

AGENDA COVER MEMO

DATE: October 29, 2003

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Frank Simas, Right of Way Manager

AGENDA ITEM TITLE: In The Matter of Authorizing a Lease and Option Agreement Concerning Tax Lot 17-03-25-13 00500.

I. MOTION

THAT THE ORDER BE APPROVED ENTERING INTO A MEMORANDUM OF LEASE AND OPTION AGREEMENT WITH JOHN AND MARY SOOY, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE LEASE AND OPTION AGREEMENT WITH JOHN AND MARY SOOY CONCERNING TAX LOT 17-03-25-13 00500.

II. ISSUE OR PROBLEM

The Sooy's wish a renewal of the Lease and Option Agreement with Lane County dated May 16, 2002, and approved pursuant to Order No. 02-5-8-15. This lease is for a parcel of excess County-owned land located on the southeast side of the intersection of North 19th Street and Marcola Road in Springfield.

III. DISCUSSION

A. Background

The original Lease and Option Agreement will expire on December 31, 2003. The agreement called for a monthly rental of \$500.00 per month and granted them the option to purchase the property for the sum of \$220,000.

Prior to entering into the agreement with the Sooy's, an adjoining property owner filed suit in Lane County Circuit Court in which they alleged that building restrictions placed on a portion of the property at the time it was conveyed to the County affected all of the property, rather than only the portion that had been specifically restricted in the conveyance document. They also alleged that their use of a driveway on a portion of the County property for a period of approximately 30 years was tantamount to a dedication of the driveway for public use.

Upon execution of the Lease and Option Agreement, the Sooy's joined in the suit as an intervener and have incurred substantial legal fees and court costs through their joining Lane County in the defense of the suit.

The Circuit Court rendered judgment in this case earlier this year, and the judge's ruling held that the building restrictions placed on the property were no longer valid due to changed conditions in the immediate area obviating their original purpose, and that the usage of the driveway over time was similar in effect to a dedication to a public use.

The adjoining owner has filed an appeal in this case seeking a reversal of the Circuit Court's ruling that the building restrictions were no longer valid.

B. Analysis

The Sooy's are unable to determine whether to exercise the option to purchase the property until the Appellate Court renders its decision, which may likely not happen until after the expiration of the existing Lease and Option Agreement. A renewal of the Agreement for one year, with the option to renew for an additional year will provide enough time to learn of the outcome of the Appeal and whether there will be a possible further appeal to a higher court.

The Lessees have thus far been unable to utilize the property or to apply for rezoning or land use permits due to the uncertainty of the outcome of the litigation. Given the extended period of time and in expectation of substantial additional legal expenses, a reduction in the monthly rent seems reasonable. They are willing to pay a monthly rental of \$175.00 per month for the initial renewal term and any extension thereof. Lane County has the option to terminate the agreement upon 60 days notice if the litigation is resolved and the Lessees then fail to exercise the Option to Purchase.

If approved by the Board, the option price shall remain unchanged as it is considered to be reasonable given the value of the property and the expectation and uncertainty of further legal expenses.

C. Alternatives/Options

1. Approve the attached order authorizing the Lease and Option Agreement and the Memorandum of Lease and Option.
2. Do not approve the order, and direct staff to continue to pursue the appeal independently and to offer the property for sale once the litigation has been settled.

D. Recommendations

Alternative No. 1 is recommended.

IV. IMPLEMENTATION/FOLLOW-UP

Upon authorization, the Lease and Option Agreement and Memorandum of Lease and Option will be processed. Staff will record the Memorandum to give public notice of the existence of the Lease and Option.

V. ATTACHMENT:
Option Agreement with Attachments

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.

(IN THE MATTER OF AUTHORIZING
(A LEASE AND OPTION AGREEMENT
(CONCERNING TAX LOT 17-03-25-13-
(00500.

