

64305

1 THIS CONTRACT OF SALE Made this 9th day of March,
2 1979, between EDWIN J. STASTNY, SR. and MARIAM C. STASTNY, husband and
3 wife, hereinafter called "Vendor", and EDWIN J. STASTNY, JR. and DIANA
4 F. STASTNY, husband and wife, as tenants in the entirety, hereinafter
5 called "Purchaser".

6
7 W I T N E S S E T H:

8
9 Vendor agrees to sell to Purchaser and Purchaser agrees to buy from
10 Vendor, at the price and on the terms, covenants, conditions and pro-
11 visions hereinafter contained, all of the following described property
12 situate in County of Klamath, State of Oregon, more particularly described
13 in Exhibit "A" and subject to the exceptions set forth in Exhibit "B".

14
15 1. Purchase Price: The purchase price of the property, which
16 Purchaser agrees to pay, is the sum of \$221,325.00 payable in the
17 following annual installments:

18
19 a. Twenty-Two Equal Annual Installments: Twenty-Two (22) equal
20 annual installments of \$15,000.00 each, including interest, the first
21 such installment to be paid on the 1st day of May, 1980, and a like
22 installment to be paid on the 1st day of each May thereafter to and
23 including the 1st day of May, 2001.

24
25 b. Final Installment: The remaining balance of principal and
26 interest due on May 1, 2002 to be paid on May 1, 2002.

27
28 c. Interest: Interest is fixed at four (4%) percent per annum
29 simple interest on declining balances. Interest commences on March
30 1, 1979.

31
32 2. Payments to Escrow Holder: All installments due Vendor from
33 Purchaser under this Contract shall be paid without demand to the Escrow
34 Holder hereinafter named. All such installments received shall be applied
35 first to interest accrued to the date of receipt and then applied to
36 reduce principal.

37
38 3. Prepayment: At any time after January 1, 1980, Purchaser may
39 increase any installment or prepay all or any part of the whole consider-
40 ation together with interest thereon to the date of any such payment. No
41 partial payment, increased installment of payment for a partial conveyance
42 by reason of the eminent domain provisions of this contract shall be
43 credited in lieu of any regular future installment, nor excuse Purchaser
44 from making the regular installments specified in this contract.

45
46 4. Possession: Purchaser has received possession of the above
47 described real property on March 1, 1979, subject, however, to reserva-
48 tion by Vendor of the use of the main dwelling house, yard, garage, and
49 pump house, for the joint lifetimes of Vendor, and upon the death of one
50 of them, the lifetime of the survivor of them, at Vendor's sole expense
51 and risk to Vendor, or their invitees, and further subject to Vendor
52 maintaining said dwelling house, yard, garage, and pump house in such a
53 condition as the same now are at Vendor's sole expense.

54
55 5. Nature of Estate Sold and Lien Created by this Contract: The
56 real property above described, hereby sold to Purchaser, includes, all
57 and singular, the tenements, hereditaments, rights, easements, privileges
58 and appurtenances thereunto belonging or in anywise appertaining, improve-
59 ments thereon, including, but not limited to, stationary pumps, pumping
60 stations, pumping motors, pumping engines, reservoirs, nonportable pipes
61 and flumes or other nonportable equipment now used for the production of
62 water thereon or for the irrigation or drainage thereof, and the reversions,
63 remainders, rents, issues and profits thereof, together with all the rights
64 of the use of water for irrigating said premises and for domestic use
65 thereon to which Vendor is now entitled, or which are now used on said
66 premises, however the same may be evidenced, and together with all shares

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PM 2
OREGON
FELIX H. JONES
A PROFESSIONAL CORPORATION, KLAMATH COUNTY, OREGON
JONES & ZAMSKY, ATTORNEYS AT LAW

