

K-34946

1 THIS INDENTURE OF LEASE, Made and entered into as of the last date set  
2 opposite the signatures of the parties hereto, by and between WM. V. MEADE  
3 and WM. JACK MEADE, as Initial Trustees of Inter Vivos Trust dated September  
4 15, 1976, and LOIS M. BROWNFIELD, or the survivor of them, as to an undivided  
5 15.5/48 interest; and FRANCES MARIE MORRIS, as to an undivided 32.5/48 inter-  
6 est, hereinafter called "Lessor", and WAYNE L. NEUBERT and KARINE K. NEUBERT,  
7 husband and wife, hereinafter called "Lessee";

8  
9 W I T N E S S E T H:  
10

11 In consideration of the covenants, agreements and stipulations herein  
12 contained on the part of Lessee to be paid, kept and faithfully performed,  
13 Lessor does hereby lease, demise and let unto the said Lessee those certain  
14 business premises, as is, situated in the County of Klamath and State of  
15 Oregon, together with all tenements, hereditaments, and appurtenances there-  
16 to appertaining, known and described as follows:

17  
18 Lot 5, Block 39, Linkville, according to the official plat thereof on  
19 file in the office of the County Clerk of Klamath County, Oregon, SAV-  
20 ING AND EXCEPTING the following:

21  
22 Beginning at the most Westerly corner of Lot 5 of said Block 39, thence  
23 from said point of beginning S.50°50' E. along the Southwesterly line  
24 of said Lot 5, 112.25 feet to a point, thence N.39°05' E. parallel to  
25 the Southeasterly line of said Lot 5, 25.09 feet to the center of an  
26 existing building wall, thence N.50°55' W. parallel to the Southwesterly  
27 line of said Lot 5 and along the center of said building wall 112.25  
28 feet to a point on the Northwesterly line of said Lot 5, thence S.39°05'  
29 W. along the Northwesterly line of said Lot 5, 25.09 feet to the point  
30 of beginning.

31  
32 SUBJECT TO: Taxes for 1981-1982 which are now a lien but not yet pay-  
33 able; assessments and charges of the City of Klamath Falls for monthly  
34 water and/or sewer service; any existing leases not of record; Party  
35 Wall Agreement, including terms and provisions thereof, dated May 1,  
36 1978, recorded May 1, 1978, Vol. M-78, Page 8608, Deed Records of Klam-  
37 ath County, Oregon; Easement, including terms and provisions thereof,  
38 disclosed by Contract of Sale, dated May 1, 1978, recorded May 1, 1978,  
39 Vol. M-78, Page 8612, Deed Records of Klamath County, Oregon; and Ease-  
40 ment Agreement, including terms and provisions thereof, recorded Febru-  
41 ary 17, 1981, Vol. M-81, Page 2657, Deed Records Klamath County, Oregon

42  
43 To Have and To Hold the above-described premises for a term of fourteen  
44 (14) months, commencing and terminating as set forth in Paragraph 1 of  
45 this Lease.

46  
47 1. Term. The term of this Lease shall begin, and the first monthly  
48 installment of rent shall become due and payable, on the 1st day of Novem-  
49 ber, 1981, and the term of this Lease shall end on midnight, December 31,  
50 1982, unless terminated earlier as provided herein.

51  
52 2. Rental: Lessee agrees to pay Lessor, as rental for said demised  
53 premises during the term of this Lease, the following sums of money at  
54 the times and in the manner as herein provided, to-wit:

55  
56 a. Base Rent: Lessee shall pay Lessor, in advance, on the  
57 1st day of each and every calendar month, commencing with the 1st  
58 day of November, 1981, a base montly rental of \$500.00. Lessor ack-  
59 nowledges receipt of the first month's rental upon execution hereof.

60  
61 b. Taxes: As rental in addition to the base rent, Lessee  
62 agrees to pay Lessor, upon demand, any tax or assessment levied upon  
63 the premises subject to this Lease pro-rated as follows: two-thirds  
64 (2/3) of the 1981-1982 taxes and assessments, and one-half (1/2) of  
65 the 1982-1983 taxes and assessments. In order to implement the pro-  
66 visions of this subparagraph, Lessor shall, upon receipt of any state-

PAGE -1-

After recording return to:  
Mr. and Mrs. Wayne L. Neubert  
Rt 1 Box 628-A, Zuckerman Rd., K. Falls, OR 97601

ment for any of the items referred to in this subparagraph, promptly submit to Lessee a statement showing thereon Lessee's respective share of the same and if Lessee should not pay Lessee's share within thirty (30) days from the date billed by Lessor, the amount billed shall bear interest at the rate of twenty-five per cent (25%) per annum from the expiration of said thirty (30) day period until paid.

c. Fire Insurance: As rental in addition to the base rent, Lessee agrees to pay Lessor, upon demand, a pro-rata of all premiums of any present fire insurance policy insuring the premises herein described as follows: one-sixth (1/6) of premiums amortized over the calendar year of 1981 and all of the premiums for the calendar year of 1982. In order to implement the provisions of this subparagraph, Lessor shall, upon receipt of any statements for any of the items referred to in this subparagraph, promptly submit to Lessee a statement showing thereon Lessee's respective share of the same and if Lessee should not pay Lessee's share within thirty (30) days from the date billed by Lessor, the amount billed shall bear interest at the rate of twenty-five per cent (25%) per annum from the expiration of said thirty (30) day period until paid. If Lessee desires additional insurance on the premises, Lessee shall obtain such additional insurance from a company or companies satisfactory to Lessor at Lessee's expense and shall provide Lessor a certificate of such insurance showing loss payable to Lessor.

3. Deposit as Security for Performance of Lease: Lessor herewith acknowledges receipt of \$500.00 which lessor is to retain as a security deposit for Lessee's faithful performance of this Lease. Lessor may so apply the security at Lessor's option, and Lessor's right to possession of the premises for nonpayment of rent or for any other reason shall not, in any event, be affected by reason of the fact that Lessor holds this security. The security deposit shall be applied toward the last rental installment if Lessee has fully performed the covenants to be performed by Lessee, and, if not applied toward payment of arrearages, damages or rent as herein provided, is to be returned to the Lessee when this Lease is terminated, after Lessee has vacated the premises and delivered possession to Lessor. If Lessor repossesses the premises because of Lessee's default or breach, Lessor may apply the deposit on all damages as may be suffered thereafter by reason of the default or breach. The security deposit is not to draw interest. Lessor shall not be obliged to keep the security as a separate fund, but may mix it with Lessor's own funds.

