in cash or cashier's check at Closing

3.2.2 At Closing, the Option Payment of \$150,000 shall be credited against the Purchase Price;

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Section 4. Remedies

4.1 Optionee. If Owner breaches any material term or provision of this Agreement, then Optionee shall be entitled to pursue any available remedy at law or equity, including the right to specifically enforce the obligations of the Owner under this Agreement.

4.2 Owner. If Optionee breaches any material term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner shall be entitled to pursue any available remedy at law or equity, including the right to specifically enforce the obligations of the Optionee under this Agreement.

Section 5. Title

Within thirty (30) days after the Effective Date, Owner shall order and deliver to Optionee a preliminary title report (the "Preliminary Report"), along with copies of all requirements or exceptions of record, from the Title Company, showing the status of Owner's title to the Property. Not later than sixty (60) days after receipt of a copy of the Preliminary Report, Optionee shall give notice in writing to Owner of any objection to such title or to any liens, encumbrances or other exceptions affecting the Property. In the event Optionee fails to raise any such objection within such 60-day period, all conditions and exceptions to title set forth in such Preliminary Report shall be "Permitted Exceptions." In the event Optionee objects to any exception(s) to title, Owner shall notify Optionee within thirty (30) days after receipt of notice of such objection whether Owner will remove such exception(s) prior to the Closing Date. If Owner notifies Optionee that Owner will be able to remove such exception(s), all remaining exceptions set forth in the Preliminary Report and agreed to by Optionee shall be "Permitted Exceptions." If Owner does not timely agree to remove the objected-to exception(s) by the Closing Date, Optionee shall be deemed to have waived its obligation to such exceptions unless Optionee sends Owner a written termination notice on or before the end of the Option Term. All remaining exceptions set forth in the Preliminary Report and not removed or to be removed pursuant to this Section 5 shall be "Permitted Exceptions."

Owner shall not cause, permit, or suffer any matter to be recorded with respect to the Property during the Term, except any matter that Optionee approves, in writing and at its sole discretion, before recordation.

Section 6. Closing

6.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") mutually selected by Optionee and Owner, but in all events the Closing shall occur within sixty (60) calendar days after the date that the Exercise Notice is given. The escrow for the Closing shall be established at the office of Aspen Title & Escrow (the "Title Company"), at 525 Main Street, Klamath Falls, Oregon 97601.

6.2 Closing Obligations. On the Closing Date, Owner and Optionee shall perform their obligations as set forth in the Contract of Sale and shall deposit the following documents

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and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

6.2.1 Owner shall deposit the following:

(1) A Statutory Bargain and Sale Deed in a form mutually acceptable to the parties, conveying marketable title to the Property, which Property shall be free of any mortgages, liens or other encumbrances, to Optionee, duly executed and acknowledged;

(2) Such other documents and funds, including (without limitation) escrow instructions, a pro-rata share of closing costs, settlement statements, as are required of Owner to close the sale in accordance with this Agreement.

6.2.2 Optionee shall deposit the following:

(1) The cash payment specified in Section 3;

(2) Such other documents and funds, including (without limitation) escrow instructions, pro-rata share of closing costs, settlement statements, as are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

6.3 Costs. Optionee and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Owner shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee. Optionee shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

6.4 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.

Section 7. Access to Property

Owner grants to Optionee and its agents the right to enter on the Property at any reasonable times before the expiration or termination of this Agreement for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Owner shall cooperate with Optionee in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Optionee shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase the Property, Optionee shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities pursuant to this paragraph. If Optionee fails to exercise the Option, Optionee shall deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.

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Section 8. 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 9. Damage or Destruction

Owner shall bear the risk of all loss or damage to the Property from all causes, until closing. If, before the Closing Date all or part of the Property is damaged by fire or by any other natural cause 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, or withdraw the Exercise Notice if given, by giving written notice to Owner within fifteen (15) days following receipt by Optionee of written notice from Owner of such casualty or condemnation. Notwithstanding any such termination, the Owner shall be entitled to retain the Option Payment. If Optionee does not elect to terminate this Agreement within such fifteen (15) period, then this Agreement shall continue in force and all interest of Owner in and to any insurance proceeds or condemnation awards that may be payable to Owner on account of such casualty or condemnation, less reasonable expenses (including attorney fees) incurred by Owner with respect to such casualty or condemnation, shall be assigned to Optionee at closing.