1 of stock or shares of water in any ditch or irrigation company which,
 2 in any manner, entitles, the Vendor to water for irrigating or domestic
 3 purposes upon said real property. The Vendor's lien created by this
 4 Contract shall and does hereby include the real property above described,
 5 together with, all and singular, the tenements, hereditaments, rights,
 6 easements, privileges and appurtenances thereunto belonging or in anywise
 7 appertaining, and all improvements now or hereafter thereon, including,
 8 but not limited to, stationary pumps, pumping stations, pumping motors,
 9 pumping engines, resevoirs, nonportable pipes and flumes or other nonportable
 10 equipment now or hereafter used for the production of water thereon for
 11 the irrigation or drainage thereof, and the reversions, remainders, rents,
 12 issues and profits thereof, and together with all the rights of the use
 13 of water for irrigating said premises and for domestic use thereon to
 14 which said real property is now or may hereafter become entitled, or which
 15 now are or may hereafter be used on said premises, however the same may
 16 be evidenced, and together with all shares of stock or shares of water
 17 in any ditch or irrigation company which, in any manner, entitles the
 18 legal or equitable owner thereof to water for irrigating or domestic purposes
 19 upon said real property. In addition, Purchaser hereby agrees that Vendor's
 20 lien is superior to any and all rights of Purchaser under and by virtue
 21 of any homestead, stay or exemption laws now in force, or which may hereafter
 22 become laws.

23
 24 6. Subordination of Lien Created By This Contract: Vendor's lien
 25 is junior to the lien created by that certain Deed of Trust dated July
 26 19, 1978, recorded August 1, 1978, in Volume M-78, Page 16745, Records
 27 of Klamath County, Oregon, wherein Purchaser is Trustor, D. L. Hoots is
 28 Trustee, and Security Savings and Loan Association is Beneficiary, secur-
 29 ing the sum of \$100,000.00 and affecting the following described portion
 30 of the real property subject to the lien created by this Contract:

31
 32 The North 615 feet of the West 175 feet of the NW $\frac{1}{4}$ SE $\frac{1}{4}$
 33 of Section 13, Township 41 South, Range 12 East of the
 34 Willamette Meridian, in the County of Klamath, State
 35 of Oregon, EXCEPT THEREFROM any portion lying within
 36 the right of way of the County Road.

37
 38 The lien created by said Deed of Trust was and is the obligation and debt
 39 of Purchaser and the purchase price herein specified is exclusive of the
 40 same. Purchaser covenants with Vendor that Purchaser will with regard to
 41 said Deed of Trust lien:

42
 43 a. Pay and perform the terms thereof as provided in said Deed
 44 of Trust and the obligation secured thereby and to satisfy in full
 45 said Deed of Trust obligation the due date of the obligation secured
 46 thereby. This covenant shall include, but not be limited to, payment
 47 by Vendor of any prepayment penalties imposed by the Beneficiary.

48
 49 b. Not to increase the amount of the Deed of Trust lien by
 50 incurring any further indebtedness and to reduce the present unpaid
 51 balance of the Deed of Trust obligation in the regular installments.

52
 53 c. To hold Vendor harmless from and indemnify Vendor against
 54 any and all liability, loss or damage Vendor might otherwise suffer
 55 by reason of said Deed of Trust lien, including, but not limited
 56 to claims, costs, demands, attorney fees or judgments, and to defend
 57 Vendor from any claims brought or suits or actions filed against
 58 Vendor by reason of the aforesaid Deed of Trust.

59
 60 If Purchaser neglects or fails to pay the sums due or to become due under
 61 the note secured by said Deed of Trust, or fails to perform any of the
 62 terms, covenants and conditions of said Deed of Trust or his covenants
 63 contained in this portion of this Contract, and said failure is not occa-
 64 sioned by reason of any default on the part of Vendor, Purchaser agrees to
 65 pay to Vendor all sums paid or incurred by Vendor in protecting Vendor's
 66 lien created by this Contract, including, but not limited to, costs,

1 charges and expenses, including costs of evidence of title or validity
2 of Vendor's interest in said real property, and reasonable attorney fees,
3 with or without trial, and if trial, both at trial or on appeal, incurred
4 by Purchaser; which sums shall bear interest at the rate of ten (10%)
5 percent per annum from the date of demand therefor. If Purchaser fails to
6 pay Vendor the sums due Vendor under this provision of this Contract
7 within thirty (30) days from date of demand therefor, Vendor shall be
8 entitled to treat such nonpayment as a default of this Contract.
9