WHEREAS, Tax Lot 17-03-25 13-00500 is owned by Lane County and is no longer needed for public use; and

WHEREAS, said property has been offered for sale at a Sheriff's Sale and did not sell; and

WHEREAS, ORS 271.310 allows for the lease of property not needed for public use for any period not exceeding 99 years to a private individual or corporation; and

WHEREAS, ORS 275.200 allows for private sale of parcels offered for sale at a Sheriff's sale but unsold without further notice; and

WHEREAS, John and Mary Sooy entered into a Lease and Option Agreement with Lane County pursuant to Order No. 02-5-8-15 covering said property; and

WHEREAS, said Lease and Option Agreement will expire on December 31, 2003; and

WHEREAS, the outcome of litigation affecting said property will not be known until after the expiration of the Lease and Option Agreement, and

WHEREAS, because of said litigation the Sooy's are unable to determine whether to exercise the Option to Purchase as provided by the Agreement,

WHEREAS, the Sooy's are desirous of entering into a renewal of the Lease and Option Agreement for a term ending December 31, 2004, with an option to renew for an additional one-year term and have signed the Lease Agreement and Memorandum attached; and

WHEREAS, it would be in the best interests of Lane County to enter into such Lease and Option Agreement;

IT IS HEREBY ORDERED that Lane County enter into a Memorandum of Lease and Option Agreement with John and Mary Sooy concerning Tax Lot 17-03-25-13 00500;

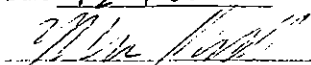
IT IS FURTHER ORDERED that the County Administrator be authorized to execute the Lease and Option Agreement with John and Mary Sooy concerning Tax Lot 17-03-25-13 00500.

DATED this _____ day of _____, 2003.

Peter Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 12-4-03 lane county



VICE CHIEF LEGAL COUNSEL

LEASE AND OPTION AGREEMENT

This agreement is entered into this _____ day of _____, 2003, by and between Lane County, a political subdivision of the State of Oregon, hereinafter referred to as **County**, and John R. Sooy and Mary P. Sooy, hereinafter referred to as **LESSEE**.

WITNESSETH:

In consideration of the covenants herein contained to be kept and performed by **Lessee, County** hereby leases to **Lessee** the premises situated in the City of Springfield, County of Lane described on "Exhibit A" attached hereto and incorporated herein by reference, (hereinafter referred to as the "PROPERTY"), and more commonly known as Lane County Assessor's Tax Lot 17-03-25-13-00500.

The parties hereby agree to the following terms and conditions:

SECTION I. Lease Terms

1. Term. The initial term of this lease shall begin January 1, 2004, and end at midnight on December 31, 2004.

2. Payment of Rent. The rental shall be \$175.00 per month payable monthly on the 1st day of each month during the lease term, payable at Lane County Public Works, Right of Way Management Section, 3040 Delta Highway North, Eugene, OR 97408-1696. If rent is not received by the fifth day of the period for which it is due, **Lessee** shall pay a late fee of \$10.00 per day, charged on a per day basis, beginning on the sixth day of the period. **Lessee** expressly agrees to pay rents at the times and place aforesaid.

3. Use of Property. **Lessee** may use the property for any use permitted by the current City of Springfield zoning designation of Low Density Residential, except that uses designated "public utility facilities" shall not be allowed. **Lessee** may use the property for uses designated as "special" or "discretionary" under said code, provided **County** provides written consent therefore. **Lessee** further agrees to not suffer or permit any waste or strip thereof; nor to make any alterations or improvements upon the property or assign this lease or sublet the property or any part thereof, or permit any other person to occupy the property without first obtaining **County's** consent.

4. Compliance With Laws. **Lessee** agrees to comply with all laws, ordinances and regulations of any public authority with respect to the use of the property.

5. Maintenance of Property. **Lessee** agrees to maintain the property in a clean and sanitary condition at all times, and upon termination of this lease to surrender the property to **County** in as good condition as when received.

6. Default. The parties hereby agree that this instrument is not a land sale contract; that time is of the essence of this lease; and that if rents shall be in arrears for ten days, or if **Lessee** shall neglect or fail to do or perform any of the covenants herein contained, then **County** may, after giving proper written notice (if any required), at any time while the default continues, terminate this agreement and/or take possession of the premises in the manner provided by law. In connection with such repossession, unless prohibited by law, **County** may expel **Lessee** and remove **Lessee's** belongings and effects, if any, at the expense of **Lessee** without being deemed guilty in any manner of trespass, and without prejudice to any

other remedies available to **County** which might be used to recover unpaid rent or for breach of covenant.

