

28-6336

1 THIS CONTRACT OF SALE OF REAL PROPERTY Made effective the 1st
2 day of January, 1974, notwithstanding its execution on December 27,
3 1973, between OSCAR A. DeNAULT and LOUISE G. DeNAULT, tenants by
4 the entirety, hereinafter called "Vendor", and REGIS V. ANDRIEU and
5 DORIS JEAN ANDRIEU, husband and wife, hereinafter referred to as
6 "Purchaser";

W I T N E S S E T H:

7 Vendor agrees to sell to Purchaser and Purchaser hereby agrees
8 to buy from Vendor, at the price and on the terms, covenants, condi-
9 tions and provisions hereinafter contained, all of the following
10 described property situate in the County of Klamath, State of Oregon,
11 more particularly described as follows:

12 The real property described in Exhibit "A" attached hereto and
13 thereby made a part hereof as though fully set forth hereat.

14 SUBJECT TO: The exceptions set forth in Exhibit "A".

SPECIAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

15 The purchase price of the property, which Purchaser agrees to
16 pay, is the sum of \$241,165.00, payable as follows:

17 (a) \$53,665.00 down payment, receipt of which is hereby
18 acknowledged.

19 (b) \$187,500.00 deferred balance payable as follows: On
20 the 15th day of January, 1975, and on the 15th day of each
21 January thereafter, annual installments of \$18,750.00, plus
22 interest, which installments shall continue until the full
23 sum of principal and interest secured by this contract have
24 been paid.

25 Interest on the deferred balance of the purchase price is fixed at
26 the rate of six (6%) percent per annum simple interest on the declining
27 balances of the deferred balance. Interest commences on the first
28 day of January, 1974.

29 From and after January 1, 1974, Purchaser may prepay interest
30 for any one year, and may increase any installment or prepay all
31 or any part of the whole consideration at any time, together with
32 interest thereon to the date of receipt of any such payment by the
Escrow Holder. Except for prepayment of interest, no partial payment,

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1 increased installment, nor payment for a partial conveyance by reason
2 of the eminent domain provisions of this agreement, shall be credited
3 in lieu of any regular future installment nor excuse Purchaser from
4 making the regular installments specified in this agreement.

5 Purchaser represents that he will continue the present use of
6 the subject property, but this representation shall not be construed
7 as limiting Purchaser's use of the subject property to its present
8 use. If Purchaser elects to change the present use of the real
9 property herein described to another use, such change shall be at
10 the full risk and expense of Purchaser. Purchaser acknowledges that
11 he has entered into this contract subject to state and federal laws
12 and regulations relating to the subdivision and sale of real property
13 by parcels or lots and assumes and agrees to be bound by such state
14 and federal laws and regulations relating to such activity. Purchaser
15 agrees to assume and pay, and hold Vendor harmless from, any expenses
16 or obligations incurred as a consequence of, or connected with, any
17 subdivision activity, including, but not limited to, any additional
18 sums due to Klamath County for deferred real property taxes by reason
19 of change of use.

20 Purchaser has made an independent investigation and inspection
21 of the real property herein described and has entered into this
22 contract without relying on any statement or representation or
23 covenant not specifically embodied in this contract, and accepts
24 the property described in this agreement as is, in its present condi-
25 tion and requires no work of any kind to be done on said property
26 by Vendor.

GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

1 The real property above described hereby sold to Purchaser includes
2 all and singular the tenements, hereditaments, rights, easements, priv-
3 ileges and appurtenances thereunto belonging, or in anywise appertaining,
4 improvements thereon including, but not limited to, stationary pumps,
5 pumping stations, pumping motors, pumping engines, reservoirs, nonportable
6 pipes and flumes or other nonportable equipment now used for the produc-
7 tion of water thereon or for the irrigation or drainage thereof, and the
8 reversions, remainders, rents, issues and profits thereof, together
9 with all the rights to the use of water for irrigating said premises
10 and for domestic use thereon to which Vendor is now entitled, or which
11 are now used on said premises, however the same may be evidenced, and
12 together with all shares of stock or shares of water in any ditch or
13 irrigation company which, in any manner entitles the Vendor water
14 for irrigating or domestic purposes upon said real property. The
15 Vendor's lien created by this contract shall and does hereby include
16 the real property above described, together with, all and singular,
17 the tenements, hereditaments, rights, easements, privileges and
18 appurtenances thereunto belonging or in anywise appertaining, and
19 all improvements now or hereafter thereon, including, but not
20 limited to, stationary pumps, pumping stations, pumping motors, pumping
21 engines, reservoirs, nonportable pipes and flumes or other nonportable
22 equipment now or hereafter used for the production of water thereon for
23 the irrigation or drainage thereof, and the reversions, remainders, rents,
24 issues and profits thereof, and together with all the rights to the use
25 of water for irrigating said premises and for domestic use thereon to
26 which said real property is now or may hereafter become entitled, or
27 which now are or may hereafter be used on said premises, however the
28 same may be evidenced, and together with all shares of stock or shares
29 of water in any ditch or irrigation company which in any manner
30 entitles the legal or equitable owner thereof to water for irrigating
31 or domestic purposes upon said real property. In addition, Purchaser
32