10 7. Escrow of Contract and Related Documents: Vendor hereby warrants
11 that he has good and merchantable title to the property above described,
12 subject to the exceptions above set forth. Vendor will, upon execution
13 hereof, make and execute in favor of Purchaser, a good and sufficient
14 warranty deed conveying said premises free and clear, as of this date,
15 of all encumbrances, subject to the above set forth exceptions. Vendor
16 will, within a reasonable time after the execution hereof, place said
17 deed, and the recorded original of this Contract, in escrow at Merrill
18 Branch of First National Bank of Oregon, with instructions to said Escrow
19 Holder that, when and if the Purchaser shall have paid the balances of
20 the purchase money and interest as above specified and shall have complied
21 with all other terms and conditions of this Contract, to deliver the same
22 to Purchaser, subject to the usual printed conditions and provisions of
23 the standard form of escrow instructions provided by said Escrow Holder.
24

25 8. Title Insurance: No title insurance policy is required by the
26 parties hereto.
27

28 9. Maintenance, Taxes, etc. Relating to Real Property: Purchaser
29 shall remain in possession so long as Purchaser is not in default hereunder.
30 Purchaser shall and hereby agrees to keep said real property and improve-
31 ments in good condition and repair at all times, reasonable wear and tear
32 excepted; to commit no waste or otherwise damage or injure said real
33 property; to maintain said real property in accordance with the laws and
34 ordinances and regulations of any constituted authority applying to said
35 real property and to make no unlawful use thereof; to pay regularly and
36 seasonably, and before the same shall become delinquent, all taxes, assess-
37 ments and charges of whatever nature (including additional charges by
38 reason of change of use) levied and assessed against said real property
39 and to pay and discharge all encumbrances thereafter placed thereon by
40 Purchaser; to permit no lien or other encumbrances to be filed upon or
41 placed against said real property without the written consent of Vendor;
42 and it is further understood and agreed, for the purposes of this provision,
43 that if Purchaser fails to pay or discharge any taxes, assessments, liens,
44 encumbrances or charges, Vendor, at his option and without waiver of
45 default or breach of Purchaser, and without being obliged to do so, may
46 pay or discharge all or any part thereof, all of which said sums so paid
47 by Vendor shall become repayable by Purchaser, together with interest at
48 the rate of ten (10%) percent per annum, upon demand, payment of which is
49 part of the performance of this Contract by Purchaser.
50

51 10. Insurance of Buildings and Improvements: Purchaser agrees to
52 keep the buildings and improvements now on, or hereafter placed upon, the
53 above described real property insured against loss by fire or other cas-
54 uality in an amount not less than maximum insurable value as determined
55 by the insurance carrier and shall obtain, at his own expense, an endorse-
56 ment thereon providing for loss payable to Vendor and Purchaser as their
57 respective interests shall appear. A certificate of such insurance shall
58 be delivered to Vendor. If a loss should occur for which insurance proceeds
59 shall become payable, the Purchaser may elect to either rebuild or repair
60 the portion of the building so destroyed, or apply the proceeds toward
61 payment of the then unpaid balance of the deferred balance. If the Pur-
62 chaser elects to rebuild or repair, he shall sign such documents as may be
63 required by Vendor to guarantee the application of the insurance proceeds
64 to the cost of such rebuilding or repair.
65

