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CONTRACT OF SALE

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THIS AGREEMENT, made and entered into this 24 day of August, 1979, by and between HERMAN PENDERGRAFT and LAURA N. PENDERGRAFT, husband and wife, hereinafter called the Sellers, and ART DAVINA and MARY M. DAVINA, husband and wife, hereinafter called the Purchasers,

WITNESSETH:

I

Sellers agree to sell to the Purchasers, and the Purchasers agree to buy from the Sellers, all of the following-described real property, and all improvements thereon, situated in Klamath County, State of Oregon, to-wit:

PARCEL ONE:  $S\frac{1}{2}$  of  $S\frac{1}{2}$ ;  $N\frac{1}{2}$  of  $SW\frac{1}{4}$ ;  $S\frac{1}{2}$  of  $NW\frac{1}{4}$  of Section 13, Township 38 South, Range  $11\frac{1}{2}$  East of the Willamette Meridian;

$S\frac{1}{2}$  of  $NE\frac{1}{4}$  and  $N\frac{1}{2}$  of  $SE\frac{1}{4}$  of Section 23, Township 38 South, Range  $11\frac{1}{2}$  East of the Willamette Meridian.

PARCEL TWO: A piece or parcel of land situate in the Southwest quarter of the Northeast quarter and the Northwest quarter of the Southeast quarter of Section 13, Township 38 South, Range  $11\frac{1}{2}$  East of the Willamette Meridian in Klamath County, Oregon, containing 8.83 acres, more or less, and more particularly described as follows:

Beginning at the Southwest corner of the said  $NW\frac{1}{4}$  of  $SE\frac{1}{4}$  of said Section 13, Township 38 S. R.  $11\frac{1}{2}$  E.W.M., and running Northerly along the Western side of the said  $NW\frac{1}{4}$  of  $SE\frac{1}{4}$  and the  $SW\frac{1}{4}$  of  $NE\frac{1}{4}$  of said Section 13, 1542.5 feet; thence Southeasterly to a point in the southerly boundary of the said  $NW\frac{1}{4}$  of  $SE\frac{1}{4}$  of said Section 13, 499.2 feet easterly from the said point of beginning; thence westerly along the said southerly boundary of the said  $NW\frac{1}{4}$  of  $SE\frac{1}{4}$  of said Section 13, 499.2 feet to the said point of beginning.

SUBJECT TO: Reservations in patents; acreage and use limitations under provisions of Federal statutes and regulations thereunder; easements and rights of way of record and apparent on the land; contract and/or lien for irrigation and/or drainage; oil and mineral leases of record; rights of governmental bodies, if any, in any portion of the property lying below high water mark of Buck Creek.

together with a 30-horsepower electric irrigation pump; at and for a price of \$250,000.00 with interest at the rate of 8% per annum from the date of the execution of this agreement; said purchase price payable as follows, to wit:

1. \$40,000.00, inclusive of interest, to be paid on the 2nd day of January, 1980; and

2. The balance to be paid in annual installments of \$18,654.30, inclusive of interest, the first installment to be paid on the 2nd day of January, 1981, and a further installment to be paid on the 2nd day of January

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1 of every year thereafter until the full balance and interest are paid. Each  
2 payment shall be applied first to interest to the date of payment and the  
3 balance to principal.

4 The Purchasers agree to make said payments promptly on the dates above  
5 named to the escrow agent hereinafter named. ~~The Purchasers may not increase~~  
6 ~~any yearly payment or prepay the whole of the balance then due without the~~  
7 ~~express written consent of the Sellers.~~ *md CD*

8 The Purchasers shall have a 10-day grace period and an installment  
9 shall not be deemed in default during said period.

10 This Contract shall be binding upon and inure to the benefit of the  
11 parties, their successors and assigns. The parties hereby acknowledge that  
12 an important bargained-for element of this agreement is the requirement of  
13 the Sellers that this Contract never be prepaid. The parties acknowledge  
14 that the realities of current property finance are such that an absolute pro-  
15 hibition of prepayment of this Contract is a practical impossibility; however  
16 the Purchasers, their successors and assigns, hereby agree to not prepay this  
17 Contract unless failure to do so would cause an unconscionable loss to said  
18 Purchasers.