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1 hereby agrees that the Vendor's lien is superior to any and all
2 rights of Purchaser under and by virtue of any homestead, stay
3 or exemption laws now in force, or which may hereafter become
4 laws and that no timber will be cut from any of the real property
5 subject to said lien.

6 Vendor hereby warrants that he has good and merchantable
7 title to the real property above described, subject to the excep-
8 tions above set forth. Vendor will, upon execution hereof, make
9 and execute in favor of Purchaser, a good and sufficient warranty
10 deed conveying said premises free and clear as of this date of
11 all encumbrances, subject to the above set forth exceptions, and
12 will place said deed, together with the original of this agree-
13 ment, and any other conveyances of title or security instruments
14 required hereby in escrow at First Federal Savings & Loan Association
15 of Klamath Falls, 538 Main Street, Klamath Falls, Oregon 97601
16 with instructions to said Escrow Holder that when and if the
17 Purchaser shall have paid the balance of the purchase money and
18 interest as above specified and shall have complied with all
19 other terms and conditions of this agreement, to deliver the same
20 to Purchaser subject to the usual printed conditions and provi-
21 sions of the standard form of escrow instructions provided by
22 said Escrow Holder.

23 Vendor shall furnish, at his own expense, a purchaser's
24 Title Insurance Policy issued by Transamerica Title Insurance Co.
25 under Order No. 28-6336 insuring Purchaser's title in the above
26 described real property in the amount of \$241,165.00 subject to
27 the above set forth exceptions and the printed conditions and
28 exceptions contained in the usual form of title policy issued
29 by said title insurance company.

30 Purchaser shall be entitled to possession of the above described real
31 property on the date this contract is recorded. Purchaser shall remain in
32 possession so long as Purchaser is not in default hereunder. Purchaser shall

1 and hereby agrees to keep said real property in clean, sanitary,
2 sightly, attractive condition; to commit no waste or otherwise damage
3 or injure said premises; to maintain said premises in accordance with
4 the laws and the ordinances and regulations of any constituted authority
5 applying to said premises and to make up no unlawful use thereof; to
6 pay regularly and seasonably, and before the same shall become delinquent,
7 all taxes, assessments, and charges of whatever nature (including addi-
8 tional charges by reason of change of use) levied and assessed against
9 said real property and to pay and discharge all encumbrances thereafter
10 placed thereon by Purchaser; to permit no lien or other encumbrances to
11 be filed upon or placed against said premises without the written consent
12 of Vendor; and it is further understood and agreed for the purposes of
13 this provision that if Purchaser fails to pay or discharge any taxes,
14 assessments, liens, encumbrances, or charges, Vendor, at his option and
15 without waiver of default or breach of Purchaser, and without being
16 obliged to do so, may pay or discharge all or any part thereof all of
17 which said sums so paid by Vendor shall become repayable by Purchaser,
18 together with interest at the rate of ten (10%) percent per annum, upon
19 demand, payment of which is part of the performance of this agreement by
20 Purchaser and a condition precedent to delivery of the warranty deed and
21 other documents by the Escrow Holder.