66 11. Eminent Domain: In the event any governmental agency or entity

1 having the power of eminent domain acquires by eminent domain or by nego-
 2 tiated sale in lieu of eminent domain all, or any portion, of the real
 3 property described in this Contract, Vendor may require Purchaser to apply
 4 all proceeds received by Purchaser from such acquisition (remaining after
 5 payment by Purchaser of attorney fees, appraiser fees and related necessary
 6 and reasonable costs in connection with securing said proceeds), which
 7 proceeds are hereinafter called "net proceeds", toward the payment of the
 8 sums secured by this Contract. Upon receipt of said net proceeds, Purchaser
 9 shall notify Vendor of the amount of said net proceeds and Vendor shall,
 10 within sixty (60) days after such notification, notify Purchaser in writing
 11 if Vendor elects to have said net proceeds applied toward payment of the
 12 sums secured by this Contract. If Vendor fails to so notify Purchaser of
 13 such election, Vendor shall conclusively be deemed to have elected not to
 14 require Purchaser to apply said net proceeds toward the sums secured by
 15 this Contract. If Vendor elects to have said net proceeds applied toward
 16 payment of the sums secured by this Contract the amount to be received
 17 by Vendor shall not exceed the total of the principal plus accrued interest
 18 to the date of receipt thereof by Vendor, and all such sums shall be paid
 19 to the Escrow Holder named herein. Regardless of whether Vendor elects
 20 to have said net proceeds applied to the sums secured by this Contract,
 21 Vendor will join in any conveyance required by the governmental agency
 22 or entity acquiring a portion or all of the real property described herein
 23 by eminent domain, but Vendor shall not be required to partially convey
 24 more property than that which is acquired by such governmental agency
 25 or entity. Vendor shall not be obligated to participate in any negotiations
 26 with such governmental agency or entity. Any notice or notices required
 27 to be given by Purchaser to Vendor pursuant hereto shall be in writing
 28 and shall be deemed given when the same is deposited with the United States
 29 Postal Service as registered mail, postage prepaid, addressed to Vendor
 30 at the last address of Vendor shown on the records of the Escrow Holder.
 31

32 **12. Resale of Property by Purchaser:** If Purchaser shall sell Purchas-
 33 er's equity in the real property described herein and securing the unpaid
 34 balance of this Contract, Purchaser shall notify Vendor of such sale in
 35 writing, and Vendor shall have thirty (30) days from such notice to elect,
 36 in writing, to require Purchaser to apply ninety (90%) percent of the net
 37 proceeds from such sale toward payment of the deferred balance (both principal
 38 and interest) secured by this Contract before Purchaser receives and realizes
 39 any payment for his equity. The term "net proceeds" shall include both pro-
 40 ceeds received by Purchaser at the time of consummation of such sale and any
 41 installments received thereafter less reasonable commissions, title insurance,
 42 demands of prior lien holders, attorneys fees, and escrow fees incurred in
 43 any such sale. Failure of Vendor to elect to require application of such
 44 net proceeds as herein provided, shall constitute a conclusive election
 45 not to require application of such net proceeds; provided however, that any
 46 subsequent Purchaser shall be required to comply with this provision and
 47 that an election not to require application of net proceeds from any sale
 48 shall not be construed as constituting a waiver of this provision as to
 49 any subsequent Purchaser. In addition, any such sale shall personally obligate
 50 the subsequent Purchaser to Vendor without relieving Purchaser of Purchaser's
 51 obligation to Vendor under this Contract. In addition, and not in derroga-
 52 tion of the preceeding provisions, but by way of further amplification of the
 53 same, if Purchaser should receive an offer to purchase the real property
 54 described herein which Purchaser is willing to accept, Purchaser shall first
 55 give Vendor written notice thereof by registered mail and Vendor shall have the
 56 exclusive right for the period of thirty (30) days from the mailing of such
 57 notice to purchase the real property at the same price and on the same terms.
 58 If Vendor does not elect to purchase said real property, Purchaser may sell
 59 any such premises to the named prospective purchaser at the price and on the
 60 terms stated in the notice of the proposed sale. If Purchaser does not con-
 61 summate the noticed sale of the real property to such prospective purchaser on
 62 the same terms as the offer of which Vendor was given notice, all provisions
 63 hereof shall apply to any other bona fide proposal received by Purchaser.
 64 This provision shall not apply to the following:
 65
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- a. A transfer of the premises within the immediate family of

1 Purchaser or between Purchaser and a corporation or partnership of
2 which Purchaser retains a substantial financial interest.
3
4

5 b. If both Vendor should be deceased.
6

7 13. Defense of Security: Vendor may appear in or defend any action
8 or proceeding at law, in equity or in bankruptcy affecting, in any way,
9 the security hereof and, in such event, Vendor shall be allowed and paid,
10 and Purchaser hereby agrees to pay, all costs, charges and expenses, in-
11 cluding costs of evidence of title or validity and priority of the security
12 and attorneys fees in a reasonable sum, incurred in any such action or
13 proceeding in which Vendor may appear, which shall bear interest at ten
14 (10%) percent from date of demand therefor. Failure of Purchaser to pay
15 Vendor for such costs, charges and expenses within thirty (30) days from
16 the date of demand therefor shall constitute a breach of this Contract.