7. Hold Harmless. Lessee agrees to assume all liability for, and hold **County** harmless from all damages and all costs and fees in the defense thereof, caused by the negligence or willful acts of Lessee's invitees or guests, in or upon any part of the property.

8. Extension of Term. Provided that Lessee is not in default in the performance of any terms or conditions of this lease, Lessee shall have the right to extend the term of the lease for an additional period of one year. This extension period (the "Extension Term") will commence on the date that the Initial Term expires. The Initial Term and the Extension Term may be referred to collectively in this agreement as the "Term." Lessee's payment of the first monthly rent payment due after the Initial Term expires shall be deemed to constitute an election to extend the lease for the Extension Term. If the last day of the Initial Term or the Extension Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the State of Oregon, all of Lessee's rights during either such time period shall extend through the next business day.

9. Holding Over. Any holding over after the expiration of this agreement or any extension thereof shall be as a tenancy at sufferance.

10. Prepaid Rent. **County** acknowledges receipt of \$200 in the form of a personal check; \$100.00 of said amount is be applied to the first month's rental due hereunder, and the remaining \$100.00 is to be applied to the rent due for the last month of the initial term or any extension term.

11. Early Termination. This lease may be terminated at the sole option of **County** upon 60 days notice to Lessee in writing of **County's** intention to do so. However, said notice shall only be given in the event that a pending court action affecting the property has been finally adjudicated or otherwise settled or resolved, and the terms of the adjudication, settlement or resolution are provided by **County** to Lessee in writing.

SECTION II. Option Terms

12. Option Term. At any time while this lease is in full force and effect, except as hereinafter provided, and Lessee is not in default in the performance hereof, **County**, for value received, hereby gives and grants unto Lessee the sole, exclusive and irrevocable right and option to purchase the above-described property subject to and upon the terms and conditions set forth herein.

13. Exercise of Option. This option shall be exercised, if at all, either by written notice (the "Exercise Notice") given by Lessee to **County** at any time during the Initial Term or the Extended Term, which notice shall state that Lessee has elected to exercise this option; or upon 60 days notice from **County** to Lessee that pending litigation affecting the title to the property has been adjudicated resolved and/or settled, and a copy showing the terms thereof is provided to Lessee. Upon exercise of this option, Lessee shall be obligated to purchase the property from **County**, and **County** shall be obligated to sell the property to Lessee, for the price and in the manner herein set forth.

14. Failure to Exercise Option. If Lessee fails for any reason to exercise this option in the manner set forth herein, Lessee shall have no further claim against or interest in the property and this Option and all of Lessee's rights under this agreement shall automatically and completely terminate without any act or action by **County**. In the event of said failure to exercise the Option, Lessee shall provide **County** with any instruments that **County** 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.

15. Option Money. Other than the rent specified in paragraph 2 above, no additional payment shall be due to **County** for **County's** grant of this option. However, in consideration of this Grant of Option, Lessee agrees to participate as a party in the Appeal which is now pending in The Court of Appeals of the State of Oregon and is identified as Case No. CA A120455, affecting the use of and title to the property. Lessee agrees that they will seek to have the Court determine that the restrictions on use urged by Plaintiffs are not applicable, and agrees that they will not take any action inconsistent with this position unless agreed to by **County**.

16. Amount of Acreage. Although **County** believes that the property contains approximately .87 acres (37,897 s.f.) of land, and has so represented to Lessee, neither party considers the precise amount of acreage and/or square footage contained in the property to be material to the purchase or sale of the property. On exercise of this option, the parties' obligations under this agreement shall not be avoided due to any determination that the property in fact contains more than .87 acre or less than .87 acres. In no event shall Lessee have any right to cancel because of a discrepancy between actual and estimated area.

17. Purchase Price. The total purchase price for the property (the "Purchase Price") shall be \$220,000. No rent paid during the lease term as specified in Paragraphs 1 and 2 above shall be applied to the purchase price.