Section 10. Successors and Assigns

Optionee shall have no right to assign this Agreement, except to The Trust for Public Land, a California nonprofit public benefit corporation, without the written consent of Owner, which may be withheld in Owner's sole and absolute discretion. The terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the permitted heirs, successors, and assigns of Owner and Optionee.

Section 11. 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:

with a copy to:

Optionee: Joe Kirk, Chairman
Tribal Council
Klamath Tribes
P.O. Box 436
501 Chiloquin Blvd
Chiloquin, Oregon, 97624
(541) 783-2219

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Fax: (541) 783-2029

with a copy to: Lee K. Shannon
Hobbs Straus Dean & Walker, LLP
806 SW Broadway, Suite 900
Portland, Oregon 97205
Tel: (503) 245-1745
Fax: (503) 242-1072

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

Section 12. Attorneys' 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 attorneys' 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 13. Brokers

Owner shall indemnify, save harmless and defend the Optionee against any claims for commissions or fees as a procuring cause of the sale contemplated by this Agreement that may be asserted by any broker claiming by, through, or under the Owner pursuant to any listing agreement applicable to the Property.

Section 14. Integration, Modification, or Amendments

This Agreement, and all exhibits hereto, contain the entire agreement of the parties with respect to the Property and supersede 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 15. Representation and Covenants

Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 12, each party shall be responsible for all attorneys' fees incurred by it with respect to this Agreement.

Owner agrees and covenants upon execution of this Agreement to have the Option Payment paid to: (i) Owner, and (ii) to have the funds pay off directly the amounts owing, on behalf of the Owner, under the Trust Deed dated as of March 19th, 2008 between the Owner as Grantor and First American Title Insurance Company of Oregon as Trustee, and J. Robert Moon, Jr. and Coughlin, Leuenberger & Moon, PC as beneficiary.

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Section 16. 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 17. Governing Law; Interpretation

This Agreement shall be governed by the laws of Oregon and of The Klamath Tribes. If a court of competent jurisdiction, including the courts of The Klamath Tribes chosen The Klamath Tribes in their sole option, 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 18. Time Is of the Essence

Time is of the essence of this Agreement.

Section 19. Authority to Execute; Waiver of Sovereign Immunity

19.1 Resolution. Optionee possesses sovereign immunity and has the legal power and authority to make a limited waiver of that sovereign immunity to the extent set forth in the Resolution (defined herein). Optionee has consented pursuant to the Resolution to suit and the arbitration of disputes arising out of or in connection with this Agreement. For purposes of this Agreement, the term "Resolution" means, Resolution No. 2008-51, adopted by the Optionee's Tribal Council on the 11th day of September, 2008, authorizing this Agreement.

19.2 Authority. This Agreement has been duly authorized, executed and delivered by the Owner and Optionee. The Agreement constitutes valid, binding and enforceable obligations of the Owner and the Optionee.

19.3 Jurisdiction and Limited Waiver of Sovereign Immunity. Optionee hereby agrees with the Owner as follows:

19.3.1 Nothing in this Agreement shall be deemed to be a general waiver of the Optionee's sovereign immunity from suit, which immunity is expressly asserted, provided, however that consistent with the Resolution, the Optionee hereby expressly consents to be sued should an action be commenced to determine and enforce the obligations under this Agreement; and provided further that such consent to suit is only as to (1) enforcement of an arbitration award and (2) to court action initiated consistent with this Agreement (including, but not limited to, compelling the parties to arbitrate as provided below), any such amounts payable by The Klamath Tribes shall be limited to the payment of the Option Payment. This limited waiver applies only to this Agreement and to no other transaction.