22 Purchaser agrees to keep the buildings and improvements now on or
23 hereafter placed upon the above described real property insured against
24 loss by fire or other casualty in an amount not less than maximum insur-
25 able value as determined by the insurance carrier and shall obtain, at
26 his own expense, said insurance in the name of Vendor as the primary
27 insured with an endorsement thereon providing for loss payable to Vendor
28 and Purchaser as their respective interests may appear. The policy or
29 policies of insurance shall be delivered to Vendor, or, in lieu thereof,
30 a certificate of such insurance may be provided by Purchaser and
31 delivered to Vendor. If a loss should occur for which insurance
32 proceeds shall become payable, the Purchaser may elect to either

1 rebuild or repair the portion of the building so destroyed, or apply
2 the proceeds to payment of the then unpaid balance of the purchase
3 money. If the Purchaser elects to rebuild, he shall sign such docu-
4 ments as may be required by Vendor to guarantee the application of
5 the insurance proceeds to the cost of such rebuilding or repair.

6 In the event any governmental agency or entity having the power
7 of eminent domain acquires by eminent domain, or by negotiated sale
8 in lieu of eminent domain, all, or any portion, of the real property
9 described in this contract, Vendor may require Purchaser to apply all
10 proceeds received by Purchaser from such acquisition (remaining after
11 payment by Purchaser of attorney fees, appraiser fees, and related
12 necessary and reasonable costs in connection with securing said pro-
13 ceeds) which proceeds are hereinafter called "net proceeds" toward
14 the payment of the sums secured by this contract. Upon receipt of
15 said net proceeds, Purchaser shall notify Vendor of the amount of said
16 net proceeds and Vendor shall, within ten (10) days after such notifi-
17 cation, notify Purchaser in writing if Vendor elects to have said net
18 proceeds applied toward payment of the sums secured by this contract.
19 If Vendor fails to so notify Purchaser of such election, Vendor shall
20 conclusively be deemed to have elected not to require Purchaser to
21 apply said net proceeds toward the sums secured by this contract. If
22 Vendor elects to have said net proceeds applied toward payment toward
23 the sums secured by this contract, the amount to be received by Vendor
24 shall not exceed the total of the principal plus accrued interest to
25 the date of receipt thereof by Vendor, and all such sums shall be paid
26 to the Escrow Holder named herein. Regardless of whether Vendor elects
27 to have said net proceeds applied to the sums secured by this contract,
28 Vendor will join in any conveyance required by the governmental agency
29 or entity acquiring a portion or all of the real property described
30 herein by eminent domain, but Vendor shall not be required to partially
31 convey more property than that which is acquired by such governmental
32 agency or entity. Vendor shall not be obligated to participate in.

1 any negotiations with such governmental agency or entity. Any notice
2 or notices required to be given by Purchaser to Vendor pursuant hereto
3 shall be in writing, and shall be deemed given when the same is depo-
4 sited in the United States mail as registered mail, postage prepaid,
5 addressed to Vendor at the last address of Vendor shown on the records
6 of the Escrow Holder.

7 If Purchaser shall sell said real property described herein and
8 securing the unpaid balance of this contract, Vendor may elect to
9 permit the subsequent Purchaser to assume the balance of Purchaser's
10 obligation secured hereby, or to demand payment from Purchaser, or
11 the transferee of said Purchaser, or both (at the option of the Ven-
12 dor) of such portion of the deferred balance as Vendor may consider
13 satisfactory, or declare the entire balance of the deferred balance
14 due and payable. This clause cannot be waived, unless Purchaser gives
15 Vendor notice of such sale in writing and Vendor, after receipt of such
16 written notice, accepts a payment from the subsequent Purchaser. The
17 written notice provided for herein shall be deemed given when the same
18 is deposited in the United States mail as registered mail, addressed
19 to the last address of Vendor shown on the records of the Escrow Holder.

20 Vendor may appear in or defend any action or proceeding at law, in
21 equity, or in bankruptcy, affecting in any way the security hereof, and
22 in such event, Vendor shall be allowed and paid, and Purchaser hereby
23 agrees to pay, all costs, charges and expenses, including costs of evi-
24 dence of title or validity and priority of the security and attorney
25 fees in a reasonable sum, incurred in any such action or proceeding in
26 which Vendor may appear, which shall bear interest at ten (10%) percent
27 from date of demand therefor. Failure of Purchaser to pay Vendor for
28 such costs, charges and expenses within ninety (90) days from date of
29 demand therefor shall constitute a breach of this contract.

