

## CONTRACT OF SALE AND RECIPROCAL RIGHT OF FIRST REFUSAL

THIS CONTRACT is made as of this 12<sup>th</sup> day of March, 1979, by JEANNE LEE WHITLATCH, whose address is 4960 Lombardi Lane, Klamath Falls, Oregon, 97601, hereinafter called "Seller", and JEWETT BRUCE WELLS, whose address is P.O. Box 1591, Klamath Falls, Oregon, 97601, hereinafter called "Purchaser".

## WITNESSETH:

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller for the price and on the terms and conditions set forth below that certain real property, and all improvements thereon, situated in Klamath County, State of Oregon, described as follows:

See attached Exhibit "C"

Such property herein shall be referred to as the "Property".

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

P.O. Box 1591

K. Falls, Ore - 97601

1. PURCHASE PRICE: Purchaser promises to pay as the total purchase price for the Property the sum of \$65,500.00. Such amount shall be paid as follows:

The sum of \$15,000.00 upon execution of this contract, receipt of which is hereby acknowledged.

The remaining balance of \$50,500.00 shall be paid in monthly installments of not less than \$455.00 per month each, including interest at the rate of 9 percent per annum on the unpaid balance, the first of such installments to be paid on or before the 13<sup>th</sup> day of April, 1979, and subsequent installments to be

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paid on or before the 13<sup>th</sup> day of each month thereafter, until the 13<sup>th</sup> day of March, 1991. The entire unpaid principal balance must be paid on or before the 13<sup>th</sup> day of March, 1991.

[illegible]

Interest on all unpaid balances shall commence on the date of execution of this contract. Each payment shall be applied first to interest to date of payment and the balance to principal.

2. PREPAYMENT: Purchaser has the right to prepay any or all parts of the balance due hereunder without penalty after January 1, 1980. Seller shall have no right to any prepayment prior to January 1, 1980, and any tender thereof shall be void.

3. SELLERS RIGHTS TO PAY: In the event Purchaser fails to pay, when due, any amounts required of Purchaser to be paid to third parties hereunder, Seller may pay any or all such amounts. If Seller makes any such payments, the amounts thereof shall be immediately due and payable to Seller from Purchaser. Until paid, such amounts shall be secured by this contract and shall bear interest at the rate of 9 percent per annum. Seller's election to make any payments pursuant to this paragraph shall not constitute a waiver of Seller's right to declare Purchaser to be in default of this contract.

4. ESCROW AGENT: All payments to Seller hereunder shall be made to Western Bank at 421 South 7th Street, Klamath Falls, Oregon, 97601, as escrow agent.

5. CLOSING: The sale shall be closed through the Transamerica Title Insurance Company, 3940 South Sixth Street, Klamath Falls, Oregon, 97601. Seller shall deliver to escrow

1 agent the deed described herein, together with suitable instructions  
2 authorizing delivery after all payments have been made and all other  
3 obligations of Purchaser under this contract have been fulfilled.

4  
5 6. TAXES: All taxes levied against the Property for  
6 the current tax year shall be prorated between Seller and Purchaser  
7 as of the date of execution of this contract. Purchaser agrees  
8 to pay when payable all taxes and assessments which are thereafter  
9 levied against the Property and to keep the Property free from all  
10 public, municipal and statutory liens which may be thereafter  
11 lawfully imposed upon the Property.

12 7. POSSESSION: Purchaser shall be entitled to possession  
13 of the Property from and after the date of execution of this  
14 contract, provided, however, that Seller and Seller's agents may  
15 enter upon the Property at reasonable times for the purpose of  
16 inspecting the Property.

17 8. MAINTENANCE: Commencing with the possession date  
18 and thereafter at all times during the term of this contract, Pur-  
19 chaser shall with respect to the Property do the following:

20 (a) Promptly comply with all laws, ordinances, reg-  
21 ulations, directions, rules and requirements of all governmental  
22 authorities applicable to the use or occupancy of the Property,  
23 and in this connection promptly make all required repairs, alter-  
24 ations and additions.

25 9. WASTE: Purchaser shall not commit or suffer any  
26 waste of the Property and shall maintain the Property in good  
27 condition.

28 10. INDEMNIFICATION: Purchaser shall indemnify and

1 defend Seller from any claim, loss or liability arising out of or  
2 related to any activity of Purchaser on the Property or any con-  
3 dition of the Property.

