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Vol. 73 Page

A-23672

CONTRACT

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THIS AGREEMENT, made this 1st day of October, 1973, by CHARLES A. CURTISS and DORIS O. CURTISS, husband and wife, herein called the Sellers, and HILLEN RANCH, LIMITED, a California limited partnership, JON R. HILLEN, general partner, herein called the Purchaser:

WITNESSETH:

Sellers agree to sell to Purchaser and Purchaser agrees to purchase that certain land, and all improvements thereon, situated in Klamath County, Oregon, commonly referred to as the Curtiss Ranch, consisting of 1433 acres, more or less, more particularly described in Exhibit "A", attached hereto, and by this reference incorporated herein, together with those items of personal property, described in Exhibit "B", attached hereto, and by this reference incorporated herein.

The purchase price of the property, which Purchaser agrees to pay, shall be the sum of \$450,000.00, payable as follows:

(a) The sum of \$10,000.00 which has previously been paid as earnest money;

(b) The sum of \$115,000.00 which is paid upon execution hereof;

(c) The deferred balance of \$325,000.00 is to be paid in annual installments of \$25,000.00, including interest at the rate of 7% per annum from October 1, 1973. The first such installment to be paid on the 1st day of November, 1974, and a like installment on the 1st day of each November thereafter, until November 1, 1983, at which time the deferred balance then remaining due, principal and interest, shall be paid in full.

After October 1, 1979, Purchaser shall have the privilege of increasing any annual installment or paying off in full,

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the entire deferred balance of the purchase price, together with interest due thereon to the date of payment.

1. It is agreed that Purchaser shall not pay more than 29% of the total purchase price during the year 1973.

2. Purchaser understands that Sellers are purchasing the real property under a Contract of Sale, dated July 29, 1966, wherein Cecil C. Haley and Vella M. Haley, husband and wife, are Sellers and Frank Couper and Kathleen Couper, husband and wife, and Max Long, Jr. and Carolyn Long, husband and wife, are Purchasers, which Contract was subsequently modified on April 15, 1969, by the aforesaid parties. On or about April 30, 1969, said Contract was assigned to Sellers, which Assignment was recorded on April 30, 1969, in Volume M-69 at page 3200, Microfilm Records of Klamath County, Oregon. Sellers represent that they will make all payments on the above-mentioned Contract as the same become due and agree to furnish Purchaser a copy of the receipt therefor within 30 days after said payments are due. In the event of their failure to do so, Purchaser shall have the right to make such payments, and upon proper receipt therefor, the escrow holder shall be authorized to apply the amount thereof as a credit to the unpaid balance of the purchase price of this Contract. Sellers further agree that they will furnish the Purchaser with copies of the receipts for payments of those certain Mortgages, listed as Exceptions 15 and 16, in the Exhibit "A", attached hereto, and by this reference incorporated herein, within 35 days after said payments are due and that in the event that said mortgage payments are not made by the Mortgagors, then Sellers agree to make such payments. In the event Sellers do not make said payments, Purchaser shall have the right to do so, and upon proper receipt therefor, the escrow holder

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shall be authorized to apply the amount thereof as a credit to the unpaid balance of the purchase price on both the within Contract and upon the prior Contract of July 29, 1966. In such event, Sellers agree to tender such paid receipt to the escrow holder pursuant to its terms.

3. In the event Purchaser fails to pay, when due, any amounts required of it to be paid herein, Sellers may pay any or all such amounts. If Sellers make any such payments the amounts thereof shall be added to the purchase price of the property on the date such payments are made by Sellers and such amounts shall bear interest at the same rate as provided above.

4. All taxes and assessments levied against the above described property, as of October 1, 1973, shall be prorated between Sellers and Purchaser as of October 1, 1973. Purchaser agrees to pay, when due, all taxes, of every kind and nature and assessments, which are hereafter levied against the property by any public or municipal body, and all public, municipal and statutory liens which may be hereafter lawfully imposed upon the premises. Also, initial escrow fees of \$281.00 shall be equally divided between Sellers and Purchaser.

5. Purchaser agrees to keep the buildings on said premises insured against loss by fire or other casualty in an amount not less than insurable value, with loss payable to the parties hereto as their interests appear at the time of loss, with priority in payment to Sellers. Any amount received by Sellers under the insurance in payment of a loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Sellers. However, Purchaser may first apply said amount to replace any improvements on the premises to the extent that they were damaged thereby. All uninsured losses shall be

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borne by Purchaser on or after the date Purchaser becomes entitled to possession.