30 If Purchaser shall fail to perform any of the terms of this agree-
31 ment, time of payment and performance being of the essence, Vendor
32 shall, at his option, subject to the requirements of notice

1 as herein provided, have the following rights:

2 (a) To foreclose this contract by strict foreclosure
3 in equity;

4 (b) To declare the full unpaid balance of the purchase
5 price immediately due and payable; and
6

7 (c) To specifically enforce the terms of this agreement
8 by suit in equity.
9

10 Purchaser shall not be deemed in default for failure to per-
11 form any covenant or condition of this contract, other than the
12 failure to make payments as provided for herein, until notice of
13 said default has been given by Vendor to Purchaser and Purchaser
14 shall have failed to remedy said default within thirty (30) days
15 after the giving of the notice.

16 If Purchaser shall fail to make payments as herein provided
17 and said failure shall continue for more than thirty (30) days
18 after the payment becomes due, Purchaser shall be deemed to be
19 in default and Vendor shall not be obligated to give notice to
20 Purchaser of a declaration of said default.

21 Where notice in writing is required by Vendor to the Pur-
22 chaser, such notice shall be deemed given when the same is
23 deposited in the United States mail as registered mail,
24 addressed to the last address of Purchaser shown on the records
25 of the Escrow Holder.

26 No waiver by Vendor of any breach of any covenant of this
27 agreement shall be construed as a continuing waiver of any sub-
28 sequent breach of such covenant nor as a waiver of any breach
29 of any other covenant nor as a waiver of the covenant itself.

30 In the event any suit or action is commenced to foreclose this

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32 -----

1 contract, the court having jurisdiction of the case may, upon motion
2 by Vendor, appoint a receiver to collect the rents and profits arising
3 out of the above described real property and to take possession,
4 management and control of the same during pendency of such foreclosure
5 proceeding or until payment of the obligations hereby secured, and
6 apply said rents and profits to the payment of the amount due hereunder,
7 first deducting all proper charges and expenses attending the
8 execution of said receivership.

9 Upon the commencement of any suit or action to collect the
10 indebtedness or disbursements, secured hereby, or any part thereof,
11 or to enforce any provision of this contract by specific performance,
12 foreclosure, or otherwise, there shall become due, and Purchaser
13 agrees to pay to Vendor, in addition to all statutory costs and
14 disbursements, any amount Vendor may incur or pay for any title re-
15 port, title search, insurance of title, or other evidence of title
16 subsequent to the date of this contract on any of the real property
17 above described and this contract shall be security for the payment
18 thereof.

19 In the event any suit or action is instituted to collect the
20 indebtedness or disbursements secured hereby, or any part thereof,
21 or to enforce any provision of this contract by specific performance,
22 or foreclosure, or otherwise, the prevailing party, at trial, or on
23 appeal, shall be entitled to such reasonable attorney's fees as
24 shall be fixed by the court having jurisdiction of the case, in
25 addition to statutory costs and disbursements.

26 This agreement contains the full understanding of the parties
27 with respect to the subject hereof and no modification hereof shall
28 be given effect unless the same be in writing subscribed by the
29 parties hereto or their successors in interest.

30 This agreement shall bind and inure to the benefit of, as the
31 circumstances may require, the parties hereto, and their respective
32 successors, heirs, executors, administrators and assigns.

1 In construing this agreement, the singular shall include both
 2 the singular and the plural and the masculine both the masculine
 3 and feminine.

4 WITNESS the hands of the parties hereto the day and year first
 5 above written.

6 Oscar A. DeNault
 7 Oscar A. DeNault

8 Regis V. Andrieu
 9 Regis V. Andrieu

10 Louise G. DeNault
 11 Louise G. DeNault Vendor

12 Doris Jean Andrieu
 13 Doris Jean Andrieu Purchaser

14 STATE OF OREGON)
 15) ss.
 16 County of Klamath)

17 On the 27th day of December, 1973, personally appeared
 18 the above named Oscar A. DeNault and Louise G. DeNault, husband and
 19 wife, and acknowledged the foregoing instrument to be their voluntary
 20 act and deed.

Before me:

(SEAL)

21 [Signature]
 22 Notary Public for Oregon
 23 My commission expires: 9-19-75

24 STATE OF OREGON)
 25) ss.
 26 County of Klamath)

27 On the 27th day of December, 1973, personally appeared
 28 the above named Regis V. Andrieu and Doris Jean Andrieu, husband and
 29 wife, and acknowledged the foregoing instrument to be their voluntary
 30 act and deed.

