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**OPTION AND PURCHASE/SALE AGREEMENT
WITH ESCROW INSTRUCTIONS**

This Option and Purchase/Sale Agreement with Escrow Instructions ("Agreement") is made on February __, 1996, between THE KISSEL COMPANY, a California corporation ("Owner") and DONAHUE WILDMAN, an individual ("Optionee") with reference to the following:

RECITALS

WHEREAS, Owner is the fee simple owner of certain unimproved real property commonly known as the northerly portion of Paradise Cove, in the City of Malibu, Los Angeles County, California ("Paradise Cove"); and

WHEREAS, Optionee desires to obtain certain easement rights over portions of Paradise Cove for purposes of assigning and/or conveying such rights to agencies of the State of California (collectively the "State") to provide public parking and public pedestrian access from Pacific Coast Highway to the mean high tide line of the Pacific Ocean where it adjoins Paradise Cove; and

WHEREAS, attached as Exhibits "A" and "B" are two (2) alternative sites on Paradise Cove which Owner is willing to sell to Optionee to convey to the State for providing public parking, public recreational use and public pedestrian ingress and egress; and

*not attached
need
more
discretion
in
selecting
concrete
location*

WHEREAS, the easements described in Exhibits "A" and "B" shall provide that the Owner will not interfere with public recreational

?

use of the beach within 25 feet of the water boundary for a distance 100 feet east and west of the southerly end of the easement as described in Exhibits "A" and "B" ("Beach Easement"); and

WHEREAS, it is intended that Optionee will present the two (2) ^{—NO} alternatives to the State and offer to convey to the State an easement over one (1) of the two (2) alternatives in exchange for the State agreeing to extinguish two easements on and about Optionee's property in Malibu; and

WHEREAS, it is acknowledged Optionee will not exercise this option or buy the Property if the option is exercised unless the State agrees to extinguish the two easements on and about Optionee's property in Malibu and the easement on the adjoining property to the west of Optionee's Property; and

WHEREAS, it is acknowledged the two alternatives easement sites are preliminary designs and Optionee may require revisions acceptable to the parties based upon more detailed study and analysis in the future; and *reparations of the state and for*

WHEREAS, it is in Owner and Optionee's interest to enter into this Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Grant of Option. Owner grants to Optionee an option to purchase one (1) of the two (2) alternative easement sites described more particularly in the attached Exhibits "A" and "B" which may be used for public parking, public recreational use and pedestrian ingress and egress (individually and collectively

no comment in gross and perpetuity

the "Property"). The Property includes all rights, licenses and easements necessary and appropriate for the unconditional and unrestricted development of the Property as herein contemplated. The correct legal description of the Property is to be furnished by the title company and when so furnished is to be approved by the parties hereto in writing. The terms and conditions of the purchase and sale shall be as set forth herein.

needs to be less specific include options that not lien. contracts etc

Section 2. Escrow. Within three (3) business days after the date of this Agreement ("Effective Date"), Owner and Optionee shall open an escrow (the "Escrow") with First American Title Company of Los Angeles ("FATCOLA"). This Agreement is hereby designated as escrow instructions duly signed by Owner and Optionee. Any additional instructions required by FATCOLA to clarify its duties and responsibilities shall not modify or amend the provisions of this Agreement.

need approval of escrow inst. by state

Section 3. Option Consideration. On or before the later of (i) five (5) business days from the Effective Date or (ii) the date Owner delivers to Optionee verification that all lienholders on the Property will either be paid off at the close of escrow or subordinated to this Agreement, Optionee shall deliver to Owner the sum of _____ as consideration for the option which sum shall be applied to or credited against the purchase price of the Property in the event the option is exercised. The option consideration shall be refunded to Optionee within five (5) business days only in the event Owner breaches its obligations as provided hereinafter.

Section 4. Term of Option. The term of the option shall commence on the date of this Agreement and shall expire at 11:59 p.m. on April 1, 1996. Optionee may extend the option term in one (1) week increments until June 31, 1996 by requesting such extension in writing prior to expiration of the then-existing term accompanied by a payment of _____. All sums paid to extend the option term shall be applied to or credited against the purchase price of the Property in the event the option is exercised. Owner agrees to provide adequate proof to the reasonable satisfaction of Optionee that it has obtained all requisite approvals and authorizations from third parties, including without limitation, any pending bankruptcy proceedings and secured lenders, necessary to consummate this transaction prior to the date Optionee is obligated to deposit any option consideration as provided herein. The term of the option and the obligation to deposit any option consideration shall be tolled for any period of time the option cannot be exercised because Owner has not obtained all such third party approvals and authorizations.