6. Purchaser shall be entitled to possession of the premises as of the 1st day of October, 1973.

7. Purchaser agrees that all improvements now located, or which shall hereafter be placed on the premises, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Sellers. Purchaser shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all improvements thereon, and all alterations thereof, in good condition and repair.

8. Sellers shall furnish, at their expense, a Purchaser's title insurance policy in the amount of \$450,000.00, within 15 days from the date hereof, insuring Purchaser, against loss or damage sustained by it by reason of the unmarketability of Sellers' title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions in such title insurance policies, easements, conditions and restrictions of record and encumbrances herein specified.

9. Sellers covenant that they are the owners of the above-described property, subject to the Contract of Sale, dated July 29, 1966, as above-mentioned.

10. As soon as practicable following the execution of this Agreement, Sellers shall deliver in escrow to First National Bank of Oregon, Klamath Falls branch:

(a) A Warranty Deed, free and clear of all encumbrances, except as expressly specified herein. The Mortgages hereinabove referred to shall not be included as exceptions in said Deed.

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said Warranty Deed to be executed by Sellers with Purchaser as Grantee;

(b) An executed copy of this Agreement;

(c) A Purchaser's title insurance policy as described

above;

and upon payment of the entire purchase price for the property, said escrow agent shall deliver to Purchaser the instruments specified above. If Purchaser fails to pay any installment before the expiration of thirty days after the date thereof, escrow agent is authorized to surrender to Sellers upon demand, and without notice to Purchaser, all of the documents specified in the preceding paragraphs, thereby terminating the escrow.

11. Purchaser shall not, until the deferred principal balance, of the Contract of July 29, 1966, is less than \$100,000.00, plow under any pasture unless the same is replanted within the same year in a permanent and perennial crop, and likewise shall not plant more than one hundred acres of the subject real property in potatoes in any one farm year and shall reseed all potatoe land after harvesting the same, to a permanent crop within four years of harvesting.

12. That Purchaser shall at all times farm said real property in a good, farmerlike manner and according to the usual course and custom practiced on like farms in Langell Valley, Klamath County, Oregon, and Purchaser shall further maintain all water ways, ditches, flumes and fences in good condition and repair.

13. Sellers agree to transfer any United States Forest Service special use permits or any leases with the United States, Department of Interior, Bureau of Land Management, held by them, subject to the approval of such agencies, pertaining to the following described property:

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W1/4, Section 6, Township 39 South, Range 12  
East of the Willamette Meridian

SE1/4, Section 17, Township 39 South, Range 12  
East of the Willamette Meridian.

all within Klamath County, Oregon. Provided, however, that this paragraph shall be limited to leases transferred pursuant to the Contract of Sale of July 29, 1966, and its subsequent Assignment.

14. Should Purchaser, while in default, permit the premises to become vacant, Sellers may take possession of same for the purpose of protecting and preserving the property and their security interest therein, and in the event possession is so taken by Sellers, they shall not be deemed to have waived their right to exercise any of the rights of Sellers upon default.

15. Except as provided herein, Purchaser declines to disclose to Sellers the use it intends to make of all or a portion of the real property described in this Agreement. Purchaser acknowledges that it has entered into this Agreement subject to State and Federal laws and regulations relating to the division and sale of real property by parcels or lots, and assumes and agrees to be bound by such State and Federal laws and regulations relating to such activity. Purchaser agrees to pay and hold Sellers harmless from any expenses or obligations incurred as a consequence of, or connected with, the acquisition of the real property described herein, including, but not limited to, the consequence of any subdivision activity and any additional sums due to Klamath County for deferred real property taxes by reason of any change of said real property from farm use to non-farm use.

16. Sellers expressly reserve the ownership, including the right to harvest and remove all growing crops located upon said real property. Sellers agree to remove said crops within



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a reasonable time after harvesting. Sellers further retain the right to enter upon said property at such times as may be necessary to carry out such purposes. Sellers also reserve the right to graze cattle upon the portion of the premises currently planted in alfalfa through the current grazing season without charge to Sellers. *MA CAC*

17. In case litigation is instituted arising directly or indirectly out of this Contract, the losing parties shall pay to the prevailing parties their reasonable attorney fees, including such attorney fees as are incurred upon appeal, if any.