17 14. Default of Purchaser: The following shall constitute a default
18 of Purchaser:
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1 a. Failure to Make Payments: Failure of Purchaser to make
2 payments as herein provided and if said failure shall continue for
3 more than thirty (30) days after the payment becomes due. The
4 acceptance of any sum secured by this Contract after its due date
5 shall not constitute a waiver of Vendor's right either to require
6 prompt payment when due or all other sums so secured to seek any
7 remedy provided for herein.

8
9 b. Failure to Perform Covenants: Failure of Purchaser to
10 perform any covenants or conditions of this Contract (other than
11 failure to make payments as provided in the preceding sentence)
12 after thirty (30) days written notice of such failure and demand
13 for performance.

14
15 15. Remedies: If Purchaser shall be in default as above provided,
16 Vendor shall have the following cumulative rights:

17 a. Foreclosure: To foreclose this Contract by strict
18 foreclosure in equity.

19 b. Acceleration: To declare the full unpaid balance of
20 the purchase price immediately due and payable.

21 c. Specific Performance: To specifically enforce the
22 terms of this Contract by suit in equity.

23
24 16. Time is of the Essence: Time is expressly made the essence
25 of this Contract.

26
27 17. Notice: Where notice in writing is required by either party to
28 the other, such notice shall be deemed given when the same is deposited
29 with the United States Postal Service as registered mail, addressed to
30 the last address of such party shown on the records of the Escrow Holder.

31 18. No Waiver: No waiver by Vendor of any breach of any covenant
32 of this Contract shall be construed as a continuing waiver of any subse-
33 quent breach of such covenant, nor as a waiver of any breach of any other
34 covenant, nor as a waiver of the covenant itself.

35 19. Receivership: In the event any suit or action is commenced
36 because of any default of Purchaser, the court having jurisdiction of
37 the case may, upon motion by Vendor, appoint a receiver to collect the
38 rents and profits arising out of the above described real property and
39 collateral and to take possession, management and control of the same
40 during the pendency of such foreclosure proceeding or until payment of
41 the obligations hereby secured and apply said rents and profits to the
42 payment of the amount due hereunder, first deducting all proper charges
43 and expenses attending the execution of said receivership.

44 20. Title Reports, etc: Upon the commencement of any suit or action
45 to collect the indebtedness or disbursements secured hereby, or any part
46 thereof, or to enforce any provision of this Contract by specific per-
47 formance, foreclosure, or otherwise, there shall become due, and Purchaser
48 agrees to pay to Vendor, in addition to all statutory costs and disburse-
49 ments any amount Vendor may incur or pay for any title report, title
50 search, insurance of title or other evidence of title subsequent to the
51 date of this Contract on any of the real property above described and this
52 Contract shall be security for the payment thereof.

53 21. Prevailing Party Attorney Fees: In the event any suit or action
54 is instituted by either party against the other relating to any provision
55 of this Contract the prevailing party, at trial or on appeal, shall be
56 entitled to such reasonable attorney fees as shall be fixed by the court
57 having jurisdiction of the case, in addition to statutory costs and
58 disbursements.

22. No Oral Modification Binding: This Contract contains the full understanding of the parties with respect to the subject hereof and no modification hereof shall be given effect unless the same be in writing subscribed by the parties hereto or their successors in interest.

23. Binding Effect: This Contract shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective successors, heirs, executors, administrators and assigns.

24. Construction of Contract: In construing this Contract, the following shall control:

a. Exhibits: Exhibits "A" and "B" attached hereto are hereby incorporated herein at the place where the reference thereto is made as though fully set forth hereat.

b. Prepared by Both Parties: This Contract shall be construed as though prepared by both parties and shall be governed by the laws of the State of Oregon.

c. Singular, Plural and Gender: All words used herein in the singular number shall extend to and include the plural. All words used in the plural number shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

d. Paragraph Headings for Convenience Only: Paragraph headings are for convenience only and shall not be used in construing the covenants, terms and provisions of this Contract.

WITNESSETH the hands of the parties hereto as of the date first above set forth.

