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K-39126

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CONTRACT OF SALE

DATED: Dec 8-86

BETWEEN:

The State of Oregon
by and through the
Director of Veterans' Affairs

AND: Henry L.R. Birch
Janette S. Birch

SELLER

BUYER(S)

On the terms and conditions set forth below, Seller agrees to sell and Buyer agrees to buy the following described real property (the "property"):

See Attached Addendum

Subject only to the following encumbrances:

See Attached Addendum

TAX STATEMENT

Until a change is requested, all tax statements shall be sent to: Department of Veterans' Affairs
Tax Division C 08281
Oregon Veterans' Building
700 Summer Street, NE
Salem, Oregon 97310-1201

00288

51282

22861

SECTION 1. PURCHASE PRICE; PAYMENT

1.1 **TOTAL PURCHASE PRICE.** Buyer agrees to pay Seller the sum of \$ 42,500.00 as the total purchase price for the property.

1.2 **PAYMENT OF TOTAL PURCHASE PRICE.** The total purchase price shall be paid as follows:

Seller acknowledges receipt of the sum of \$ 00.00 from Buyer, as down payment on the purchase price.

Buyer shall make improvements to the property in accordance with the Property Improvement Agreement, Form 590-M, signed this date. Completion of the agreed-upon improvements will satisfy the equity requirements of ORS 407.375(3). The value of the improvements will not be subtracted from the purchase price nor subtracted from the contract balance.

The balance due on the Contract of \$ 42,500.00 shall be paid in payments beginning on the first day of

January 1, 19 87. The initial payments shall be \$ 357.00 each, including interest. In addition to that amount, Buyer shall pay an amount estimated by Seller to be sufficient to pay taxes, when due. Buyer also shall pay to Seller on demand any additional amounts which may be necessary for payment of the taxes or assessments.

The total monthly payments on this Contract shall change if the interest rate changes or if the taxes and assessments change. The money paid by Buyer to Seller for the payment of taxes and assessments will not be held in reserve by Seller. When Buyer pays Seller for taxes and assessments, that payment will be subtracted from the balance due on the Contract. When Seller pays the taxes or assessments, that amount will be added to the balance due on the Contract.

1.3 **TERM OF CONTRACT.** This is a 25 year Contract and the final payment is due December 1, 2011
(month, day) (year)

1.4 **INTEREST RATE.** The annual interest rate during the term of this Contract is variable; it cannot increase by more than one (1) percent except to maintain the solvency of the Department of Veterans' Affairs. The Seller may periodically change the interest rate by Administrative Rule pursuant to the provisions of ORS 407.375 (4). The initial annual interest rate shall be 9.0 percent per annum.

1.5 **PRE-PAYMENTS.** Buyer may prepay all or any portion of the balance due on the Contract at any time without penalty.

1.6 **PLACE OF PAYMENTS.** All payments to Seller shall be made to Department of Veterans' Affairs at 700 Summer Street, N.E., Salem, Oregon 97310-1201, unless Seller gives written notice to Buyer to make payments at some other place.

1.7 **WARRANTY DEED.** Upon payment of the total purchase price for the property as provided for by this Contract and performances by Buyer of all other terms, conditions, and provisions of the Contract, Seller shall deliver to Buyer a Warranty Deed. Such Warranty Deed shall warrant marketable title, except for those liens and encumbrances referred to on page one of this Contract and those placed upon the property or suffered by Buyer after the date of this Contract.

SECTION 2. POSSESSION; MAINTENANCE

2.1 **POSSESSION.** Buyer shall be entitled to possession of the property from and after the date of this Contract. It is understood, and agreed, however, that Buyer will permit Seller and its agents to enter the property at reasonable times, to inspect the property. Buyer shall not permit the premises to be vacant for more than thirty (30) consecutive days.

2.2 **MAINTENANCE.** Buyer shall keep all buildings, other improvements, and landscape now existing, or which shall be placed on the property, in good condition and repair. Buyer shall not permit any waste or removal of the improvements, nor make any substantial improvements or alterations without the prior written consent of Seller. Except for domestic use, Buyer shall not permit the cutting or removal of any trees, nor removal of any sand and gravel, without prior written consent of Seller.