4 11. COVENANTS OF SELLER: Seller covenants that Seller  
5 is the owner of good and marketable title to the Property free of  
6 all liens and encumbrances except:

7 (a) Rights of the public in and to any portion of  
8 said premises lying within the limits of roads and highways.

9 (b) Regulations, including levies, assessments, water  
10 and irrigation rights and easements for ditches and canals, of  
11 Klamath Irrigation District.

12 (c) Regulations, including levies, assessments, water  
13 and irrigation rights and easements for ditches and canals, of Klamath  
14 Basin Improvement District.

15 Subject to the terms and provisions of that cer-  
16 tain instrument recorded July 24, 1970 in Volume M-70 at page 6187  
17 as "Notice to persons intending to Plat Lands within the Klamath  
18 Basin Improvement District."

19 (d) As disclosed by the assessment and tax roll, the  
20 premises herein have been specially assessed for farm use. If the  
21 land becomes disqualified for this special assessment under the  
22 statutes, an additional tax, plus interest and penalty, will be  
23 levied for the number of years in which this special assessment was  
24 in effect for the land.

25 12. TITLE INSURANCE: Seller shall furnish at Seller's  
26 expense a purchaser's title insurance policy in the amount of  
27 \$65,500.00 within 30 days from the date of closing, insuring  
28 Purchaser against loss or damage sustained by Purchaser by reason

1 of the unmarketability of Seller's title, or liens or encumbrances  
2 thereon, excepting matters contained in the usual printed exceptions  
3 in such title insurance policies.

4 13. DEFAULT: Time is of the essence of this contract.  
5 A default shall occur if:

6 (a) Purchaser fails to make any payment within 10 days  
7 after it is due.

8 (b) Purchaser fails to perform any other obligation  
9 imposed by this contract and does not correct or commence correct-  
10 ion of such failure within 10 days after receipt of written notice  
11 from Seller specifying the manner in which Purchaser in in default;  
12 or

13 (c) Purchaser becomes insolvent, a receiver is app-  
14 ointed to take possession of all or a substantial part of Purchaser's  
15 properties, Purchaser makes an assignment for the benefit of cred-  
16 itors or files a voluntary petition in bankruptcy or Purchaser is  
17 the subject of an involuntary petition in bankruptcy which is not  
18 dismissed within 90 days. If Purchaser consists of more than one  
19 person or entity, the occurrence of any of these events as to any one  
20 such person or entity shall constitute a default hereunder.

21 In the event of a default and after notice, Seller may  
22 take any one or more of the following steps:

23 (a) Declare the entire balance of the purchase price  
24 and interest immediately due and payable;

25 (b) Foreclose this contract by suit in equity;

26 (c) Specifically enforce the terms of this contract  
27 by suit in equity;

28 (d) Declare this contract null and void as of the date

1 of the breach and retain as liquidated damages the amount of the  
2 payments previously made hereunder. In such event, all of the  
3 right, title and interest of Purchaser to the Property shall revert  
4 to and be vested in Seller without any act of re-entry or without  
5 any other act by Seller to be performed, and Purchaser agrees to  
6 peaceably surrender the Property to Seller. Should Purchaser fail  
7 to so surrender the Property, Seller may at his option treat Pur-  
8 chaser as tenant holding over unlawfully after the expiration of  
9 a lease and Purchaser may be ousted and removed as such.

10 The remedies provided above shall be nonexclusive  
11 and in addition to any other remedies provided by law.

12 14. CONDITION OF PROPERTY: Purchaser accepts the land,  
13 buildings, improvements and all other aspects of the Property in  
14 their present condition, AS IS, including latent defects, without  
15 any representations or warranties, expressed or implied, unless  
16 they are in writing signed by Seller. Purchaser agrees that he  
17 has ascertained, from sources other than Seller, the applicable  
18 zoning, building, housing and other regulatory ordinances and laws  
19 and that he accepts the Property with full awareness of these  
20 ordinances and laws as they may affect the present use or any  
21 any intended future use of the Property, and Seller has made no re-  
22 presentations with respect thereto.

23 15. NOTICE: Any notice under this contract shall be  
24 in writing and shall be effective when actually delivered or when  
25 deposited in the United States mail, registered or certified, add-  
26 ressed to the party at the address maintained by the escrow agent.

27 16. WAIVER: Failure of Seller at any time to require  
28 performance of any provision of this contract shall not limit the

1 right of Seller to enforce the provision, nor shall any waiver by  
2 Seller of any breach of any provision be a waiver of any succeeding  
3 breach of that provision or a waiver of that provision itself or  
4 any other provisions.