18. Payment of Purchase Price. The entire balance of the purchase price shall be paid in cash at closing.

19. Right of First Refusal. In the event that the issues that are the subject of the above-referenced Appeal of the Judgment rendered in Lane County Circuit Court Case No. 16-01-13688 are not resolved within the lease term in a manner consistent with Judgment rendered in said Circuit Court Case, then **County** agrees that whether or not the Lease has been terminated by either party, Lessee shall have the right of first refusal to purchase the Property upon the same terms as offered by a third party or its monetary equivalent. Accordingly, should the **County** receive an offer to purchase the Property that it is willing to accept, **County** shall provide written notice to Lessee of such offer and its terms, and Lessee shall have the right, exercisable within 30 days of receipt of **County's** notice, to elect to purchase the Property upon the same terms as offered or the cash equivalent thereof. If Lessee provides notice of election to purchase to **County** on a timely basis, then closing shall occur in the manner described in the succeeding paragraphs of this Agreement. The right of first refusal shall expire if not exercised by Lessee upon the earlier of (a) termination of the Lease and Option Agreement due to default by Lessee, or (b) December 31, 2005. A Memorandum of Lease and Option shall be recorded in the form attached as Exhibit B.

20. Remedies.

Lessee. If **County** breaches any term or provision of this agreement, then Lessee, as its exclusive remedy and in lieu of any other relief, may either terminate this Agreement or tender performance of the obligations of **County** and specifically enforce all obligations of **County**. Except as noted in this paragraph and in Paragraph 21 below, and any specific remedies reserved elsewhere in this agreement, Lessee waives the right to pursue any remedy in law or equity against **County** other than the remedies specified above, including any action for damages, in the event of a default by **County**.

County. If Lessee breaches any term or provision of this agreement, and regardless of whether the breach occurs before or after Lessee notifies County of the exercise of the option, then County, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this agreement by giving Lessee written notice of termination. County acknowledges (1) the adequacy of this exclusive remedy, and (2) that this limitation of remedies is an essential part of this agreement from the perspective of Lessee. County expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Lessee.

21. Other Remedies. The limitations on remedies set forth in this agreement shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property, or for fraud, except that any indemnity of Lane County shall be limited as provided by the Oregon Constitution and the Oregon Tort Claim Act.

22. Title. Lessee hereby acknowledges that County shall convey title to the property by quitclaim deed without warranty, express or implied, as to the condition of title. County has informed Lessee of all known encumbrances of title and has furnished Lessee with a copy of a Preliminary Title Report. Lessee may, if desired, and at its sole option and expense, pay for and obtain a policy of Title Insurance, however the issuance to any Policy of Title Insurance is not a condition precedent to the closing of the transaction.

23. Closing. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by County, but in all events, the closing shall occur within 60 days after the date that the Exercise Notice is given by Lessee. The escrow for the closing shall be established at the office of Evergreen Land Title Company (the "Title Company"), at 1570 Mohawk Boulevard, Springfield, OR 97477.

On the closing date, County and Lessee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of County and Lessee.

County shall deposit the following:

- (a) The Quitclaim Deed described in paragraph 22 above, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that County is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445;
- (c) Original counterparts or legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of County that relate to the property;
- (d) Such documents as Lessee or the Title Company may require to evidence the authority of County to consummate this transaction; and
- (e) Such other documents and funds, including (without limitation) escrow instructions, as are required of County to close the sale in accordance with this agreement.

Lessee shall deposit or cause to be deposited the following:

(a) The entire purchase price as specified in Paragraph 17.

(b) Such documents as County or the title company may require to evidence the authority of Lessee to consummate the transaction contemplated; and

(c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Lessee to close the sale and purchase of the property in accordance with this agreement.

24. Costs. County and Lessee shall each pay one-half the escrow fee of the title company with respect to the closing. Lessee shall pay the premium for title insurance if desired. Lessee shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

25. Prorations. All items of expense incurred by County with respect to the property shall be paid by County at closing, without proration. Any real property taxes and assessments payable with respect to the tax year in which closing occurs shall be prorated between Lessee and County as of the closing date. The monthly rental payment as specified in Section 1 above, for the month in which closing occurs shall be prorated as of the closing date.