In the event any suit or action is commenced to foreclose this contract, the court having jurisdiction of the case may, upon motion by Vendor, appoint a receiver to collect the rents and profits arising out of the above described real property and to take possession, management and control of the same during pendency of such foreclosure proceeding or until payment of the obligations hereby secured, and apply said rents and profits to the payment of the amount due hereunder, first deducting all proper charges and expenses attending the execution of said receivership.

Upon the commencement of any suit or action to collect the indebtedness or disbursements, secured hereby, or any part thereof, or to enforce any provision of this contract by specific performance, foreclosure, or otherwise, there shall become due, and Purchaser agrees to pay to vendor, in addition to all statutory costs and disbursements, any amount vendor may incur or pay for any title report, title search, insurance of title, or other evidence of title subsequent to the date of this contract on any of the real property above described

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and this Contract shall be security for the payment thereof.

18. Purchaser certifies that this Contract of purchase is accepted and executed on the basis of its own examination and personal knowledge of the premises and opinion of the value thereof; that no attempt has been made to influence its judgment; that no representations as to the condition or repair of said premises have been made by Sellers or by any agent of Sellers; that no agreement or promise to alter, repair, or improve said premises has been made by Sellers or by any agent of Sellers; and that Purchaser takes said property and the improvements thereon in the condition existing at the time of this Agreement.

19. In the event that Purchaser shall fail to perform any of the terms of this Agreement, time of payment and performance being of the essence, Sellers shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this Contract by strict foreclosure in equity;
- (b) To declare the full unpaid balance of the purchase price immediately due and payable;
- (c) To specifically enforce the terms of this Agreement by suit in equity;
- (d) To declare this Agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option, all of the right, title and interest of Purchaser shall revert and re-vest in Sellers without any act of re-entry or without any other act by Sellers to be performed, and Purchaser agrees to peaceably surrender the premises to Sellers, or in default thereof, Purchaser may, at the option of Sellers, be treated as a tenant holding over unlawfully after the expiration of a lease,

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and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant and condition of this Contract, including payment as herein provided, until notice of said default has been given by Sellers to Purchaser and Purchaser shall have failed to remedy the said default within 15 days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser at the last address as shown in the records of the escrow holder.

If Purchaser shall fail, within 15 days after notice of default, to make payment as herein provided, and said failure shall continue for more than 15 days after the payment becomes due, Purchaser shall be deemed in default and Sellers shall not be obligated to give any further notice to Purchaser of a declaration of said default.

20. Failure by Sellers at any time to require performance by Purchaser of any of the provisions hereof, shall in no way affect Sellers' rights hereunder to enforce the same, nor shall any waiver by Sellers of any breach hereof be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

21. Any assignment by Purchaser of this Agreement, or any or all of its rights hereunder, and any lease by Purchaser of said property, or any part thereof, shall be inoperative and void, unless Sellers shall assent thereto in writing, however, such consent shall not be unreasonably withheld.

The covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto; provided, however, that nothing contained in this paragraph shall alter the restriction hereinabove contained relating to assignment.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 25th day of September, 1973.

SELLERS:

*Charles A. Curtiss*  
CHARLES A. CURTISS

*Doris J. Curtiss*  
DORIS J. CURTISS

PURCHASER:

HILLEN RANCH, LIMITED, a California limited partnership

BY: *Jon R. Hillen*  
JON R. HILLEN, general partner

STATE OF OREGON,  
County of Klamath } ss.

FORM NO. 23 - ACKNOWLEDGMENT  
STATE OF OREGON - LAW FIRM, CO., PORTLAND, ORE.

BE IT REMEMBERED. That on this 25th day of ~~XXXX~~ September, 1973, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Charles A. Curtiss and Doris J. Curtiss

known to me to be the identical individual s described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

*Shirley J. Hillen*  
Notary Public for Oregon.  
My Commission expires 8-5-75

EXHIBIT "A"

The following described real property situate in

Klamath County, Oregon:

PARCEL 1:

S $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  lying North of Lost River, and that part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , lying North of Lost River in Section 18; SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, Township 39, South, Range 12 E. W. M.

PARCEL 2:

E $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 6; E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , Lots 3 and 4, and S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7; E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , Lot 1 and that portion of Lot 2 or the SW $\frac{1}{4}$ NW $\frac{1}{4}$  lying North of Lost River, that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  lying North of Lost River, that portion of Lot 3 or the NW $\frac{1}{4}$ SW $\frac{1}{4}$  lying North of Lost River in Section 18; Lots 1 and 2 or the E $\frac{1}{2}$ SW $\frac{1}{4}$  Section 7; NW $\frac{1}{4}$ NW $\frac{1}{4}$  and that portion of NW $\frac{1}{4}$ NW $\frac{1}{4}$  lying West and North of the Horsefly Irrigation District Canal, Section 17; all in Township 39 South, Range 12 East of the Willamette Meridian.