2.3 **COMPLIANCE WITH LAWS.** Buyer shall promptly comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the property. In this compliance, Buyer shall promptly make all required repairs, alterations, and additions. Buyer may contest in good faith any such requirements and withhold compliance during any proceeding, including appropriate appeals, so long as Seller's interest in the property is not jeopardized.

SECTION 3. INSURANCE

3.1 **PROPERTY DAMAGE INSURANCE.** Buyer shall get and keep policies of fire insurance with standard extended coverage endorsements (and any other endorsements required by Seller) on an actual cash value basis covering all improvements on the property. Such insurance shall be in an amount sufficient to avoid application of any co-insurance clause. Insurance shall be made with loss payable to Seller and Buyer, as their respective interests may appear. In the event of loss, Buyer shall give immediate notice to Seller. Seller may make proof of loss if Buyer fails to do so within fifteen (15) days of the loss. If Buyer fails to keep insurance in force, Seller may obtain insurance, and add the cost to the balance due on the Contract. The insurance cost shall be payable to Seller on demand.

3.2 **APPLICATION OF PROCEEDS.** All proceeds of any insurance on the property shall be held by Seller. If Buyer chooses to restore the property, Buyer shall repair or replace the damaged or destroyed portion of the property in a manner satisfactory to Seller. Upon satisfactory proof of restoration, Seller shall pay or reimburse Buyer from the insurance proceeds for the reasonable cost of repair or restoration. If Buyer chooses not to restore the property, Seller shall keep a sufficient amount of the proceeds to pay all amounts due under this Contract, and shall pay the balance of the insurance proceeds to Buyer. Any proceeds which have not been paid out within 180 days after their receipt, and which Buyer has not committed to the repair or restoration of the property, shall be used to pay first accrued interest and then the principal balance due on the Contract.

SECTION 4. EMINENT DOMAIN

If a condemning authority takes all or any portion of the property, Buyer and Seller shall share in the condemnation proceeds in proportion to the values of their respective interests in the property. Sale of the property in lieu of condemnation shall be treated as a taking of the property.

SECTION 5. SECURITY AGREEMENT

This instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to any personal property included within the description of the property. Upon request of Seller, Buyer shall execute any necessary financing statements in the form required by the Uniform Commercial Code and shall file the statements at Buyer's expense. Without further authorization from Buyer, Seller may at any time file copies of the Contract as financing statements. Upon default under the terms of this Contract, Buyer shall, within three (3) days of receipt of written demand from Seller, assemble the personal property and make it available to Seller.

SECTION 6. DEFAULT

6.1 **EVENTS OF DEFAULT.** Time is of the essence of this Contract. A default shall occur under any of the following circumstances:

- (a) Failure of Buyer to make any payment when payment is due. No notice of default and no opportunity to cure shall be required if during any twelve (12)-month period Seller has already sent three (3) notices to Buyer concerning non-payment or late payment under this Contract.
- (b) Failure of Buyer to perform any other obligation in this Contract in addition to payment. Buyer must perform obligation within thirty (30) days after receiving Notice of Default from Seller. Such Notice shall specify the nature of the default.

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6.2 REMEDIES ON DEFAULT. In the event of a default, Seller may take any one or more of the following steps:

- (a) Declare the entire balance due on the Contract, including interest, immediately due and payable;
- (b) Foreclose this Contract by suit in equity;
- (c) Specifically enforce the terms of this Contract by suit in equity;
- (d) Exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code. Seller may exercise these rights and remedies with respect to any part of the property which constitutes personal property in which Seller has a security interest.
- (e) Choose to impose a late charge. The charge will not exceed five (5) cents per dollar of the payment in the event Buyer fails to make any payment within 10 days after it is due.
- (f) Declare this Contract to be void thirty (30) or more days after Seller gives written notice to Buyer of Seller's intention to do so, unless the performance then due under this Contract is tendered or accomplished prior to the time stated. At the end of the thirty (30) days, all of Buyer's rights under this Contract shall cease without further act by Seller. Seller shall then be entitled to immediate possession of the property. All payments previously made to Seller by Buyer may be kept by Seller as reasonable rental of the property up to the time of default.
- (g) Appoint a receiver. Seller shall be entitled to the appointment of a receiver as a matter of right. It does not matter whether or not the apparent value of the property exceeds the amount of the balance due on the Contract. Any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the property, the receiver may:
 - (i) Use, operate, manage, control, and conduct business on the property and make necessary expenditures for all maintenance and improvements that in the receiver's judgement are proper;
 - (ii) Collect all rents, revenues, income, issues, and profits from the property and apply such sums to the necessary expenses of use, operation, and management;
 - (iii) Complete any construction in progress on the property, at Seller's option. To complete that construction, receiver may pay all bills, borrow funds, employ contractors, and make any changes in plans and specifications that Seller deems appropriate.If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow from Seller or otherwise, such sums as receiver deems necessary. These sums shall be used for the purposes stated in this paragraph. Repayment of such sums shall be secured by this Contract. Amounts borrowed from or advanced by Seller shall bear interest at the same rate as the balance on this Contract. Interest shall be charged from the date the amount is borrowed or advanced until the amount is repaid. Any amount borrowed shall be paid by Buyer on demand.
- (h) Elect to collect all rents, revenues, income, issues, and profits (the "Income") from the property, whether due now or later. Prior to default, Buyer may operate and manage the property and collect the Income from the property. In the event of default and at any time hereafter, Seller may revoke Buyer's right to collect the Income from the property. Seller may collect the income either through itself or a receiver. Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the income is collected by Seller, then Buyer irrevocably designates Seller as Buyer's attorney-in-fact and gives Seller permission to endorse rent or fee checks in Buyer's name. Buyer also gives Seller permission to negotiate and collect such rents or fees. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the expenses of renting or collection and the balance (if any) to payment of sums due from Buyer to Seller under this Contract.

6.3 REMEDIES NONEXCLUSIVE. The remedies provided above shall not exclude any other remedies provided by law. They are in addition to any other such remedies.

SECTION 7. SELLER'S RIGHT TO CURE

If Buyer fails to perform any obligation required of it under this Contract, Seller may, without notice, take any steps necessary to remedy such failure. Buyer shall reimburse Seller for all amounts expended in so doing on demand. Such action by Seller shall not constitute a waiver of the default or any other right or remedy which Seller may have on account of Buyer's default.

SECTION 8. WAIVER

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision. If a party waives a breach of any provision of this Contract, the waiver applies only to that specific breach. It does not apply to the provision itself.

SECTION 9. INDEMNIFICATION

Buyer shall forever defend, indemnify, and hold Seller harmless from any claim, loss, or liability arising out of or in any way connected with Buyer's possession or use of the property; Buyer's conduct with respect to the property, or any condition of the property. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Buyer agrees to defend Seller, Buyer shall, upon notice from Seller, vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to Seller.

SECTION 10. SUCCESSOR INTERESTS

This Contract shall be binding upon and for the benefit of the parties, their successors, and assigns. But no interest of Buyer shall be assigned, subcontracted, or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller. Consent by Seller to one transfer shall not constitute consent to other transfers or waiver of this section.

As a condition to such consent, Seller may increase the interest rate under this Contract from the date of the transfer. Any increase in the interest rate under this Contract shall entitle the Seller to increase monthly payments. Monthly payments may be increased to the amount necessary to retire the obligation within the time provided for in Section 1, 1.3, in this Contract. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller. Buyer hereby waives notice and consent to any and all extensions and modifications of this Contract granted by Seller. Any other person at any time obligated for the performance of the terms of this Contract also hereby waives such notice and consent. Any such extensions or modifications will not in any way release, discharge, or otherwise affect the liability of any person at any time obligated under this Contract.