5 17. COSTS AND ATTORNEY FEES: In the event suit or  
6 action is instituted to enforce any of the terms of this contract,  
7 the prevailing party shall be entitled to recover from the other  
8 party such sum as the court may adjudge reasonable as attorney's  
9 fees at trial or on appeal of such suit or action, in addition to  
10 all other sums provided by law.

11 18. SUCCESSOR INTERESTS: This contract shall be  
12 binding upon and inure to the benefit of the parties, their succ-  
13 essors and assigns.

14 19. PRIOR AGREEMENTS: This document is the entire,  
15 final and complete agreement of the parties pertaining to the sale  
16 and purchase of the Property, and supersedes and replaces all  
17 written and oral agreements heretofore made or existing by and be-  
18 tween the parties or their representatives insofar as the Property  
19 is concerned.

20 20. NUMBER, GENDER AND CAPTIONS: As used herein, the  
21 singular shall include the plural, and the plural the singular.  
22 The masculine and neuter shall each include the masculine, feminine  
23 and neuter, as the context requires. All captions used herein are  
24 intended solely for convenience of reference and shall in no way  
25 limit any of the provisions of this contract.

26 21. FARM USE: The Property is specially assessed for  
27 tax purposes for farm use. In the event the Property becomes dis-  
28 qualified for farm use assessment, any additional tax shall be

1 paid by Purchaser. Purchaser agrees to indemnify and hold Seller  
2 harmless from any such tax liability.

3 22. MORTGAGES ON PROPERTY: Seller agrees, so long  
4 as Purchaser is not in default under the terms of this contract,  
5 to assume and hold Purchaser harmless from the following mortgages:  
6 Said mortgages are not assumed by Purchaser.

7 (a) Mortgage, including the terms and provisions there-  
8 of, with interest thereon and such future advances as may be provided  
9 therein, given to secure the payment of \$34,100.00

10 Dated: January 29, 1970  
11 Recorded: February 6, 1970 Book: M-70 Page: 945  
12 Mortgagor: Lester Rookstool and Donna L. Rookstool, husband  
13 and wife  
14 Morgagee: State of Oregon, represented and acting by the  
15 Director of Veterans' Affairs.

16 (b) Mortgage, including the terms and provisions  
17 thereof, with interest thereon and such future advances as may be  
18 provided therein, given to secure the payment of \$49,664.86

19 Dated: January 17, 1977  
20 Recorded: January 17, 1977 Book: M-77 Page: 847  
21 Mortgagor: Jeanne Lee Whitlatch  
22 Morgagee: Donna L. Rookstool

23 23. RIGHT OF FIRST REFUSAL: Seller is the owner of  
24 the real property located in Klamath County and described on  
25 Exhibit "B" attached hereto, hereinafter referred to as "Seller's  
26 Property". Seller hereby grants to Purchaser the right of first  
27 refusal regarding Seller's Property and Purchaser hereby grants to  
28 Seller a right of first refusal regarding the Property. In the  
event Seller or Purchaser elects to sell the Property owned by  
Seller or Purchaser and described herein, and in the event Seller  
or Purchaser receives a written bona fide offer which Seller or  
Purchaser wishes to accept, Seller or Purchaser shall deliver a  
copy of the written offer to the other party hereunder personally,



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1 or shall mail registered or certified, return receipt requested,  
2 at the address maintained by the escrow agent hereunder, a copy of  
3 the written offer. The party receiving the offer shall have 30-10  
4 days from receipt or mailing of the written offer to purchase the  
5 Property covered by the option at the price and on the terms con-  
6 tained in the written offer. The option shall be exercised by the  
7 giving of written notice either personally or by depositing in the  
8 United States mail, certified or registered, postage fully prepaid  
9 addressed to the other party at the address maintained by the  
10 escrow agent. Such sale shall be closed as soon as possible upon  
11 receipt of the written exercise of the option. In the event the  
12 option is not exercised within 10 days of the giving of notice,  
13 the party wishing to sell may sell to the person indicated as  
14 buyer in the notice, and upon the price and terms in the notice,  
15 and this right of first refusal shall be of no effect. The exer-  
16 cise of the right of first refusal shall be at the option of the  
17 party receiving notice.

18  
19 Seller and Purchaser agree that because their respective  
20 properties adjoin each other, and enjoy a special relationship  
21 with each other, that money damages alone for failure to comply  
22 with the right of first refusal, would cause irreparable damages.  
23 The parties therefore agree that any rights created by the right  
24 of first refusal may be enforced by a court decree allowing specific  
25 performance.