Before me:

(SEAL)

31 [Signature]
 32 Notary Public for Oregon
 My commission expires: 9-19-75

EXHIBIT "A"

The following described real property in Klamath County, Oregon:

Portions of Lots 2, 5 and 9, Section 28, Township 40 South, Range 9 East of the Willamette Meridian, in Klamath County, Oregon, being more particularly described as follows:

Beginning at the quarter section corner common to Sections 21 and 28, Township 40 South, Range 9 East of the Willamette Meridian; thence South $0^{\circ} 06' 1/4''$ West 1326.8 feet along the North-South centerline of the said Section 28 to a point in the centerline of the Lower Klamath Lake County Road as the same is presently located and constructed; thence South $64^{\circ} 41'$ East along the centerline of said County Road 362.7 feet to the true point of beginning of this description; thence South $0^{\circ} 17'$ West 211.3 feet to the centerline of a well; thence South $0^{\circ} 17'$ West 274.4 feet to an iron pipe; thence South $74^{\circ} 59' 1/4''$ East 502.5 feet to an iron pipe; thence North $0^{\circ} 09' 1/4''$ East 400.0 feet to an iron pipe reference monument; thence North $0^{\circ} 09' 1/4''$ East 31.2 feet to an point in the centerline of the said County Road; thence North $69^{\circ} 35'$ West along the centerline of said County Road 467.4 feet to a point; thence North $64^{\circ} 41'$ West 50.3 feet more or less to the point of beginning.

A portion of Lot 2, Section 28, Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at an iron pipe at the quarter-section corner common to Sections 21 and 28, Township 40 South, Range 9 East of the Willamette Meridian; thence South $0^{\circ} 6' 1/4''$ West along the Westerly line of Lot 2 in said Section 28 859.4 feet to a point; thence South $89^{\circ} 28'$ East 483.8 feet to an iron pin and the true point of beginning of this description; thence East 328.2 feet to an iron pin; thence South $0^{\circ} 06'$ West 771.5 feet to an iron pin reference monument; thence South $0^{\circ} 06'$ West 30.9 feet to the centerline of the Lower Klamath Lake County Road as the same is presently located and constructed; thence following the centerline of said County Road North $69^{\circ} 35'$ West 352.6 feet to a point; thence leaving the centerline of said County Road, North $0^{\circ} 18' 3/4''$ East 679.6 feet more or less to the true point of beginning.

A tract of land in Klamath County, Oregon, described as follows:

In Township 40 South, Range 9 East of the Willamette Meridian

Section 29: W $1/2$ SW $1/4$ NE $1/4$, S $1/2$ NW $1/4$, SW $1/4$, W $1/2$ SE $1/4$. EXCEPTING THEREFROM that tract in the SW $1/4$ SW $1/4$, being a right of way 180 feet in width, conveyed to the United States of America by instrument recorded January 20, 1945 in Book 172 at page 351.

EXHIBIT "A"

Exhibit "A" continued

Section 32: W 1/2 E 1/2.

In Township 41 South, Range 9 East of the Willamette Meridian

Section 6: NE 1/4 SW 1/4.

SUBJECT TO: Terms and conditions of special assessment as farm use and the right of Klamath County to additional taxes in the event said use should be changed; regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Klamath Drainage District; easement, including the terms and provisions thereof, from H. C. Jordan et ux., to Klamath Drainage District, dated February 6, 1923, recorded February 8, 1923, in Volume 59 at page 529, Deed Records of Klamath County, Oregon; rights of the public in and to any portion of said premises lying within the limits of roads and highways; easements and rights of way of record and apparent thereon.

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:

TRANSAMERICA TITLE INS. CO.
on this 14th day of JANUARY A. D., 19 74
at 10:40 o'clock A. M. and duly
recorded in Vol. M 74 of DEEDS
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WM. D. MILNE, County Clerk

By Hazel Drayton
Fee \$24.00 Deputy.

Until a change is requested, all tax statements
shall be sent to the following address:

Regis V. Andrew
P.O. Box 32
Medford OR 97534
Return Transamerica Title Insurance Co.
12-20-73

EXHIBIT "A"