VENDOR

PURCHASER

Edwin J. Stastny, Sr.
Edwin J. Stastny, Sr.

Edwin J. Stastny, Jr.
Edwin J. Stastny, Jr.

Mariam C. Stastny
Mariam C. Stastny

Diana F. Stastny
Diana F. Stastny

STATE OF OREGON)
) SS.
County of Klamath)

On this 9th day of March, 1979, personally appeared the above named EDWIN J. STASTNY, SR. and MARIAM C. STASTNY, husband and wife, and declared that the foregoing instrument was their voluntary act and deed.

(SEAL)

KIRSTINE L. PROCK
NOTARY PUBLIC — OREGON
My Commission Expires

BEFORE ME:

Kirstine L. Prock
Notary Public for Oregon
My Commission Expires: 12/6/80

1 STATE OF OREGON)
2) SS.
3 County of Klamath)
4

6291

5 On this 9th day of March, 1979, personally appeared
6 the above named EDWIN J. STASTNY, JR. and DIANA F. STASTNY, husband and
7 wife, and declared that the foregoing instrument was their voluntary act
8 and deed.
9

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11
12 (SEAL) KIRSTINE L. PROCK
13 NOTARY PUBLIC — OREGON
14 My Commission Expires
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BEFORE ME:

Kirstine L. Prock
Notary Public for Oregon,
My Commission Expires: 12/16/80

GIACOMINI, JONES & ZAMSKY, ATTORNEYS AT LAW A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

PROPERTY DESCRIPTION

6292

The parties hereto agree that the following real property is hereby made subject to the Contract to which this Exhibit "A" is attached:

Township 41 South, Range 12 East of the Willamette Meridian

Section 12: S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 13: N $\frac{1}{2}$ SE $\frac{1}{4}$, SAVING AND EXCEPTING that portion conveyed to Malin Irrigation District in Volume 112, page 601, records of Klamath County, Oregon, and, NE $\frac{1}{4}$, SAVING AND EXCEPTING that portion thereof conveyed to Malin Irrigation District, described as follows: A piece or parcel of land in the Southeast quarter of the Northeast quarter of Section 13, Township 41 South, Range 12 E.W.M. and more fully described as follows: Beginning at the quarter section corner on the easterly boundary of the said Section 13, Twp. 41 S.R. 12 E.W.M. and running thence North, along the said section boundary line 771.2 feet; thence North 22°46' W. 228.2 feet; thence S. 71°36' W. 86.3 feet; thence S. 1°51' E. 248.8 feet; thence S. 9°03' W. 233.8 feet; thence S. 31°56' E. 276.3 feet; thence S. 21°05' W. 259.2 feet more or less, to a point in the east and west center line of said Section 13; thence N. 89°15' E., along the said center line of Section 13, 146.5 feet more or less, to the point of beginning, and containing 2.8 acres, more or less.

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GIACOMINI, JONES & ZAMSKY, ATTORNEYS AT LAW A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

EXCEPTIONS

6293

The parties hereto agree that the real property described in Exhibit "A" to the Contract to which this Exhibit "B" is attached is subject to the following exceptions:

1. 1977-78 Klamath County real property taxes and assessments.
2. Liens, contracts, and easements of all kind of record for irrigation and/or drainage.
3. Easements and rights of way of record and apparent thereon.

EJH *EJH*
mes *ass*

WHEN RECORDED MAIL TO:

GIACOMINI, JONES & ZAMSKY
ATTORNEYS AT LAW
635 MAIN STREET
KLAMATH FALLS, OREGON 97601

MAIL TAX STATEMENTS TO:

EDWIN J. STASTNY JR. and
DIANA F. STASTNY
STAR ROUTE, BOX 24
MALIN, OREGON 96532

(Don't use this
space; reserved
for recording
label in coun-
ties where
used.)

STATE OF OREGON

ss.

County of Klamath

I certify that the within instrument was received for record on the 20th day of March, 1979, at 2:35 o'clock P.M. and recorded in book M79 on page 6284 or as filing fee number 64305, Record of Deeds of said County.

Witness my hand and seal of County affixed.

Wm. D. Milne

County Clerk Title

By Bernard J. Rotzsch Deputy