26. Conveyance. At the closing, County shall execute, acknowledge, and deliver to Lessee a Quitclaim Deed conveying all of County's right title and interest in the property.

27. Possession. Lessee shall be entitled to exclusive possession of the property during the term of the lease as specified above and after the closing date.

28. Access to Property. Lessee grants to County and its agents the right to enter on the property at any reasonable times during the term of the lease and before the closing date for the purpose of conducting tests, studies or surveys that County may deem necessary or appropriate in connection with the property.

29. Approvals. Lessee shall have the right to apply for and obtain any governmental approvals to use and develop the property as Lessee may desire, provided that County approves the form and substance of all of documents related to said approvals. All costs and expenses incurred with respect to such approvals shall be paid for by Lessee.

30. Covenants of County. County acknowledges that the covenants of County contained in this agreement are material inducements to Lessee to enter into this agreement. The covenant(s) specifically delineated in this paragraph are the following:

(a) **County.** During the term, County 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, nor grant any easement, access right, or other encumbrance or restriction upon the Property.

31. Warranties and Representations of County. County acknowledges that the warranties and representations of County contained in this agreement, (the "Warranties"), are material inducements to Lessee to enter into this option agreement. All Warranties, and Lessee's right to assert a breach of them, shall survive execution of this agreement, the closing, and the execution and delivery of the closing documents.

32. No Condemnation or Assessment Proceedings. There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part of it and, to the knowledge of County, no such proceeding is contemplated by any governmental entity.

33. Litigation; Law. Other than has been previously disclosed to Lessee and as described above, there is no known litigation, arbitration, or administrative hearing pending before any governmental authority that concerns or affects the property or any portion of it and, to the knowledge of County, no other such proceeding is threatened. To the knowledge of County, the property complies with all laws, ordinances, and governmental approvals and decisions that relate to it.

34. Access and Site Conditions. County makes no warranty as to whether the property has unimpeded access to Marcola Road or Mohawk Road which are believed to be dedicated public roads. County has no knowledge of any pending changes in land use designation (comprehensive plan or zoning ordinance) that apply to the property.

35. Hazardous Substances. For purposes of this subparagraph, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(15).

(a) To the knowledge of County, there are no Hazardous Substances in, on, or buried on or beneath the property, and no hazardous substances have been emitted or released from the property in violation of any environmental laws of the federal or state government. However, County has performed no site assessments or other work that would be necessary to disclose the presence of such substances, and County further makes no warranty as to the existence or non-existence of any such substances on the property.

(b) County has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the property any hazardous substances in violation of any environmental laws of the federal or state government; and

(c) To the knowledge of County, no underground storage tanks are located on the property, including (without limitation) any storage tanks that contain, or previously contained, any hazardous substances, and Lessee agrees not to cause or permit any such tanks to be installed on the property before closing.

36. Status of County. County warrants that it is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC §1445.

37. Breach of Agreements. Neither the execution of this agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the exercise of the option and closing of the transaction contemplated herein, constitutes or will constitute a default under any other agreement or contract that relates to the property or to which County is a party.

38. Authority. No consents, documents, or approvals that have not been obtained are necessary to the effectiveness of the grant of the option by County.

39. Contracts and Leases. County warrants and represents to Lessee that there are no lease agreements, maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it, other than those of record.

As used herein, the phrase "to the knowledge of County" or any variation of that phrase shall refer to matters within the actual knowledge of Lane County Department of Public Works, and shall not

include constructive or imputed notice or knowledge; and the use of that phrase shall not imply that County has undertaken any special inquiry or investigation with respect to the representation modified by such phrase, unless circumstances within the actual knowledge of County would warrant a reasonable person to undertake further inquiry when presented with similar circumstances.