4. Glass Breakage: Lessee shall replace any plate glass damaged during the term of this Lease, regardless of cause.

5. Business to be Conducted on the Premises: Lessee shall use the premises during the term of this Lease for the conduct of a retail store business, and such other business activities incidental thereto.

6. Use of Premises: Without limiting any other provision of this Lease, Lessee shall use the premises in compliance with the following provisions:

a. Proper Use: Lessee will not make any unlawful, improper, or offensive use of said premises; Lessee will not suffer any strip or waste thereof; Lessee will not permit any objectionable noise or odor to escape or to be emitted from said premises or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance; Lessee will not sell or permit to be sold any spirituous, vinous or malt liquors on said premises, excepting such as Lessee may be licensed by law to sell.

b. No Increase in Fire Insurance: Lessee will not allow the leased premises at any time to fall into such a state of disrepair or disorder as to increase the fire hazard thereon; Lessee shall not install any power machinery on said premises except under the super-

vision and with written consent of Lessor; Lessee shall not store gasoline or other highly combustible materials on said premises at any time; Lessee will not use said premises in such a way or for such a purpose that the fire insurance rate on the building in which said premises are located is thereby increased or that would prevent Lessor from taking advantage of any rulings of the Insurance Rating Bureau of the state in which said leased premises are located, or its successors, which would allow Lessor to obtain reduced premium rates for long-term fire insurance policies.

c. Obey Law: Lessee shall comply, at Lessee's own expense, with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said leased premises.

7. Utilities: Lessee shall pay for all heat, light, water, power and other services or utilities used in the above demised premises during the term of this Lease.

8. Repairs and Improvements: Lessor shall not be required to make any repairs, alterations, additions or improvements to or upon said premises during the term of this Lease. Lessee hereby agrees to maintain and keep said leased premises, including the exterior walls, roof, gutters, downspouts, foundation, heating and air conditioning systems, interior wiring, plumbing and drain pipes to sewers, in good order and repair during the entire term of this Lease at Lessee's own cost and expense. Lessee further agrees that Lessee will make no major alterations, additions or improvements to or upon said premises except that Lessee may, at Lessee's expense, remodel the interior in such manner as will not disturb or modify the existing exterior or the structural integrity of the premises.

9. Acceptance of Premises: Upon taking possession of the demised premises, Lessee shall be conclusively presumed to have accepted the same, as is, as satisfactory for Lessee's purposes.

10. Signs: Lessee may attach such signs or devices, for the purposes of advertising or displaying the name of Lessee's business, to the exterior wall or roof of the demised premises, PROVIDED, HOWEVER, that any such sign or device shall be one which can be removed without damage to any wall or the roof of the demised premises, and, further provided, that the Lessee shall and will not paint any sign or advertising material on any wall or the roof of the demised premises. Lessee may also suspend or place upon, or within, the premises banners, signs or devices of a temporary nature which can be removed at any time.

11. Lessor's Right of Entry: It shall be lawful for Lessor, his agents and representatives, at any reasonable time, to enter into or upon said demised premises for the purpose of examining into the condition thereof, or for any other lawful purpose.

12. Right of Assignment: Except as provided herein, Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this Lease, or the option provided herein, or permit any other person or persons whomsoever to occupy the demised premises without the written consent of Lessor being first obtained in writing; this Lease is personal to said Lessee; Lessee's interests, in whole or in part, cannot be sold, assigned, transferred, seized or taken by operation of law, or under or by virtue of any execution or legal process, attachment or proceedings instituted against the Lessee, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to Lessee or in any other manner, except as above mentioned. Lessor agrees to consent to an assignment, or transfer, or other disposition of this Lease, or the option provided therein, by Lessee, on the condition that Lessor approves, in writing, the credit of such assignee or transferee. In addition, notwithstanding the foregoing, Lessee may sublet a department of the Lessee's business.

13. Liens: Lessee will not permit any lien of any kind, type or description to be placed or imposed upon the building in which said leased premises are situated, or any part thereof, or the real estate on which it stands. In the event a lien is permitted to be placed upon the demised premises by Lessee, Lessor may, without waiving any rights of Lessor for breach of covenant, or otherwise, appear in or defend any action or proceeding at law or in equity concerning any such lien and, in such event, Lessor shall be allowed and paid, and Lessee hereby agrees to pay, all sums Lessor may be required to expend in connection with such lien, including, without limitation of the generality of the foregoing, the payment of the same, attorney fees in a reasonable sum, including attorney fees at trial or upon appeal, which sums shall bear interest at the rate of twenty-five per cent (25%) per annum from date of demand therefor until paid.

14. Ice, Snow, Debris: At all times, Lessee shall keep the sidewalks or walkways and parking lots, if any, of the demised premises free and clear of ice, snow, rubbish, debris and obstruction; and Lessee will, in addition, not permit rubbish, debris, ice or snow to accumulate on the roof of said building so as to stop up or obstruct gutters or downspouts or cause damage to said roof, and will save harmless and protect the Lessor against any injury, whether to Lessor or to Lessor's property or to any other person or property, caused by his failure to comply with this provision.

15. Overloading of Floors: Lessee will not overload the floors of said premises in such a way as to cause any undue or serious stress or strain upon the building in which said demised premises are located, or any part thereof, and Lessor shall have the right, at any time, to call upon any competent engineer or architect whom Lessor may choose, to decide whether or not the floors of said premises, or any part thereof, are being overloaded so as to cause any undue or serious stress or strain on said building, or any part thereof, and the decision of said engineer or architect shall be final and binding upon Lessee; and in the event that said engineer or architect so called upon shall decide that, in his opinion, the stress or strain is such as to endanger or injure said building, or any part thereof, then and in that event Lessee agrees immediately to relieve said stress or strain either by reinforcing the building or by lightening the load which causes such stress or strain in a manner satisfactory to Lessor.