SECTION 11. TRANSFER FEE

If any interest of the Buyer under this Contract is assigned, subcontracted, or otherwise transferred, a fee to cover administrative costs will be immediately due and payable to Seller. The amount of the fee shall be prescribed by Seller's duly adopted Oregon Administrative Rule 274-20-440.

SECTION 12. NOTICE

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or ten (10) days after being deposited in the U.S. mail, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

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SECTION 13. COSTS AND ATTORNEY FEES

Events may occur that would cause Seller or Buyer to take some action, judicial or otherwise, to enforce or interpret terms of this Contract. Should such actions be taken, the prevailing party shall be entitled to recover from the other party all expenses reasonably incurred in taking such action. Such expenses shall include, but are not limited to the following costs:

- Cost of searching records,
- Cost of title reports,
- Cost of surveyors' reports,
- Cost of foreclosure reports,
- Cost of attorney fees,

whether incurred in a suit or action, in an appeal from a judgement or decree therein, or in connection with nonjudicial action.

SECTION 14. SURVIVAL OF COVENANTS

Any covenants, the full performance of which is not required prior to the closing or final payment of the purchase price, shall survive the closing and the final payment of the purchase price. Such covenants shall be fully enforceable thereafter in accordance with their terms.

SECTION 15. GOVERNING LAW; SEVERABILITY.

This Contract shall be governed by the laws of the State of Oregon. In the event that any provision or clause of this Contract conflicts with applicable law, such conflict shall not affect any other provision and, to this end, the provisions of this Contract are severable.

SECTION 16. REPRESENTATIONS; CONDITION OF PROPERTY

Buyer accepts the land, buildings, improvements, and all other aspects of the property, and any personal property sold under this Contract, in their present condition, AS IS. Present condition includes latent defects, without any representations or warranties, expressed or implied, unless they are expressly set forth in this Contract or are in writing signed by Seller. Buyer agrees that Buyer has ascertained, from sources other than Seller, the applicable zoning, building, housing, and other regulatory ordinances and laws. Buyer also agrees to accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property. Buyer agrees that Seller has made no representations with respect to such laws or ordinances.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the property. The document supersedes and replaces all prior or existing written and oral agreements (including any sale or earnest money agreement) between the parties or their representatives relating to the property.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate as of the first day and year above written.

BUYER(S):

Henry L.R. Birch
HENRY L.R. BIRCH

Janette S. Birch
JANETTE S. BIRCH

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CONTRACT NO.

STATE OF OREGON

County of

DOUGLAS

ss

DEC 8TH, 19 86

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Personally appeared the above named HENRY L.R. & JANETTE S. BIRCH
and acknowledged the foregoing Contract to be his (their) voluntary act and deed.

Before me:

My Commission Expires: 5/10/90

Notary Public For Oregon

SELLER:

Director of Veterans' Affairs

By

Fred Blanchfield

FRED BLANCHFIELD

Manager, Bend Office

Title

STATE OF OREGON

County of

Deschutes

ss

December 2, 19 86

Personally appeared the above named Fred Blanchfield
and, being first duly sworn, did say that he (she) is duly authorized to sign the foregoing Contract on behalf of the Department of Veterans' Affairs by
authority of its Director.

Before me:

Linda Kirkham

My Commission Expires: 1-1-90

Notary Public For Oregon

CONTRACT OF SALE

FOR COUNTY RECORDING INFORMATION ONLY

AFTER RECORDING, RETURN TO:

Department of Veterans Affairs
155 NE Revere
Bend OR 97701

C08281

CONTRACT NO.