Section 5. Manner of Exercising Option. Optionee may exercise the option by delivering to Owner, before the expiration of the then-existing option term, written notice of such exercise ("Exercise Notice") which shall state the option is exercised subject to all the terms and conditions of this Agreement, including without limitation, each of the following terms:

A. The total purchase price for an easement over either Exhibit "A" or Exhibit "B" shall be _____, payable

in sufficient time to allow the close of escrow in a timely manner as herein provided. The purchase price shall be made by wire transfer, cashier's check, certified check or cash.

B. Escrow to close within thirty (30) days from the date of Owner's receipt of the Exercise Notice.

C. The parties to share equally in all transactional costs except Owner to pay for title insurance. Each party shall assume responsibility for its own attorneys' fees.

D. Optionee to deliver to Owner a release from Prudential Jon Douglas Realty for the payment of a commission as provided in Section 10.

E. Optionee to provide a description of the vestee of title.

F. Owner to deliver title to the Property free and clear of all liens and encumbrances as described more particularly in Section 7 of this Agreement.

Section 6. Representations and Warranties. Owner warrants and represents to Optionee as follows:

A. Owner is the owner of the Property and has marketable and insurable fee simple title to the Property and will convey the Property to Optionee free of restrictions, leases, liens, and other encumbrances. In the event the option is exercised, Owner will convey to ^{Optionee} Owner or its designee an easement in perpetuity over the Property by grant deed subject only to (a) taxes for the current year which are not then due and payable and (b) only those exceptions which Optionee has approved in writing.

B. Optionee, or his designee, is not assuming any service, operating, or other contracts or liabilities or other agreements affecting the Property.

C. Owner has obtained all requisite approvals and authorizations from third parties, including without limitation, any pending bankruptcy proceedings and secured lenders, to consummate this transaction including the granting of the option and the conveyance of title to the Property.

D. Owner and the individuals signing on behalf of Owner hereinbelow, represents and warrants it is the fee owner of the Property and it has full right, power and authority, without any other party's consent, to enter into this Agreement and to carry out Owner's obligations hereunder.

Section 7. Condition of Title. Closing of escrow is contingent upon Owner conveying title to the Property free of liens, encumbrances, easements, restrictions, rights and conditions of record or known to Owner, other than the following (a) current property taxes, (b) covenants, conditions, restrictions and public utility easements of record, if any, provided the same do not adversely affect the continued use of the Property for the purposes for which the Optionee or State plan to use it, and (c) those matters approved in writing by Optionee.

Section 8. Right of Entry on Property. During the option term, Optionee or the State and their designated agents and independent contractors shall have the right to enter the Property to the extent necessary to examine and determine the feasibility

of developing the Property. Optionee agrees to repair any damages its agents or independent contractors may cause to the Property^{ty} and further agrees to indemnify and hold Owner harmless from any and all costs, expenses, losses, attorney's fees and liabilities incurred or sustained by Owner as a result of any acts of Optionee, its agents, or independent contractors pursuant to the right granted by this paragraph.

Section 9. Owner's Cooperation in Seeking Permits and Approvals. Owner agrees at its sole cost to execute any and all documents or to join in any application that may be legally required to obtain approval for the development of the Property as herein described. Owner agrees at its sole cost to retain the services of counsel for purposes of assisting and participating in the process of obtaining approval from the State for the exchange of easements as provided in the Recitals. Owner further agrees to actively support the development of the easements by Optionee or the State.

problem w/ restricting in my for single fam land

Section 10. Broker's Referral Fee. Owner represents that Owner has not had any dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated thereby. Optionee represents and warrants he has not had any other dealings with any person, firm broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated thereby, except in the event Optionee exercises the option contemplated by this Agreement,

Optionee shall pay Prudential Jon Douglas Realty the sum of _____ for the services of Michael Shepherd related to this Agreement. Owner and Optionee do hereby indemnify and hold the other harmless from and against all liability, claims, demands, damages or costs of any kind arising from or connected with any broker's or finder's fees or commission or charge claimed to be due any person arising from indemnitor's conduct with respect to this transaction, other than the commissions authorized by this paragraph.