16. Exemption of Lessor From Liability, Indemnification by Lessee and Liability Insurance:

a. Lessee's Obligation of Indemnity of Lessor: Lessee shall save and hold harmless Lessor from, and hereby indemnifies Lessor against, liability to Lessee or to any other person for or on account of any death or injury to persons, or any damage to property in or about the leased premises, including the merchandise, fixtures or equipment of Lessee that may result by reason of any condition or present or future lack of repair of the leased premises or improvements thereon, or the wiring, equipment, furnishings, fixtures, apparatus, or any sign, advertising or display device, awning or other like covering therein or thereon, or by or from any person or persons lawfully or unlawfully upon said premises, or by or from any act, omission or neglect of any such person, or in any manner whatsoever growing out of the past, present or future condition or use of the leased premises or improvements thereon or any part thereof, including any attorney fees and costs.

b. Insurance of Lessor: During the term of this Lease, Lessee shall, at Lessee's own expense, maintain in full force and effect a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Oregon, that will insure Lessee against liability for injury to persons and property and for death of any person or persons occurring in or about the premises. The liability under such insurance shall not be less than \$300,000.00

1 for any one person injured or killed, and not less than \$300,000.00  
2 for any one accident, and not less than \$50,000.00 for property damage.  
3 Lessee shall provide Lessor with copies or certificates of all policies.  
4

5 17. Fixtures: All remodeling improvements and fixtures, other than  
6 Lessee's trade fixtures, placed upon the leased premises during the term  
7 of this Lease, or any renewal or extension of this Lease, shall become  
8 the property of Lessor. Movable furniture, decorations, floor coverings  
9 (other than hard surface bonded or adhesively fixed flooring), curtains,  
10 blinds, furnishings and trade fixtures of Lessee shall remain the property  
11 of Lessee if placed on the leased premises by Lessee and shall be removed  
12 by the Lessee upon the expiration of the term of this Lease, or any renewal  
13 or extension thereof. If Lessee fails to remove those items of property  
14 which remain the property of Lessee upon the expiration of the term of  
15 this Lease, or any renewal or extension thereof, and Lessor gives Lessee  
16 written notice that, if such property is not removed within fifteen (15)  
17 days immediately following the giving of such notice, that such property  
18 shall conclusively be deemed to be abandoned and Lessee does not, within  
19 the fifteen (15) day period following the giving of such notice, remove  
20 the same, such property shall conclusively be presumed to be abandoned  
21 to lessor and Lessor may, thereafter, retain such property and all rights  
22 of Lessee to it shall vest in Lessor.  
23

24 18. Lien For Rent: Lessor reserves, as security for the total rent  
25 to be paid Lessor by Lessee under this Lease, a lien on all fixtures,  
26 furniture and equipment and personal property now or hereafter placed,  
27 installed in or attached to the building now erected on the premises and  
28 all furniture, fixtures, equipment and personal property which may, in  
29 the future, be placed, installed in or attached to any building now or  
30 hereafter erected on the premises. In case default shall be made in the  
31 payment of the rent herein specified, or any part thereof, or if Lessee  
32 be in default of any provisions herein and attempts to remove said property  
33 from said premises without the written consent of the Lessor being first  
34 had and obtained, it shall and may be lawful for, and Lessor is hereby  
35 authorized and empowered, with or without the aid and assistance of any  
36 person or persons, to enter the premises where the said furniture, fixtures,  
37 equipment and personal property are or may be placed, and take or carry  
38 away the said furniture, fixtures, equipment and personal property and  
39 sell and dispose of the same at public or private sale, with or without  
40 notice to the said Lessee, or sell the same at public auction upon giving  
41 ten (10) days' notice of the same in a newspaper of general circulation,  
42 published in the county where the premises are situated, and out of the  
43 money arising therefrom, to retain and pay the minimum rental remaining  
44 unpaid under this Lease, together with such additional rental as may then  
45 be due, and all charges touching the same. Lessee agrees, upon request,  
46 to execute any documents or instruments reasonably requested by Lessor  
47 to carry out this provision.  
48

49 19. Damage by Casualty, Fire and Duty to Repair: If the building  
50 upon the demised premises should be damaged by fire, or other casualty,  
51 Lessee may elect to repair such damage or rebuild the building subject  
52 to the terms and conditions set forth in this paragraph. If Lessee desires  
53 to repair the damage or rebuild the building, Lessee must, within thirty  
54 (30) days from the date of the occurrence of such damage or destruction,  
55 notify Lessor in writing that Lessee elects to repair or rebuild the build-  
56 ing. Such notification must be in writing and shall contain a firm bid  
57 for such repair or rebuilding executed by a financially responsible and  
58 reputable contractor together with the following irrevocable commitments  
59 from a bank, savings and loan association, or similar financial institu-  
60 tion: an irrevocable loan commitment to provide interim financing for  
61 the cost of such repair or rebuilding, and to lend to Lessee (without the  
62 subordination, guarantee, or other commitment of Lessor) any amounts neces-  
63 sary to pay for the repair or reconstruction not covered by insurance pro-  
64 ceeds or resulting from an over-run of costs in excess of the contractor's  
65 bid; and a commitment to receive, hold, and disburse for the purposes of  
66 such repair or rebuilding, the proceeds payable from any fire insurance



1 policy maintained pursuant to Paragraph 2,c, of this Lease by reason of  
 2 such fire or other casualty. If Lessee does not give such notice within  
 3 such time period, Lessee shall conclusively be deemed to have elected not  
 4 to repair or rebuild the building and this Lease, and all rights under it,  
 5 shall terminate as of the date of the damage or destruction of the building  
 6 without reimbursement to Lessee of prepaid rent, or sums paid toward the op-  
 7 tion herein contained, and Lessor shall retain all fire insurance proceeds.  
 8 If Lessee elects to repair or rebuild the building, the notice specified  
 9 in this paragraph must be in strict conformance with the conditions contained  
 10 in this paragraph. If such election is made by Lessee, Lessor shall, within  
 11 thirty (30) days after the giving of the notice by Lessee, execute with the  
 12 aforesaid bank, savings and loan association, or similar financial institu-  
 13 tion, such escrow instructions and/or documents as shall be appropriate to  
 14 assure application of the insurance proceeds payable to Lessor to the repair  
 15 or reconstruction of the building and shall appoint the aforesaid bank, sav-  
 16 ings and loan association, or similar financial institution, as Lessor's  
 17 attorney-in-fact to receive and disburse such insurance proceeds. If Lessee  
 18 elects to repair or rebuild the building pursuant to this paragraph, rent  
 19 shall not be abated during the period of such repairing or rebuilding. Noth-  
 20 ing herein shall obligate Lessor to repair or rebuild said building.