19  
20 II

21 The parties hereto are bound by a Lease agreement dated January 1,  
22 1976. Said Lease provides for annual rent installments of \$12,000.00, with  
23 the last such installment payable on January 1, 1980. The terms of said  
24 Lease agreement shall continue in force until December 31, 1979, at which  
25 time said Lease shall terminate.

26 The Purchasers hereby exercise their right of first refusal to buy  
27 the property therein described as provided by said Lease agreement. The  
28 Purchasers hereby waive any notice required by said Lease of the Sellers.  
29 Further, the Purchasers hereby waive any right to refund of unearned rent  
30 that may otherwise be owing from the Lessors to the Lessees thereunder.

31 The Sellers hereby agree to remove all of Sellers' personal property  
32 and goods which now remain on the subject property on or before October 21,  
1979. This agreement does not convey or sell to Purchasers any personal

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1 property or goods now on the subject property, except the irrigation pump  
2 specifically described above. The Purchasers agree to allow the Sellers on-  
3 to the subject property for the purpose of removing Sellers' personal prop-  
4 erty and goods at any and all reasonable times between the date of execution  
5 of this agreement and October 21, 1979.

## III

7 The property is subject to an unrecorded Agreement dated April 14,  
8 1961, between William A. Koenig and Ivy R. Koenig, husband and wife, and  
9 Christopher Pontrelli and Thomas Osa, a partnership.

10 The Sellers are the assignees of Christopher Pontrelli and Thomas Osa.  
11 Said Agreement and Assignment of Agreement are deposited in Escrow Account  
12 99-01120 at Klamath First Federal Savings and Loan Association, 540 Main  
13 Street, Klamath Falls, Oregon.

14 The Sellers agree to pay off the remaining principal and interest of  
15 said Agreement within 30 days of the receipt by Sellers of the payment due  
16 from Purchasers on January 2, 1980. The Sellers agree to furnish Purchasers  
17 with title insurance in the penal sum of \$250,000.00 within 60 days of the  
18 receipt by Sellers of said installment payment. Said title policy shall show  
19 marketable title free and clear of all encumbrances except those above set  
20 forth, and any encumbrances hereafter created by Purchasers.

## IV

22 The Purchasers further agree:

- 23 1. To keep said property at all times in as good condition as the  
24 same now are;  
25 2. That no improvement which may hereafter be placed on said property  
26 shall be removed or destroyed before the entire purchase price has been paid;  
27 and  
28 3. To pay regularly and seasonably, and before the same shall become  
29 subject to interest charges, all taxes, assessments, liens, and encumbrances  
30 of whatsoever nature and kind and agree not to suffer or permit any part of  
31 said property to become subject to any taxes, assessments, liens, charges,  
32 or encumbrances whatsoever having precedence over the rights of the Sellers

1 in and to said property;

2 4. To keep the property insured against loss or damage by fire in a  
3 sum not less than the insurable value with loss payable to the parties as  
4 their respective interests may appear;

5 5. The Purchasers agree to indemnify and defend Sellers from any  
6 claim, loss or liability arising out of or related to any activity of Pur-  
7 chasers on the property or any condition of the property.

8 During the term of this agreement, Purchasers shall maintain public  
9 liability insurance with limits of not less than \$250,000.00 for injury to  
10 one person and \$500,000.00 in one occurrence, and \$100,000.00 for damage to  
11 property.

## V

12  
13 The Sellers covenant that Sellers are the owners of good and market-  
14 able title to the property free of all liens and encumbrances except those  
15 set out above and also the property taxes for the tax year 1979-80 which are  
16 now a lien but are not yet payable. Sellers agree to pay to Purchasers a  
17 pro-rata share of said taxes for the period beginning July 1, 1979, and  
18 ending on the date of execution of this agreement. Sellers will make said  
19 payment within thirty days after receipt from Purchasers of proof of payment  
20 by Purchasers of said taxes.