Section 11. Condemnation.

A. If before the close of escrow, either Owner or Optionee receives notice of any condemnation or eminent domain proceeding, or any proceeding in lieu of condemnation being initiated against the Property, this Agreement will terminate and Owner shall refund within 5 business days all option consideration paid by Optionee.

B. The Beach Easement shall be terminated if any public agency acquires by eminent domain proceedings that portion of Owner's property which includes the Beach Easement. It is the intent of the parties that the value of the sandy beach area for eminent domain purposes shall not be diminished by the existence of the Beach Easement. no.

Section 12. Authorization to Record Documents and Disburse Funds. FATCOLA is hereby authorized to record and distribute the documents and disburse the funds called for hereunder, provided each of the following conditions have been met:

A. FATCOLA is issuing to Optionee a ~~C.L.T.A.~~ Owner's

Santa Monica, California 90401

Optionee:

Donahue Wildman
c/o Jonathan S. Horne
309 Santa Monica Boulevard
Suite 308
Santa Monica, California 90401

Notices, demands, requests and exercises served in the above manner shall be considered sufficiently given or served for all purposes under this option at the time the notice is hand-delivered or within 2 calendar days from the date of the postmark.

Section 14. Assignment of Option. Optionee may assign from time to time this option and the rights under it to agencies of the State of California or their designees or such other third parties as the parties may hereafter agree. As a condition precedent to the assignment to a public agency of the State of California of this option and the rights under it, the prospective holder of the easements to the Property shall agree not to oppose any aspect of the redevelopment of Owner's property provided it does not interfere with the safe, continuous and uninterrupted use of the Property by the public.

no. we want to mis.

Section 15. Attorney's Fees and Governing Law. If it becomes necessary for either party to take any action to enforce this option, or any of its terms, the prevailing party shall be entitled to reasonable attorney's fees and all costs. This Agreement shall be interpreted in accordance with the laws of the State of California.

Section 16. Entire Agreement. This Agreement contains the

entire agreement between the parties respecting the matters set forth and supersedes all prior agreements between the parties respecting such matters.

Section 17. Modification to Easements. The easement rights to be conveyed to Optionee, the State or their respective designees shall be subject to the right of Owner, at its cost, to relocate portions of the Property or to construct or reconstruct any improvements hereafter constructed on the Property as may be necessary or convenient for the development of Owner's adjoining properties. Any such relocation or construction which affects the easements shall be subject to prior written approval of the then-existing holder of the Property, which approval shall not be unreasonably withheld. no.

Section 18. Amendments. This Agreement may be amended only by a writing signed by each of the parties hereto.

Section 19. Time of Essence. Time is of the essence of this Agreement.

Section 20. Specific Performance. In the event Owner defaults on its obligations set forth in this Agreement, Optionee may sue for specific performance of this Agreement pursuant to California Civil Code Section 3384 et seq., in addition to or instead of any cause of action for damages.

Section 21. Time Periods. As used in this Agreement, (1) a "day" is a calendar day and (2) a "business day" is a calendar day other than a Saturday or Sunday upon which (A) the Office of the County Recorder of Los Angeles County is open and accepting

documents for recording, (B) the United States Postal Service is delivering first class mail, and (C) banks in Los Angeles County are generally open for business.—If, pursuant to this Agreement, a party must act by a particular time; or an act is ~~effective only~~ if done by a particular time, and the last date for the doing or effectiveness of such act falls upon a day other than a business day, the time for the doing or effectiveness of such act shall be ~~extended to the next succeeding business day.~~

Section 22. Confidentiality. Owner is not authorized to, and Owner agrees not to, report any information concerning the terms and conditions of ~~the purchase and sale of the Property or this Agreement, including regarding Optionee's identity, to any listing service or the media or any other person or entity without Optionee's prior written consent, and Owner should not permit its agents to allow any such information to be disclosed to any person or entity.~~

Section 23. No Obligation to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor ~~obligate either of the parties hereto,~~ to any person or entity other than to each other.

Section 24. Counterparts.—This Agreement may be executed in counterparts, ~~each of which is an original, and all of which together constitute but one and the same document.~~

EXECUTED ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

"OWNER"

THE KISSEL COMPANY, a
California corporation

Date: February __, 1996

By: _____

(Its) _____

"OPTIONEE"

DONAHUE WILDMAN,
an individual

Date: February __, 1996