20. Waiver of Subrogation Rights: Neither Lessor nor Lessee shall  
 21 be liable to the other for loss arising out of damage to or destruction of  
 22 the leased premises, or the buidling or improvement of which the leased  
 23 premises are a part or with which they are connected, or the contents of  
 24 any thereof, when such loss is caused by any of the perils which are or could  
 25 be included within or insured against by a standard form of fire insurance  
 26 with extended coverage, including sprinkler leakage insurance, if any. All  
 27 such claims for any and all loss, however caused, hereby are waived. Said  
 28 absence of liability shall exist whether or not the damage or destruction  
 29 is caused by the negligence of either Lessor or Lessee or by any of their  
 30 respective agents, servants or employees. It is the intention and agree-  
 31 ment of Lessor and Lessee that the rentals reserved by this Lease have been  
 32 fixed in contemplation that each party shall fully provide his own insurance  
 33 protection at his own expense, and that each party shall look to his respec-  
 34 tive insurance carriers for reimbursement of any such loss, and further,  
 35 that the insurance carriers involved shall not be entitled to subrogation  
 36 under any circumstances against any party to this Lease.

21. Eminent Domain: If the premises above demised, or any portion  
 22 thereof, excepting such fixtures as Lessee shall have the right to remove  
 23 under the terms of this Lease, or any portion thereof, be taken by any  
 24 entity having the power of eminent domain pursuant to the laws of eminent  
 25 domain and condemnation, all moneys paid for the taking of said real prop-  
 26 erty or buildings, or both, or of any portion thereof, shall be retained  
 27 by Lessor, and Lessee shall have no claim against Lessor as a result of  
 28 the condemnation. If the entire real property described herein shall be  
 29 taken by such proceeding, this Lease shall terminate as of the date title  
 30 vests in the condemning authority, and all moneys paid under such taking  
 31 shall be and remain the sole and exclusive property of Lessor, it being  
 32 understood and agreed that, upon vacation of the premises by Lessee, Lessee  
 33 shall be entitled to the return of any unused portion of prepaid rental  
 34 and/or security deposit. Nothing herein contained shall be so construed  
 35 as to give Lessor any right, title or interest in or to the personal prop-  
 36 erty of Lessee, which Lessee shall have the right, under the terms of this  
 37 Lease, to remove. If a partial taking of the leased premises occurs which  
 38 makes occupancy of the same for the purposes of this Lease impractical,  
 39 this Lease shall terminate as of the date title vests in the condemning  
 40 authority, in which event all the unused portion of any prepaid rentals  
 41 and/or security deposit as of the date of vacation of the premises by Lessee  
 42 shall be returned to Lessee and all other rentals completely abated. Sale  
 43 of all or part of the leased premises to a purchaser with the power of  
 44 eminent domain in the face of a threat of probable exercise of such power  
 45 shall be treated, for the purposes of this provision, as a taking by eminent  
 46 domain or condemnation.

22. Option To Purchase: For and in consideration of the payment of \$250.00 upon the execution of this Lease and the further payment of the sum of \$250.00 per month, commencing with the first day of November, 1981, and a like payment on the first day of each month thereafter, until exercise by Lessee of the option herein provided, Lessor hereby grants unto Lessee an option to buy the leased premises at any time before December 31, 1982, as Lessee may elect, at a price of \$150,000.00, provided Lessee shall have timely paid the monthly sums specified for said option and shall have fully performed all of the terms, covenants and provisions of this Lease. In the event of a termination of this Lease, for breach or any other reason, this option shall also terminate and the option money shall be retained by Lessor. The terms and covenants of the option are:

a. The purchase price of \$150,000.00 is payable as follows:

(1) \$10,000.00 as down payment to be made on or before the closing of the escrow as provided hereafter.

(2) As additional down payment, Lessee shall be credited with the total sums paid Lessor for this option as above provided.

(3) The remainder of the purchase price, less credit for the sums specified in the immediately preceding subparagraphs (1) and (2) shall be payable in monthly installments calculated by amortizing such remainder over a term of twenty (20) years at twelve per cent (12%) per annum interest. Said installments shall be inclusive of interest. The first monthly installment shall be due and payable on the first day of the first month following closing of the escrow as provided hereafter. The fully unpaid balance of principal and interest shall be due and payable sixty (60) months from the due date of the first installment. Interest shall commence on the date of the closing of the escrow provided for herein. The balance of the principal and interest to be paid as provided in this paragraph shall be evidenced and secured by a Contract of Sale containing substantially the same provisions set forth in the attached Exhibit "A". Lessee shall, on the first day of the fifty-seventh (57th) month of the term of the Contract apply to a bank, savings and loan association, or similar financial institution, for a loan to pay the sums due on the sixtieth (60th) month of said Contract. If Lessee is refused a loan for such amount by two (2) such banks, savings and loan associations, or similar institutions, Lessor agrees to extend the termination date of said Contract for an additional eighteen (18) months, provided, however, that the installments shall be reamortized over a term of fifteen (15) years at the prime interest rate being charged by First Interstate Bank for commercial loans to its preferred borrowers, and such installments, so reamortized, shall be paid on the first day of each month thereafter, with the final sum of principal and interest due on the seventy-eighth (78th) month of said Contract.

b. Exercise of this option shall be as follows: Lessee shall give Lessor notice of his election to exercise this option by delivering to Lessor a letter designating Klamath County Title Co. (hereinafter called "Closing Escrow Holder") the agent to close the purchase and sale provided for in this option and stating that Lessee is exercising this option. Within ten (10) days after Lessor's receipt of said notice, the parties shall execute such closing instructions with the Closing Escrow Holder as it may require. Said closing escrow shall close thirty (30) days from the date that it is established, as herein provided, unless both Lessee and Lessor agree to extend the time for closing.