21 Sellers will, on the execution hereof, make and execute in favor of  
22 Purchasers a good and sufficient warranty deed conveying a fee simple title  
23 to said property, free and clear as of this date of all encumbrances whatso-  
24 ever, except as above set forth, and will place said deed, together with one  
25 of these agreements in escrow at Certified Mortgage, Klamath Falls, Oregon,  
26 hereby instructing said escrow holder that when, and if, Purchasers shall  
27 have paid the balance of the purchase price and shall have in all other  
28 respects fully complied with all of the terms and conditions of this Contract,  
29 said escrow holder shall deliver said instruments to Purchasers.

30 Sellers as soon as practical after the execution hereof will furnish  
31 Purchasers with a preliminary title report. In the event that the title to  
32 the property proves to be unmarketable or subject to any liens or encumbrances

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1 thereon, except those above set forth, Sellers agree to cure the title de-  
2 fects within a reasonable period of time.

3 Sellers agree to give Purchasers written notice that they are in  
4 default of one or more of the requirements of this Contract. If Purchasers  
5 do not cure said default within ninety days of receipt of said notice, time  
6 of payment and strict performance being declared to be the essence of this  
7 agreement, then Sellers shall have the following rights:

- 8 (1) To foreclose this Contract by strict foreclosure in equity;  
9 (2) To declare the full unpaid balance immediately due and payable;  
10 (3) To specifically enforce the terms of the agreement by suit in  
11 equity;

12 (4) To declare this Contract null and void; and in any of such cases,  
13 except exercise of the right to specifically enforce this agreement by suit  
14 in equity, all the right and interest hereby created or then existing in  
15 favor of Purchasers derived under this agreement shall utterly cease and de-  
16 termine, and the premises aforesaid shall revert and revest in Sellers  
17 without any declaration of forfeiture or act of re-entry, and without any  
18 other act by Sellers to be performed, and without any right of Purchasers of  
19 reclamation or compensation for money paid or for improvements made, as ab-  
20 solutely, fully, and perfectly as if this agreement had never been made.

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

26 And in case suit or action is instituted to foreclose this Contract  
27 or to enforce any of the provisions hereof, Purchasers agree to pay reason-  
28 able cost of title report and title search and such sum as the trial court  
29 may adjudge reasonable as attorney's fees to be allowed plaintiff in said  
30 suit or action; and if an appeal is taken from any judgment or decree of such  
31 trial court, the Purchasers further promise to pay such sum as the appellate  
32 court shall adjudge reasonable as plaintiff's attorney's fees on such appeal.

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Purchasers further agree that failure by Sellers at any time to require performance by Purchasers of any provision hereof shall in no way affect Sellers' rights hereunder to enforce the same, nor shall any waiver by Sellers of such breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

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

IN WITNESS WHEREOF, said parties have executed this instrument in triplicate.

SELLERS

PURCHASERS

Herman Pendergraft  
Herman Pendergraft

Art Davina  
Art Davina

Laura N. Pendergraft  
Laura N. Pendergraft

Mary M. Davina  
Mary M. Davina

STATE OF OREGON )  
                          ) SS.  
County of Klamath )

August 24, 1979.

Personally appeared the above-named Herman Pendergraft and Laura N. Pendergraft, husband and wife; and Art Davina and Mary M. Davina, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed. BEFORE ME:

WM M Ganong  
(SEAL) WM. M. GANONG  
NOTARY PUBLIC—OREGON  
MY COMMISSION EXPIRES 11-7-82

WM M Ganong  
Notary Public for Oregon

Until a change is requested, all tax statements shall be sent to:  
Mr. & Mrs. Art Davina  
Rt. 1, Box 310  
Bonanza, Oregon 97623

After recording return to:  
Mr. & Mrs. Herman Pendergraft  
2435 Nile Street  
Klamath Falls, Oregon 97601

STATE OF OREGON, )  
County of Klamath )  
Filed for record at request of

on this 28th day of August A.D. 1979  
at 11:33 o'clock A M, and duly  
recorded in Vol. M79 of Teeds  
age 20434

Wm D. MILNE, County Clerk  
By Bernice H. Holsch Deputy

Fee \$21.00

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ATTORNEY AT LAW  
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