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19.3.2 It is further agreed that disputes arising under this Agreement that cannot be resolved by mutual agreement shall be submitted to the U.S. Federal District Court for the District of Oregon or the Courts of The Klamath Tribes, at the option of The Klamath Tribes, for determination of the issue. In the event that jurisdiction shall not be proper in federal court, such as for non-federal question jurisdiction, or Courts of The Klamath Tribes the parties agree to submit the issue to binding arbitration as set forth below.

19.3.3 If arbitration is required under Section 19.3.2 above, the matter shall be referred to the Arbitration Services of Portland and an arbitration shall be held with a single arbitrator mutually chosen by the parties. If the parties cannot agree on a single arbitrator, then each party shall choose an arbitrator from a list provided by Arbitration Services of Portland, and those two arbitrators shall themselves choose a third arbitrator who shall conduct the binding arbitration. The arbitration shall be pursuant to the then-current rules of the Arbitration Services of Portland. All expedited procedures prescribed by the then-current rules shall apply to the arbitration. Venue for the arbitration shall be in Klamath Falls, Oregon. The decision of the arbitrator (or arbitrators) shall be binding, without right of appeal by the parties and enforceable by a federal or state court of competent jurisdiction. However, any such decision of the arbitrator (or arbitrators) shall not include the award of exemplary or punitive damages.

Section 20. Statutory Disclaimer

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.305. 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, 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 195.305."

"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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.305. 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, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.305."

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Executed on the day and year first above written.

OWNER:

By: 
Name: Lititia Josephine Kirk
Title: owner

OPTIONEE:

THE KLAMATH TRIBES

By: 
Joe Kirk, Chairman
Tribal Council

Attachments:

Exhibit A—Property

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EXHIBIT A

Legal Description of the Property

In Klamath County, Oregon

Lots 23, 26 and 31, Section 9, and Lots 2, 3, 8, 9, 12, 13, 18 and 19, Section 16, all in Township 35 South, Range 7 east of the Willamette Meridian, Klamath County, Oregon.

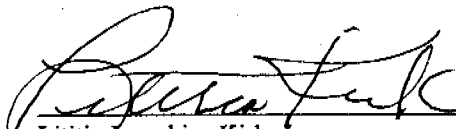
Except that portion laying west of the Westerly right of way line of U.S. Highway No. 97.

Also excepting that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division, by Warranty Deed recorded May 24 1990 in Volume M90, page 9957, Deed records of Klamath County, Oregon.

Tax parcel numbers: R232377 and R594752 and R232625

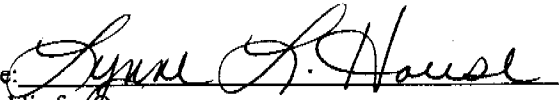
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EXHIBIT A-1
Map of the Property

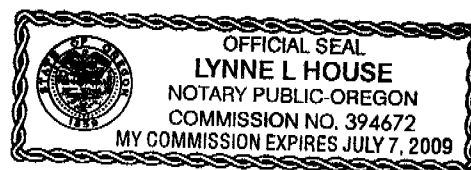

Lititia Josephine Kirk

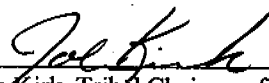
STATE OF OREGON, County of **Klamath**) ss.

On October 14, 2008 personally appeared the above named Lititia Josephine Kirk and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me: 
Notary Public for Oregon
My commission expires:

Official Seal




Joe Kirk, Tribal Chairman for The Klamath Tribes

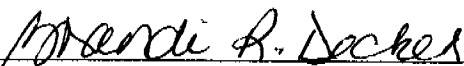
STATE OF OREGON, County of **Klamath**) ss.

On October 15, 2008 personally appeared the above named Joe Kirk, Tribal Chairman for The Klamath Tribes and acknowledged the foregoing instrument to be his voluntary act and deed.

This document is filed at the request of:



Klamath Tribes
Joe Kirk, Tribal Chairman
PO BOX 436
Chiloquin, OR 97201.

Before me: 
Notary Public for Oregon
My commission expires: 9-18-2010

Official Seal