c. Real property taxes and assessments, and prepaid premiums for fire insurance on the building shall not be prorated.

d. The closing costs of the escrow shall be borne as follows: each party shall pay one-half of the fee of the Closing Escrow Holder; Lessee shall pay for the cost of recording the Contract of Sale, and all other costs not specifically specified herein; Lessor shall pay the charge for an owner's policy of title insurance issued by Klamath County Title Co. in favor of Lessee, all recording fees not specifically required to be paid by Lessee, the cost of removing any liens to which Lessee objects (as hereinafter provided) and any fees charged for the preparation of the Contract.

e. Lessor agrees to provide Lessee, upon closing of said escrow, a standard form of owner's title insurance policy to the real property described in this Lease naming Lessee as the insured. The parties agree to accept the form of said policy subject to the exceptions shown thereon. Prior to the issuance of any such policy and the closing of the escrow provided herein, the Closing Escrow Holder shall secure issuance to the Lessee of a preliminary report for title insurance. If said preliminary report shows an exception other than easements and rights of way of record and real property taxes and assessments for the fiscal year in which this option is exercised, Lessee may object, within ten (10) days from the date of receipt of said preliminary report, to the inclusion of the same in any policy issued pursuant to this option. Such objections shall be by written notice to both Lessor and the Closing Escrow Holder. If Lessee makes such exception, and the defect shown in said title report is other than an encumbrance securing a monetary sum, Lessor agrees to do all that Lessor reasonably can to remove such defect prior to the closing date of said escrow, but if such defect cannot be removed by all reasonable means by such closing date, Lessee may, at Lessee's election, by written notice to Lessor and the Closing Escrow Holder, do either of the following: (1) postpone the closing date of the exercised option for such time as Lessee may wish, not exceeding three (3) months in the aggregate, to allow Lessor further time to remove such default; or (2) rescind the exercised option in its entirety. If such defect is in the form of an encumbrance against the real property subject to this option, which encumbrance secures a monetary sum created by, for or on account of, Lessor, Lessor shall remove the same prior to the closing date of escrow provided for herein, and if Lessor fails to remove any such encumbrance, Lessee may, at Lessee's election, by written notice to Lessor and the Closing Escrow Holder, do either of the following: (1) accept title subject to such encumbrance and assume the same; or (2) rescind the exercised option in its entirety. If Lessee elects to accept title subject to such encumbrance, the following provisions shall apply: (1) the amount so assumed shall be deducted from the purchase price provided for in this option; (2) interest on the monetary sum secured by such encumbrance shall be prorated by the Closing Escrow Holder and all interest accrued to the closing date of such escrow shall be charged to Lessor; (3) any penalties or assumption charges shall be paid by Lessor; and (4) Lessor shall obtain the consent of the party secured by such an encumbrance, if the encumbrance contains a provision either requiring consent to an assumption or for acceleration in the event of transfer of said real property by Lessor, or both, and if such consent is required by such encumbrance, but Lessor is unable to obtain the same by the closing date of said escrow, Lessee may, at Lessee's election by written notice to Lessor and the Closing Escrow Holder, do either of the following: (1) postpone the closing date of this transaction for such time as Lessee may wish, not exceeding three (3) months in the aggregate, to allow Lessor further time to secure such consent; or (2) rescind the exercised option in its entirety. This provision shall not apply to any defect created by Lessee, and Lessee shall accept title subject to such defect.

f. Lessee's remedy provided for in Subparagraph e above shall be the sole remedy of Lessee for any breaches provided for in said Subparagraph e. In the event of such rescission, Lessor shall pay all costs and charges of the Closing Escrow Holder.



g. Lessor covenants with Lessee that Lessor has marketable title in the real property described in this Lease. It is understood and agreed that issuance of the owner's policy of title insurance as set forth above shall constitute conclusive evidence of marketable title.

23. Light and Air: This Lease does not grant any rights of access to light and air over the property.

24. Payment of Taxes on Lessee's Property: Lessor shall have no obligation to pay any personal property taxes and assessments levied by any taxing authority upon the personal property, equipment, fixtures and inventory of Lessee and that said personal property taxes, assessments and levies, both rolled and not rolled, shall be paid by Lessee.

25. Lessee to Maintain Fire Insurance on Lessee's Personalty: Lessee shall maintain insurance against loss by fire with a reputable insurance company on Lessee's personal property, equipment, fixtures and inventories, at Lessee's expense, in such amounts as Lessee shall choose, and Lessor shall be under no obligation to Lessee to insure the same.

26. Notices: Any notice required by the terms of this Lease to be given by one party hereto to the other, or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, deposited with the United States Postal Service as Certified Mail with postage fully prepaid, and if intended for Lessor addressed to said Lessor at 700 North Eldorado, Klamath Falls, Oregon 97601, and if intended for Lessee addressed to Lessee at Rte. 1, Box 628-A, Zuckerman Road, Klamath Falls, Oregon 97601. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof 48 hours after the deposit thereof with said United States Postal Service.

27. Renegotiation of Lease: It is understood and agreed by the parties that the parties may negotiate to renew or extend the term of this Lease, upon the expiration hereof, and any extensions thereof, upon such terms and conditions as shall, upon such renewal or extension, be then agreed upon. The negotiations to renew or extend shall be exercised as follows: Within not less than ninety (90) days prior to the expiration hereof, Lessee shall notify Lessor whether or not Lessee intends to continue leasing the demised premises. Upon receipt of the aforesaid notice by Lessee, Lessor shall deliver to Lessee, within not less than thirty (30) days prior to the expiration date hereof, notice specifying the terms of such lease and the amount of rental Lessor desires for such renewed or extended Lease, or, if Lessor does not desire to continue leasing said premises to Lessee, notice to that effect. Lessee shall have thirty (30) days from Lessor's notice to accept by written notice to Lessor the terms and rental specified in Lessor's notice. If Lessee does not accept the terms and rental specified in Lessor's notice, this Lease shall not be renewed or extended.