SUBJECT TO:

1. Reservations, restrictions, rights of way, easements of record and those apparent on the land;
2. Taxes for 1973-74 are now a lien, but not yet payable;
3. Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder;
4. Liens and assessments of Klamath Project and Horsefly Irrigation District and regulations, contracts, easements and water and irrigation rights in connection therewith;
5. Any unpaid charges or assessments of the Horsefly Irrigation District;
6. Rights of the Federal Government, the State of Oregon, and the general public in and to that part of the property described herein lying below the high water line of Lost River;
7. Reservations and restrictions contained in deed from H. L. Sparreborn to Charles Gates, recorded July 25, 1918, in Deed Volume 48 page 541, records of Klamath County, Oregon, as follows: Reserving 5% of all the oil and minerals found to exist on said lands to my heirs and assigns. This deed covered Lots 3 and 4 and E $\frac{1}{2}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 7, Lots 1 and 2, E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 18 SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 6;
8. Reservations and restrictions contained in deed from J. C. Hunt and Bess Hunt, husband and wife, to L. L. Truax and Lida Truax, husband and wife, dated January 24, 1936, recorded June 6, 1936, in Deed Vol. 106, page 442, records of Klamath County, Oregon, as follows: This conveyance, however, does not include



any rights appurtenant to the said lands, in and to any gas, or oil, which may be discovered in and under the same, or any portion of the same, as it is the intention of the grantors herein to retain unto themselves an undivided 1/2 interest in and to any and all gas and oil, if any, in and under the said above described premises together with the right to prospect for and, if found, remove same therefrom. This deed covered Lots 3 and 4, SE 1/4 SW 1/4 and that part of the SE 1/4 SE 1/4 lying on the Northerly side of Lost River, Section 18;

9. Right of way, including the terms and provisions thereof, given by C. M. Haley, a single man, Cecil C. Haley and Velda Haley, his wife, to The California Oregon Power Company, a California corporation, dated November 22, 1939, recorded January 18, 1940 in Deed Vol. 126 page 456, records of Klamath County, Oregon, as follows: SW 1/4 Section 7 and NW 1/4 NW 1/4 of Section 18;

10. Right of way, including the terms and provisions thereof, given by L. L. Truax and L. L. Truax, as guardian of Lida A. Truax, to The California Oregon Power Company, a California corporation, dated October 6, 1942, recorded October 24, 1942, Deed Vol. 150 page 513, records of Klamath County, Oregon. Covers Lot 3 Section 18;

11. Reservations and restrictions contained in deed from Fred B. Robinson and Freda Robinson, his wife, and Marie E. Green, a single woman, to Cecil C. Haley and Velda M. Haley, husband and wife, dated August 14, 1948, recorded December 6, 1948, Deed Vol. 227 page 136 records of Klamath County, Oregon, as follows: "Grantors reserve unto themselves, their heirs and assigns, the right of free and unrestricted access to the Horsefly Irrigation District canal from the South and East where said canal lies on the NE 1/4 NW 1/4 of Section 17, Township 39 South Range 12 E. W. M." This deed covered NW 1/4 NW 1/4 and portion NE 1/4 NW 1/4 lying West and North of Horsefly Canal Section 17;

12. Right of way for transmission line, including the terms and provisions thereof, given by Cecil C. Haley and Velda Haley, husband and wife, to The California Oregon Power Company, a California corporation, dated March 22, 1954, recorded April 7, 1954, Deed Vol. 266 page 277, records of Klamath County, Oregon. Covers Lot 3 lying North and East of Lost River and NE 1/4 SW 1/4 Section 18;

13. Right of way for transmission line, including the terms and provisions thereof, given by Cecil C. Haley and Velda Haley, his wife, to The California Oregon Power Company, a California corporation, dated July 22, 1954, recorded July 26, 1954, Deed Vol. 268 page 242, records of Klamath County, Oregon. Covers Lot 4 Section 7 and Lot 1, Section 18;

14. Right of way for roadway, including the terms and provisions thereof, given by Cecil C. Haley and Velda Haley, husband and wife, to C. Vernon Haley, and Mary E. Haley, husband and wife, dated December 28, 1961, recorded December 28, 1961, Deed Vol. 334, page 484, records of Klamath County, Oregon;