40. Changed Conditions. If County discovers that one or more of the warranties or one of the conditions referred to in the Warranties has changed after this agreement is executed, through no fault of County, County shall immediately inform Lessee, in writing, of such discovery. If the changed condition or Warranty cannot be cured within 10 days of the date County discovers the change, then Lessee may terminate this agreement (and its exercise of the option, if any) by giving written notice of termination to County within 15 days after receiving the notice from County. If the changed condition or warranty can be corrected within 10 days after discovery by County, Lessee shall not have the right to terminate this option agreement pursuant to this paragraph and County shall correct the changed condition or warranty within 10 days of the discovery.

41. Recording. On the effective date, County shall execute, acknowledge, and deliver to Lessee a memorandum in the form attached as Exhibit B. If Lessee fails to exercise the option before the term expires, Lessee shall execute, acknowledge, and deliver to County a statutory quitclaim deed releasing any interest in the property.

42. Waiver. Failure by County or Lessee to enforce any right under this agreement shall not be deemed to be a waiver of that right or of any other right.

43. Successors and Assigns. The terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of County and Lessee. Lessee may not assign its interest in this option agreement and the property to any person or entity, without the consent of County. If an assignee assumes the obligations of Lessee hereunder, then Lessee shall have no further liability with respect to this agreement.

44. 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 County:	Lane County Public Works c/o Right of Way Management Section 3040 Delta Highway North Eugene, OR 97408-1696
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To Lessee:	John R. Sooy and Mary P. Sooy 3815 Winslow Ave. Springfield, OR 97477-7908
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The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

45. Attorney Fees. If litigation is instituted between the parties hereto with respect to this agreement, neither party shall be entitled to recover its attorney fees from the other party.

46. Real Estate Commission. County shall not pay any commission or finder's fees that may be due any third parties on account of this transaction.

47. Risk of Loss. County 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, County shall give Lessee written notice of such event. Lessee may terminate this agreement by giving written notice to County within 15 days after receipt by Lessee of written notice from County of such casualty or condemnation. If Lessee does not elect to terminate this agreement, then this agreement shall continue in force and, if Lessee exercises the option and the property is conveyed to Lessee, then all interest of County in and to any insurance proceeds or condemnation awards that may be payable to County on account of such casualty or condemnation shall be assigned to Lessee at closing.

48. 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 County and Lessee, in writing.

49. Representation. County and Lessee have each been represented by separate legal counsel of choice with respect to this transaction. Each party shall be responsible for all attorney fees incurred by it with respect to this agreement.

50. 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 County and Lessee. With respect to any pronouns used, each gender used shall include the other gender and the singular the plural, as the context may require.

51. 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, County and Lessee 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.

52. Time Is of the Essence. Time is of the essence of this agreement.

53. Authority to Execute. Each person executing this agreement on behalf of County and Lessee, respectively, warrants his or her authority to do so.

54. Statutory Disclaimer. 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.

55. Confidentiality. County and Lessee hereby acknowledge that County is a political subdivision of the State of Oregon and as such may be required to disclose the terms of this agreement or any information relating to it to other persons than the entities engaged to assist in the consummation of this agreement, such as the title company. If the option is not exercised, then County shall return to

Lessee all documents and information delivered to County by Lessee. Nothing contained herein shall operate to prevent or limit the right of County or Lessee to disclose the terms of this agreement or any other information relating to it in conjunction with any litigation, land use proceeding, or other proceeding instituted with respect to this agreement or the property.

Executed on the day and year first above written.

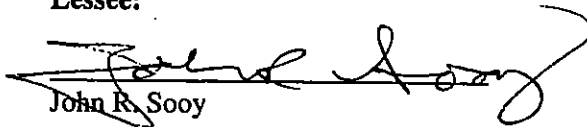
COUNTY:

By: _____

Name: _____

Title: _____

Lessee:



John R. Sooy



Mary P. Sooy

Attachments:

Exhibit A—Property

Exhibit B—Form of Memorandum

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land lying in the B.B. Powers Donation Land Claim Number 81 in the Southwest one-quarter of the Northeast one-quarter (SW ¼ NE ¼) of Section 25, Township 17 South, Range 3 West of the Willamette Meridian, Lane County, Oregon, and being a portion of that property described in those certain deeds to LANE COUNTY, a political subdivision of the State of Oregon, recorded June 21, 1948; in Book 323, Pages 601 and 602 and March 18, 1952, in Book 456, Pages 480 and 481, LANE COUNTY OREGON DEED RECORDS, said parcel being all that portion that was vacated by The Board of County Commissioners of Lane County by Order 72-4-19-17 described as follows:

“Beginning at a point on the Easterly right of way line of Mohawk Road portion of the Mohawk Road Interchange (Eugene-Springfield Highway), said point being opposite and 40.0 feet distant Southerly from Engineers’ Centerline Station MK 9+69.76 P.O.C., also said point being 439.23 feet North and 101.85 feet East of the Southeast corner of the William C. Spencer Donation Land Claim No. 50, Township 17 South, Range 3 West, Willamette Meridian; thence North 19° 39’ 04” West, 118.08 feet; thence North 1° 46’ 55” East, 102.70 feet; thence North 49° 15’ 15” East, 51.57 feet to a point opposite and 60.0 feet distant Southerly from Engineers’ Centerline Station L 46+35.00 P.O.T. of Mohawk Road – 19th Street relocation; thence South 88° 06’ 55” East, 145.00 feet; thence North 88° 20’ 28” East, 257.39 feet to a point opposite and 40.0 feet distant Southerly from Engineers’ Centerline Station MK 4+39.63 P.O.C.; thence on a 532.96 foot radius curve left (the long chord of which curve bears South 58° 16’ 44” West, 475.84 feet) a distance of 493.12 feet to the place of beginning.

Containing 0.87 acre, more or less, in Lane County, Oregon.

The bearings used herein are based upon the Oregon Coordinate System, South Zone.”

After Recording, Return to:
Lane County Public Works
Right of Way Management Section
3040 Delta Highway North
Eugene, OR 97408-1696

MEMORANDUM OF LEASE AND OPTION AGREEMENT

Lane County, a political
subdivision of the State of Oregon, Optionor

John R. Sooy and
Mary P. Sooy, Optionee

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum shall serve notice to all third parties that John R. Sooy and Mary P. Sooy, ("Optionee"), whose address is 3815 Winslow Avenue, Springfield, Oregon 97477-7908, have entered into a Lease and Option Agreement with Lane County, a political subdivision of the State of Oregon, whose address is C/O Department of Public Works, R/W Management Section, 3040 Delta Highway North, Eugene, OR 97408-1696, ("Optionor"), which agreement affects that real property ("the Property") described on Exhibit A, attached hereto and incorporated herein by reference, and more commonly known as Lane County Assessor's Tax Lot 17-03-25-13-00500.

The agreement provides, in part, as follows:

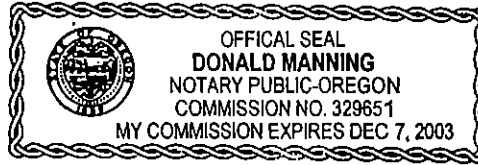
1. Optionee is granted the sole and exclusive right to purchase the property during the one-year Option Term stipulated in the Agreement, which Option Term may be extended for one additional one-year term.
2. The initial term of the Option Begins January 1, 2004 and expires December 31, 2004.
3. That the Option Agreement is subject to various terms, conditions and provisions, all of which have been agreed by and between Optionor and Optionee as set forth in the agreement.

IN WITNESS WHEREOF, the parties to the agreement, in consideration of the amounts stated in the Agreement, and other good and valuable consideration, and the benefits to be derived by the parties hereto in accordance with the terms and conditions of the Agreement, have executed this Memorandum of Option Agreement on the dates of their respective notarial acknowledgements.

OPTIONOR:

[Signature]
John R. Sooy

[Signature]
Mary P. Sooy



STATE OF OREGON)
)
County of Lane) ss.

On November 24, 2003, personally appeared the above-named John R. Sooy and Mary P. Sooy and acknowledged the foregoing instrument to be their voluntary act before me.

[Signature]
Notary Public for Oregon
My Commission Expires: 12-7-2003

OPTIONEE:

Commissioner Commissioner

Commissioner Commissioner

Commissioner

STATE OF OREGON)
)
County of Lane) ss.