28. Delivering up Premises on Termination: At the expiration of said term or upon any sooner termination thereof, Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same, broom-clean, to Lessor or those having Lessor's estate in the premises, peaceably, quietly and in as good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements alone excepted, as the same are now in or hereafter may be put in by Lessor.

29. Holding Over: In the event Lessee, for any reason, shall hold over after the expiration of this Lease, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but shall only create a tenancy from month to month which may be terminated at will at any time by Lessor.

30. For Sale and For Rent Signs: During the period of thirty (30) days prior to the date above fixed for the termination of this Lease, Lessor hereby may post on said premises or in the windows thereof signs of moderate size notifying the public that the premises are "for sale" or "for rent" or "for lease".

31. Waiver: Any waiver by Lessor of any breach of any covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent Lessor from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

32. Heirs and Assigns: All rights, remedies, and liabilities herein given to or imposed upon either of the parties hereto shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and, so far as this Lease is assignable by the terms hereof, to the assigns of such parties.

33. Time of the Essence and Remedies by Lessor:

a. Time: Time is the essence of this Lease agreement and that this Lease is upon the express condition that, if Lessee fails to pay the rental reserved and provided hereunder for a period of ten (10) days after the same becomes due, or fails to observe, perform, keep or comply with any covenant, agreement, condition or provision of the Lease to be observed, performed, kept or complied with by Lessee, Lessor, or Lessor's successors in interest, may, at Lessor's option, immediately or at any time thereafter while such default continues, forthwith and without further notice, terminate this Lease, whereupon, without any other act on the part of Lessor, all rights, interest and estate of Lessee hereunder shall utterly cease and terminate, and Lessor shall thereupon be revested in the full estate of said premises as if this Lease had never been entered into, and, in such event, Lessee hereby agrees to vacate said premises peaceably and forthwith, and, if Lessee fails to do so, Lessor may, without further notice, enter upon said premises or any part thereof, in the name of the whole, and expell Lessee, Lessee's agents, employees and representatives thereof and remove therefrom Lessee's property and effects, without legal process and without trespassing and without liability for damage or injury to person or property, Lessor to retain all prepaid rentals as liquidated damages for such breach of this Lease, without, in any manner, preventing or affecting the rights of Lessor to recover any rentals in arrears hereunder and/or any additional damages actually sustained by Lessor by reason of or resulting from such default or defaults of Lessee and without any prejudice to any remedies which might otherwise be used for arrears of rent or proceedings for breach of covenant.

b. Liability: Lessor may, as Lessee's agent, and without being obligated to do so, rent the premises for the best rental and best terms then reasonably obtainable without releasing Lessee hereunder from any liability for rent or otherwise, applying any moneys collected first to the expenses of such repossession and such renting, and then to the payment of the rent and all charges due or to become due to Lessor under the terms of this present Lease, any surplus to be paid to Lessee, who shall remain liable for any deficiency of rent under this Lease, with this proviso, however, that Lessor may immediately bring action or suit for the deficiency of unpaid rent upon the renting of said premises as agents of Lessee, and provided further, that no waiver of any breach of any covenant herein contained to be kept by Lessee shall be deemed or considered as a continuing waiver or a waiver of any subsequent breach of the same covenant or of any other covenant.

34. Attorney Fees and Court Costs: In the event suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this Lease, or to collect the rental which may become due hereunder, or any portion thereof, the prevailing party shall recover from the other party such sum as the trial court may adjudge reasonable as attorney fees to be allowed in such suit or action and in the event any appeal is taken from any judgment or decree in such suit or action, such further sum as the appellate court shall adjudge reasonable as attorney fees on such appeal, in addition to costs and disbursements allowed by law, Lessee

1 also agrees to pay and discharge all Lessor's costs and expenses, including  
 2 Lessor's reasonable attorney fees, that shall arise from enforcing any  
 3 provisions or covenants of this Lease even though no suit or action is  
 4 instituted.

5  
 6 35. Obligations Joint and Several: All obligations created by this  
 7 Lease shall be joint and several.

8  
 9 36. Construction: All agreements and covenants contained herein are  
 10 severable, and in the event any of them shall be held to be invalid by any  
 11 competent court, this Lease shall be interpreted as if such invalid agree-  
 12 ments or covenants were not contained herein. The headings contained in this  
 13 Lease are for convenience only and are not to be construed as part of this  
 14 Lease. All words used in the plural number shall extend to and include the  
 15 singular. All words used in the singular number shall extend to and include  
 16 the plural. All words used in any gender shall extend to and include all  
 17 genders. This Lease shall not be construed against the party paying for its  
 18 preparation, but shall be construed as if all parties prepared it.

19  
 20 SIGNED on the date set opposite the signatures of the parties signing  
 21 the same.

DATE

10/19/81

10-19-81

10-19-81

11/3/81

10-19-81

10-19-81

SIGNATURE

WM. V. MEADE

(Lessor)

WM. JACK MEADE

(Lessor)

(Initial Trustees of Inter Vivos Trust  
 dated September 15, 1976)

LOIS M. BROWNFIELD

(Lessor)

FRANCES MARIE MORRIS

(Lessor)

WAYNE L. NEUBERT

(Lessee)

KARINE K. NEUBERT

(Lessee)

1 STATE OF OREGON )  
 2 ) ss:  
 3 County of Klamath )  
 4

5 Personally before me on the 19th day of October, 1981, appeared  
 6 WM. V. MEADE and WM. JACK MEADE and acknowledged the foregoing instrument  
 7 as their voluntary act and deed.  
 8  
 9

Kirstine L. Prock  
 KIRSTINE L. PROCK  
 NOTARY PUBLIC - OREGON  
 My Commission Expires 12/16/84

10  
 11  
 12  
 13  
 14 STATE OF OREGON )  
 15 ) ss:  
 16 County of Klamath )  
 17

18 Personally before me on the 19th day of October, 1981, appeared  
 19 LOIS M. BROWNFIELD and acknowledged the foregoing instrument as her vol-  
 20 untary act and deed.  
 21  
 22

Kirstine L. Prock  
 KIRSTINE L. PROCK  
 NOTARY PUBLIC - OREGON  
 My Commission Expires 12/16/84