26 24. REAL ESTATE SALES PERSON: Purchaser realizes  
27 that Seller is a licensed real estate sales person in the State  
28 of Oregon.

HENDERSON  
& MOLATORE  
ATTORNEYS AT LAW  
426 MAIN STREET  
KLAMATH FALLS,  
OREGON 97601  
TELEPHONES  
(503) 884-7731  
884-2030

5771

IN WITNESS WHEREOF, the parties have caused this instrument to be executed the day and year above first written.

*Jeanne Lee Whitlatch*  
JEANNE LEE WHITLATCH

*Jewett Bruce Wells*  
JEWETT BRUCE WELLS

STATE OF OREGON )  
County of Klamath ) ss.

On this 12 day of Mar, 1979, personally appeared before me the above named JEANNE LEE WHITLATCH who is known to me to be the individual described therein, and who acknowledged to me that she executed the within instrument freely and voluntarily.

*Susan C. Patke*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 11/2/82

STATE OF OREGON )  
County of Klamath ) ss.

On this 12 day of Mar, 1979, personally appeared before me the above named JEWETT BRUCE WELLS who is known to me to be the individual described therein, and who acknowledged to me that he executed the within instrument freely and voluntarily.

*Susan C. Patke*  
NOTARY PUBLIC FOR OREGON  
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## EXHIBIT "B"

5772

A portion of tract 17, 400 Subdivision, a duly recorded subdivision in Klamath County, Oregon, more particularly described as follows:

Beginning at the northeast corner of said Tract 16, marked by a 5/8 inch by 30-inch iron pin; thence N89° 32'W, along the south line of Lombardi Lane, 395 feet to a 5/8-inch by 30-inch iron pin; thence S00° 28'W 150.00 feet to a 5/8 inch by 30-inch iron pin; thence S89° 32'E 583.60 feet to a 5/8-inch by 30-inch iron pin; thence continuing S89° 32'E 18.64 feet to the apparent centerline of the Klamath Irrigation District canal and the easterly line of said Tract 17; thence N25° 46'W, along said line 167.22 feet to the south line of said Lombardi Lane and the northeast corner of said Tract 17; thence N89° 32'W 18.64 feet to a 5/8-inch by 30-inch iron pin; thence continuing N89° 32'W 114.68 feet to the point of beginning, containing 1.89 acres, including the area in the Klamath Irrigation District canal. The above described tract is subject to a 30-foot Klamath Irrigation canal right of way along the easterly line and, a 20-foot, measured at right angles to said canal, ingress and egress easement adjacent to and along the westerly line of said canal.

## EXHIBIT "C"

5773

1 A tract of land situated in Tracts 16 and 17, 400 Subdivision, a  
 2 duly recorded subdivision in Klamath County, Oregon, more part-  
 3 icularly described as follows:

4 Tracts 16 and 17 of said 400 Subdivision, excepting therefrom a  
 5 tract of land described as follows: Beginning at the northeast  
 6 corner of said Tract 16, marked by a 5/8 inch by 30-inch iron pin;  
 7 thence N89° 32'W, along the south line of Lombardi Lane, 395 feet  
 8 to a 5/8-inch by 30-inch iron pin; thence S00° 28'W 150.00 feet to  
 9 a 5/8 inch by 30-inch iron pin; thence S89°32'E 583.60 feet to a  
 10 5/8-inch by 30-inch iron pin; thence continuing S89°32'E 18.64 feet  
 11 to the apparent centerline of the Klamath Irrigation District canal  
 12 and the easterly line of said Tract 17; thence N25° 46'W, along  
 13 said line 167.22 feet to the south line of said Lombardi Lane and  
 14 the northeast corner of said Tract 17; thence N89° 32'W 18.64 feet  
 15 to a 5/8-inch by 30-inch iron pin; thence continuing N89°32'W  
 16 114.68 feet to the point of beginning, containing 1.89 acres, includ-  
 17 ing the area in the Klamath Irrigation District canal. The above  
 18 described tract is subject to a 30-foot Klamath Irrigation canal  
 19 right of way along the easterly line.

20  
 21  
 22  
 23 STATE OF OREGON; COUNTY OF KLAMATH; ss.

24 filed for record at request of Transamerica Titleco.

25 this 13th day of March, A. D. 1979, at 3:30 clock P.M., and

26 duly recorded in Vol. M79, of Deeds on Page 5762.

27 Wm D. MILNE, County Clerk

28 Fee \$36.00 By Bernice A. Delich

Return to

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