LEGAL DESCRIPTION:

The following described real property situate in Klamath County, Oregon:

A parcel of land situate in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, Township 24 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point along the original Southwest line of the land of Jim Erikson, being also a corner common to Crescent Heights Subdivision and E.B. Stumbaugh reserved land, a 5/8 inch steel rod, from which the NE 1/16 corner of said Section 30 bears North 72°52'07" East 481.31 feet; thence along two lines with Crescent Heights Subdivision, South 38°58'09" West 100.0 feet to a point, a 5/8 inch steel rod; thence North 77°00'07" West 168.11 feet to a point, a 5/8 inch steel rod along the East right of way line of U.S. Highway 97 and 50 feet from the centerline thereof; thence along said right of way line, North 15°00'13" East 180.00 feet to a point in a paved driveway, a center-punched railroad spike; thence along two lines as agreed between E.B. Stumbaugh and Jim Erikson: South 55°46'32" East 220.94 feet to a point, a 5/8 inch steel rod; South 15°00'13" West, parallel to U.S. Highway 97, 10.00 feet to the point of beginning.

ENCUMBRANCES:

1. Rules, regulations and assessments of Crescent Water and Sewer District.
2. Right of way to Cascade Natural Gas Corporation, dated July 5, 1963, recorded August 7, 1963, in Volume 347 page 235, Deed Records of Klamath County, Oregon.
3. Agreement for right of way, including the terms and provisions thereof, to Crescent Water and Sewer Association, dated June 27, 1967, recorded August 3, 1976, in Volume M67 page 5970, and dated June 27, 1963, recorded August 3, 1967, in Volume M67 page 5973, Deed Records of Klamath County, Oregon.
4. Easement for public bikeway and walkway, including the terms and provisions thereof, by and between Ellwyn B. Stumbaugh aka E.B. Stumbaugh and Marjorie Stumbaugh aka Marjorie H. Stumbaugh, husband and wife, to State of Oregon, by and through its Department of Transportation, Highway Division, dated September 20, 1979, recorded November 8, 1979, in Volume M79 page 26325, Deed Records of Klamath County, Oregon.
5. Boundary Description Agreement, between Carl L. Eriksen and Sherry G. Eriksen and E.B. Stumbaugh and Marjorie Stumbaugh, recorded July 15, 1980, in Volume M80 page 13095, Deed Records of Klamath County, Oregon.

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Department of Veterans' Affairs

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PROPERTY IMPROVEMENT AGREEMENT

THIS AGREEMENT, made this 8 day of Dec, 19 86, by and between the State of Oregon, acting by and through the Director of Veterans' Affairs, called the Seller in this Agreement, and Henry L.R. Birch and Janette S. Birch called the Buyer in this Agreement.

Buyer hereby agrees to complete all improvements to the property located at Hwy 97 N., Crescent OR 97733

in accordance with the approved plans and specifications hereby accepted to satisfy the requirements of Chapter 11, Section 2(3), 1982 Oregon Laws, First Special Session.

The improvements to be completed are:

1. Finish putting siding on garage.
2. New vinyl on floor in upstairs bathroom.
3. New paint and trim on outside of house and garage.
4. Repair fence around back yard.

Buyer further agrees:

1. That all improvements will be completed in a workmanlike manner at no cost to the Department of Veterans' Affairs.
2. Not to permit any liens for labor or materials, or delinquent assessments, to exist on this property at any time.
3. To complete all improvements in accordance with the approved plans and specifications within 180 days of purchase.
4. That failure by the Buyer to complete the improvements within the time allowed shall be considered a breach of the Purchase Agreement, and grounds for foreclosure by the Seller.
5. To be liable for any loss in market value suffered by the property as a result of non-performance of this agreement.
6. That all improvements must be inspected and approved by the Department of Veterans' Affairs to satisfy this agreement.

SIGNED: Henry L.R. Birch
Buyer

Janette S. Birch
Buyer

WITNESSED: [Signature]
DVA Representative

IMPROVEMENTS COMPLETED:

BY: [Signature]
Chief Appraiser

590-M (10-84)

Date

BERNARD J. JONES
COUNTY TITLE CO.
Red Oaks Square
1239 N. E. Third Street
BEND, OREGON 97701
Agent for

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of December A.D., 19 86 at 2:12 o'clock P M., and duly recorded in Vol. M86 of Deeds on Page 22860

FEE \$29.00

Evelyn Biehn, County Clerk
By [Signature]