23  
 24  
 25  
 26  
 27 STATE OF New York )  
 28 ) ss:  
 29 County of New York )  
 30

31 Personally before me on the 3rd day of November, 1981,  
 32 appeared FRANCES MARIE MORRIS and acknowledged the foregoing instrument  
 33 as her voluntary act and deed.  
 34  
 35

Steven Brown  
 STEVEN BROWN  
 Notary Public, State of New York  
 No. 414597533  
 NOTARY PUBLIC FOR  
 My Commission Expires Qualified in Queens County  
Commission Expires March 23, 1983  
at ny

36  
 37 (SEAL)  
 38  
 39  
 40

41 STATE OF OREGON )  
 42 ) ss:  
 43 County of Klamath )  
 44

45 Personally before me on the 19th day of October, 1981, appeared  
 46 WAYNE L. NEUBERT and KARINE K. NEUBERT, husband and wife, and acknowledged  
 47 the foregoing instrument as their voluntary act and deed.  
 48  
 49

Kirstine L. Prock  
 KIRSTINE L. PROCK  
 NOTARY PUBLIC - OREGON  
 My Commission Expires 12/16/84

19623  
CONTRACT OF SALE of the real property described in the attached Exhibit "A" (called "Real Property"), subject to the exceptions to title set forth in said Exhibit "A", made, as of the last date set opposite the signatures of the parties hereto, between WM. V. MEADE and WM. JACK MEADE, as Initial Trustees of Inter Vivos Trust dated September 15, 1976, and LOIS M. BROWNFIELD, or the survivor of them, as to an undivided 15.5/48 interest; and FRANCES MARIE MORRIS, as to an undivided 32.5/48 interest (herein called "Seller"), and WAYNE L. NEUBERT and KARINE K. NEUBERT, husband and wife (herein called "Buyer"), whose address is Route 1, Box 628-A, Zuckerman Road, Klamath Falls, Oregon 97601.

1. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the Real Property for the price and on the terms, covenants, conditions and provisions herein contained.

2. [The payment provisions of the Option to which this Exhibit "A" is attached will be incorporated in this part of this Contract.] Buyer may prepay all, or any part of, the principal or interest at any time. No partial payment nor increased installment shall be credited in lieu of any regular future installment, nor excuse Buyer from making the regular installments specified in this Contract.

3. All installments shall be paid, without demand, to Klamath County Title Company, 422 Main Street, Klamath Falls, Oregon 97601 (herein called "Escrow Holder").

4. In the event any governmental agency or entity having the power of eminent domain acquires by eminent domain or by negotiated sale in lieu of eminent domain, all, or any portion of, the Real Property described in this Contract, Buyer shall pay to the Escrow Holder all proceeds received by Buyer from such acquisition (remaining after payment by Buyer of attorney fees, appraiser fees, and related necessary and reasonable costs in connection with securing said proceeds, which proceeds are hereinafter called "Net Proceeds"), and which Net Proceeds shall be applied toward payment of the sums secured by this Contract; PROVIDED, HOWEVER, that the amount of said Net Proceeds to be applied pursuant to this provision shall not exceed the total of the principal plus accrued interest to the date of payment of said Net Proceeds to the Escrow Holder.

5. If Buyer shall sell Buyer's equity in the Real Property described herein and securing the unpaid balance of this Contract, Buyer shall notify Seller of such sale in writing, and Seller shall have thirty (30) days from such notice to elect, in writing, to require Buyer to apply ninety per cent (90%) of the net proceeds from such sale toward payment of the deferred balance (both principal and interest) secured by this Contract before Buyer receives and realizes any payment for his equity. The term "net proceeds" shall include both proceeds received by Buyer at the time of consummation of such sale and any installments received there- after less reasonable commissions, title insurance, demands of prior lien holders, attorney fees, and escrow fees incurred in any such sale. Failure of Seller to elect to require ap- plication of such net proceeds as herein provided, shall constitute a conclusive election not to require application of such net proceeds; provided, however, that any subsequent Buyer shall be required to comply with this provision and that an election not to require application of net proceeds from any sale shall not be construed as constituting a waiver of this provision as to any subsequent Buyer. In addition, any such sale shall personally obligate the subse- quent Buyer to Seller without relieving Buyer of Buyer's obligation to Seller under this Con- tract.

6. Buyer warrants and covenants that the Real Property is being purchased for an or- ganization or business and/or commercial purpose other than agricultural.

7. Possession of the Real Property has been delivered.

8. The terms, covenants, conditions, and provisions set forth on the reverse hereof, and any exhibit attached hereto, is incorporated into this Contract as though fully set forth at the place in this Contract at which reference to them is made.

THIS DOCUMENT CONSTITUTES A BINDING CONTRACT. THE PARTIES HAVE READ BOTH SIDES AND ALL EX- HIBITS.

DATE

SIGNATURES

\_\_\_\_\_  
WM. V. MEADE (Seller)

\_\_\_\_\_  
WM. JACK MEADE (Seller)  
(Initial Trustees of Inter Vivos Trust dated  
September 15, 1976)

\_\_\_\_\_  
LOIS M. BROWNFIELD (Seller)

\_\_\_\_\_  
FRANCES MARIE MORRIS (Seller)

\_\_\_\_\_  
WAYNE L. NEUBERT (Buyer)

\_\_\_\_\_  
KARINE K. NEUBERT (Buyer)

(SEE ACKNOWLEDGEMENTS ON REVERSE SIDE HEREOF)

EXHIBIT "A"