On _____, 2003, personally appeared _____

Who, being duly sworn, did say that they are members of the Board of Commissioners of Lane County, Oregon, and that said instrument was signed and sealed on behalf of lane County by authority of its Board of Commissioners; and that they acknowledge said instrument to be its voluntary act and deed. Before me:

Notary Public for Oregon
My Commission expires: _____

After Recording, Return to:
Lane County Public Works
Right of Way Management Section
3040 Delta Highway North
Eugene, OR 97408-1696

MEMORANDUM OF LEASE AND OPTION AGREEMENT

Lane County, a political
subdivision of the State of Oregon, Optionor

John R. Sooy and
Mary P. Sooy, Optionee

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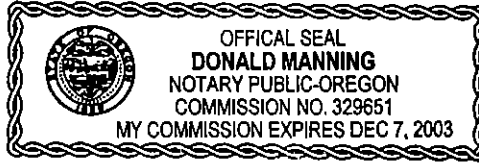
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IN WITNESS WHEREOF, the parties to the agreement, in consideration of the amounts stated in the Agreement, and other good and valuable consideration, and the benefits to be derived by the parties hereto in accordance with the terms and conditions of the Agreement, have executed this Memorandum of Option Agreement on the dates of their respective notarial acknowledgements.

OPTIONOR:

John R. Sooy
 John R. Sooy

Mary P. Sooy
 Mary P. Sooy



STATE OF OREGON)
)
 County of Lane) ss.

On November 24, 2003, personally appeared the above-named John R. Sooy and Mary P. Sooy and acknowledged the foregoing instrument to be their voluntary act before me.

Donald Manning
 Notary Public for Oregon
 My Commission Expires: 12-7-2003

OPTIONEE:

_____ Commissioner	_____ Commissioner
_____ Commissioner	_____ Commissioner
_____ Commissioner	

STATE OF OREGON)
)
 County of Lane) ss.

On _____, 2003, personally appeared _____

Who, being duly sworn, did say that they are members of the Board of Commissioners of Lane County, Oregon, and that said instrument was signed and sealed on behalf of lane County by authority of its Board of Commissioners; and that they acknowledge said instrument to be its voluntary act and deed. Before me:

 Notary Public for Oregon
 My Commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land lying in the B.B. Powers Donation Land Claim Number 81 in the Southwest one-quarter of the Northeast one-quarter (SW ¼ NE ¼) of Section 25, Township 17 South, Range 3 West of the Willamette Meridian, Lane County, Oregon, and being a portion of that property described in those certain deeds to LANE COUNTY, a political subdivision of the State of Oregon, recorded June 21, 1948, in Book 323, Pages 601 and 602 and March 18, 1952, in Book 456, Pages 480 and 481, LANE COUNTY OREGON DEED RECORDS, said parcel being all that portion that was vacated by The Board of County Commissioners of Lane County by Order 72-4-19-17 described as follows:

"Beginning at a point on the Easterly right of way line of Mohawk Road portion of the Mohawk Road Interchange (Eugene-Springfield Highway), said point being opposite and 40.0 feet distant Southerly from Engineers' Centerline Station MK 9+69.76 P.O.C., also said point being 439.23 feet North and 101.85 feet East of the Southeast corner of the William C. Spencer Donation Land Claim No. 50, Township 17 South, Range 3 West, Willamette Meridian; thence North 19° 39' 04" West, 118.08 feet; thence North 1° 46' 55" East, 102.70 feet; thence North 49° 15' 15" East, 51.57 feet to a point opposite and 60.0 feet distant Southerly from Engineers' Centerline Station L 46+35.00 P.O.T. of Mohawk Road - 19th Street relocation; thence South 88° 06' 55" East, 145.00 feet; thence North 88° 20' 28" East, 257.39 feet to a point opposite and 40.0 feet distant Southerly from Engineers' Centerline Station MK 4+39.63 P.O.C.; thence on a 532.96 foot radius curve left (the long chord of which curve bears South 58° 16' 44" West, 475.84 feet) a distance of 493.12 feet to the place of beginning.

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