15. Mortgage, including the terms and provisions thereof, given by Cecil Vernon Haley, same person as C. Vernon Haley, and Mary Haley, husband and wife, to The Federal Land Bank of Spokane, a corporation, dated November 21, 1961, recorded December 7, 1961

in Mortgage Volume 207 page 44, records of Klamath County, Oregon to secure the payment of \$16,000.00. Covers Parcel 1;

16. Mortgage, including the terms and provisions thereof, given by Cecil C. Haley and Velda M. Haley, also known as Velda Haley, husband and wife, to The Federal Land Bank of Spokane, a corporation, dated October 3, 1963, recorded October 14, 1963, in Mortgage Volume 219 page 611, records of Klamath County, Oregon, to secure the payment of \$100,000.00. Covers Parcel 2;

17. Stock Subscription and Contract between Mary M. Clouston, a widow, and Klamath Water Users Association, corporation, dated February 5, 1908, recorded March 19, 1908, Deed Vol. 7B, page 466, records of Klamath County, Oregon;

18. The interest of Charles A. Curtiss and Doris Q. Curtiss, husband and wife, Assignees, as disclosed by Assignment of Vendees' Interest in Contract, dated April 15, 1969, recorded April 30, 1969, in Volume M-69 page 3200, Microfilm Records of Klamath County, Oregon, in and to that certain Contract of Sale by and between Frank Couper and Kathleen Couper, husband and wife, and Max Long, Jr. and Carolyn Long, husband and wife, purchasers and Cecil C. Haley and Velda M. Haley, husband and wife, as sellers, dated July 29, 1966.

With respect to said Mortgages, listed as exceptions 15 and 16 above, the Mortgagors thereunder have agreed to assume and pay holding Sellers' predecessor in interest harmless therefrom. Sellers herein reaffirm that they will hold Purchaser harmless therefrom.



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EXHIBIT "B"

The following described personal property, located  
on the real property, described in Exhibit "A", attached hereto,  
and by this reference incorporated herein, to-wit:

6 1/2 to 8 yd. Carryall (Ateco)  
Disc Checker for HD 6  
Farmall Super H Model Serial #826J  
Hay-o-vator elevator and gas engine  
Hay elevator with electric motor  
Clean Field hay loader (old) needs repair  
Johnson Hay loader  
Owatonna Swather Serial #80217, Model 80 10' & Conditioner  
International 2-way plow #39 (old)  
John Deere Drill (10') Model E8, & Cultipacker  
Morrell rake  
Checker (dump type)  
Spike tooth harrow, 4 section (old)  
10' International offset disc ST-52 2050043R91  
8' Springtooth harrow  
Self Propelled International Combine 12' Serial #4474  
Straw Chopper for combine  
Towner leveler, old  
Ezee flow spreader #10-46470 (poor)  
International dump truck KBS-6 Serial #41945  
Chevrolet Truck Serial #6RUF1193 (1948)  
Australian Harrow  
John Deere Manure Spreader Model H  
Bazooka and Electric motor  
2 wheel tilt trailer  
Universal Hay loader - old  
Busby stock chute  
Brower mixer and electric motor, Model 1951, Serial #1234  
Fairbanks Morse single animal scale 97237  
8" reject pipe 500'  
5 Pallet feeders  
Arc welder, acetylene welder  
Jeep Pickup 1949  
1 compressor  
Eversman land plane  
Straw chopper Schultz Serial #6115 Model 2146  
John Deere Side delivery rake 851 Serial #LR25-16534  
Large disc, offset Model Goble  
Danuser Post hole Auger 12" 3-point F7-17426  
Fairbanks morse sack scale platform type  
4 wheel hay wagon  
Bench grinder and misc. tools - benches  
John Deere KBA - 10' disc  
Farmhand chopped hay wagon H305A-1228  
Butz bale feed mill and mixer with drag, molasses tank & pumps  
100 2" Aluminum syphons  
2001" plastic syphons

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Klamath County Title

Filed for record at request of \_\_\_\_\_  
this 17 day of Oct, A.D. 1973 at 3:52 o'clock P.M. and  
duly recorded in Vol. M-73, of Deeds on Page 14002

EXHIBIT "B"

28.00

W.D. MILLER, County Clerk

Let. Klamath Co. Title  
P.O. Box 151

By Hayden