1. Seller hereby warrants to Buyer that Seller has good and merchantable title to the real property described in this Contract, subject to the exceptions to title set forth in this Contract. Seller agrees that when the sums due Seller secured by this Contract have been fully paid, Seller shall, upon Buyer's request, deliver a good and sufficient warranty deed conveying said real property in fee simple unto Buyer, and Buyer's heirs and assigns, free and clear of encumbrances as of the date of the Contract, except those exceptions to title set forth in this Contract, and those exceptions to title permitted or created by Buyer. To the extent that this Contract designates an Escrow Holder, Seller will, upon execution of this Contract, execute the aforesaid warranty deed, and, within a reasonable time thereafter, place said warranty deed, together with an executed original of this Contract, in escrow with the designated Escrow Holder with instructions (subject to the usual printed conditions and provisions of the standard form of escrow instructions provided by said Escrow Holder) to said Escrow Holder that, when and if Buyer shall have paid the sums due Seller provided for in this Contract, to deliver said warranty deed to Buyer.
2. Buyer shall remain in possession of the real property so long as Buyer is not in default hereunder. Buyer shall and hereby agrees to keep the real property and improvements in good condition and repair at all times, reasonable wear and tear excepted; to commit no waste or otherwise damage or injure the real property; to maintain the real property in accordance with the laws and ordinances and regulations of any constituted authority applying to the real property and to make no unlawful use thereof; to pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments and charges of whatever nature levied and assessed against the real property and to pay and discharge all encumbrances thereafter placed thereon by Buyer; to permit no lien or other encumbrances to be filed upon or placed against the real property without the written consent of Seller; and it is further understood and agreed, for the purposes of this provision, that if Buyer fails to pay or discharge any taxes, assessments, liens, encumbrances or charges, Seller, at Seller's option and without waiver of default or breach of Buyer, and without being obliged to do so, may pay, or discharge all or any part thereof, all of which said sums so paid by Seller shall become repayable by Buyer, together with interest at the rate of twelve and one-half percent (12 1/2%) per annum, upon demand, payment of which is part of the performance of this Contract by Buyer.
3. Buyer agrees to keep the building and improvements now on, or hereafter placed upon, the real property insured against loss by fire or other casualty in an amount not less than maximum insurable value as determined by the insurance carrier and shall obtain, at Buyer's expense, an endorsement thereon providing for loss payable to Seller, Buyer, and any third party shown in this Contract as having an encumbrance upon the real property as an exception to the title as their respective interests may appear. A certificate of such insurance shall be delivered to Seller and such third party. If a loss should occur for which insurance proceeds shall become payable, Buyer may (subject to the rights of said third party encumbrance holder) elect to either rebuild or repair the portion of the building so destroyed, or apply the proceeds toward payment of the then unpaid balance of the sums due Seller. If Buyer elects to rebuild or repair, Buyer shall sign such documents as may be required by Seller (subject to the rights of said third party encumbrance holder) to guarantee the application of the insurance proceeds to the cost of such rebuilding or repair.
4. Seller may appear in or defend any action or proceeding at law, in equity or in bankruptcy, affecting, in any way, the security hereof and, in such event, Seller shall be allowed and paid, and Buyer hereby agrees to pay, all costs, charges and expenses, including costs of evidence of title or validity and priority of the security and attorney fees in a reasonable sum, incurred in any such action or proceeding in which Seller may appear, which shall bear interest at twelve and one-half percent (12 1/2%) from date of demand therefor. Failure of Buyer to pay Seller for such costs, charges and expenses within thirty (30) days from the date of demand therefor shall constitute a breach of this Contract.
5. The following shall constitute a default of Buyer:
  - a. Failure of Buyer to make payments as herein provided for more than thirty (30) days after the payment becomes due. The acceptance of any sum secured by this Contract after its due date shall not constitute a waiver of Seller's right either to require prompt payment when due or to seek any remedy provided for herein.
  - b. Failure of Buyer to perform any covenants or conditions of this Contract (other than failure to make payments as provided in the preceding sentence) after thirty (30) days written notice of such failure and demand for performance.
6. If Buyer shall be in default as above provided, Seller shall have the following cumulative rights which Seller may, at Seller's election, exercise sequentially or contemporaneously:
  - a. To foreclose this Contract by strict foreclosure in equity;
  - b. To declare the full unpaid balance secured by this Contract immediately due and payable;
  - c. To specifically enforce the terms of this Contract by suit in equity.
7. In the event any suit or action is commenced because of any default of Buyer, the following provisions shall apply:
  - a. The Court having jurisdiction of the case may, upon motion by Seller, appoint a receiver to collect the rents and profits arising out of the real property and to take possession, management and control of the same during pendency of suit or action 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.
  - b. Buyer shall pay to Seller, in addition to all statutory costs and disbursements, any amount Seller 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 the real property above described and this Contract shall be security for the payment thereof.
  - c. The prevailing party, at trial or on appeal, shall be entitled to such reasonable attorney fees as shall be fixed by the Court having jurisdiction of the case, in addition to statutory costs and disbursements.
8. This Contract creates a lien upon the real property in favor of Seller as security for the performance of all covenants of Buyer and remedies of Seller contained herein and Buyer agrees with Seller that said lien is superior to any and all rights of Buyer hereunder or by reason of any homestead, stay, or exemption laws now in force or which may hereafter become law.
9. Time is expressly made the essence of this Contract.
10. Where notice in writing is required by either party to the other, such notice shall be deemed given when the same is deposited in the United States Postal Service as certified mail, postage prepaid, and addressed to the address of such party set forth in the Contract.
11. No waiver by Seller of any breach of any covenant of this Contract shall be construed as a continuing waiver of any subsequent breach of such covenant, nor as a waiver of any breach of any other covenant, nor as a waiver of the covenant itself.
12. All terms, covenants, conditions, and provisions contained in this Contract are severable and, in the event any of them shall be held to be invalid by any competent Court, this Contract shall be interpreted as though the same were not contained in this Contract.
13. 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.
14. The term real property, when used in this Contract, includes, all and singular, the tenements, hereditaments, rights, easements, privileges, and appurtenances thereto belonging, or in anywise appertaining, and improvements thereon, together with the reversions, remainder, rents, issues, and profits thereof.
15. This Contract shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective successors, heirs, personal representatives, or assigns.
16. The debts and obligations under this Contract of Seller and Buyer are both joint and several.

STATE OF OREGON; COUNTY OF KLAMATH: ss.

I hereby certify that the within instrument was received and filed for record on the  
10 day of November A.D., 1981 at 3:38 o'clock P.M., and duly recorded in

Vol 181 of Deeds on page 19611.

Fee \$56.00

EVELYN BIEHN

By Bernetha S. Leto Deputy  
 COUNTY CLERK

My Commission Expires \_\_\_\_\_