

THIS CONTRACT, made and entered into this 15th day of March, 1988, by and between JOHN MULLENDRE and PAULINE MULLENDRE, Husband and Wife, hereinafter called Seller, and HAROLD J. ATKINSON and MARILYN L. ATKINSON, Husband and Wife, hereinafter called Buyer (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

## W I T N E S S E T H:

Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller for the price and on the terms and conditions set forth hereafter all of the following described property and improvements legally described on Exhibit "A", attached hereto and incorporated by reference herein as if fully set forth, subject to the encumbrances also set forth on Exhibit "A".

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.

It is mutually agreed as follows:

1. **Possession:** Buyer shall be entitled to possession of the property as of the date hereof;
2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment;
3. **Payment of Liens and Taxes:** Buyer shall pay promptly all indebtedness incurred by their acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date, provided, all such taxes, assessments and charges for the current year shall be pro-rated as of the date hereof, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller and such amount shall bear interest at the same rate as provided herein, without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered a proper receipt therefore;
4. **Insurance:** Buyer shall keep any buildings on said property insured against loss or damage by fire or other casualty in an amount not less than the full insurable value thereof with loss payable in the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession; Buyer shall furnish Seller proof of such insurance coverage;

5. Buyer agrees that all improvements now locate or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof in good condition and repair. ~~Buyer agrees that all improvements now locate or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not cut or remove any timber, trees or shrubbery without Seller's prior written consent. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair, provided, Buyer shall not make or cause to be made any major improvements or alterations to the property without first obtaining the written consent of Seller.~~

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6. **Transfer of Title:** Seller shall upon the execution hereof make and execute in favor of Buyer a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as provided on Exhibit "A", together with a good and sufficient Bill of Sale or Certificate of Title as appropriate and will place said documents, together with one of these agreements, in escrow at Mountain Title Company, 407 Main Street, Klamath Falls, OR 97601, and shall enter into written escrow instructions in form satisfactory to said escrow holder and the parties hereto, instruct said escrow holder that when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said escrow holder shall deliver said documents to Buyer, but in case of default by Buyer said escrow holder shall, on demand, surrender said documents to Seller;

7. **Tax Payment Procedures:** Until a change is requested, all tax statements shall be sent to the address designated by Buyer hereinafter. Buyer shall be required to pay the same and provide proof of such payment to Seller no less than five (5) days before the date upon which Klamath County will afford the maximum discount for prompt payment thereof. Under no circumstances shall the Buyer allow any of the real property taxes to become delinquent.

8. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of his own examination and personal knowledge of the premises and opinion of the value thereof; that no attempt has been made to influence his judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement;

9. **Consent to Assignment:** Buyer shall not assign this agreement, his rights thereunder, or in the property covered thereby without the written consent of Seller. Such consent shall not be unreasonably withheld.

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10. **Time of Essence:** It is understood that and agreed between the parties that time is of the essence of this contract;

11. **Default:** In case Buyer shall fail to make the payments aforesaid, or them punctually and upon the strict terms and at the times above-specified or fail to keep any of the terms or conditions of this agreement, then the Seller at his option shall have the following rights;

a) To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

b) To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

c) To withdraw said deed and other documents from the escrow and/or;

d) To foreclose this contract by suit or by strict foreclosure in equity.

In any of such cases, all rights and interest created or then existing in favor of the Buyer as against the Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above-described and all other rights acquired by the Buyer hereunder shall revert to and revest in said Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of Buyer of return, reclamation or compensation for monies paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default, all payments theretofore made on this contract are to be retained by and belong to said Seller as the agreed and reasonable rent of said premises up to the time of such default. The said Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right and nothing in this contract shall preclude appointment of the Seller as such receiver;

12. **Abandonment:** Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and his security interest herein, and in the event possession is so taken by Seller he shall not be deemed to have waived his right to exercise any of the foregoing rights;

13. **Attorney Fees:** In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law;

14. **No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision hereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by Seller of any 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;

15. **Binding on Successors:** This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing;

16. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) payable as follows:

(a) Buyer shall pay an initial payment in the sum of \$10,000.00, and

(b) The remainder of the purchase price in the amount of \$50,000.00 shall be payable in monthly installments of \$482.50, including interest at the rate of ten percent (10%) per annum on the unpaid balance, which said sum includes principal and interest; together with the applicable collection escrow fees; the first of such payments shall be payable on the 1st day of April, 1988, with a further and like installment payable on the 1st day of each and every month thereafter, until the full amount of principal and interest shall have been paid in full.

17. **Late Payment Penalty:** In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of TWENTY-FOUR AND 13/100 DOLLARS (\$24.13), in addition to the regularly-scheduled payments set forth in paragraph 16 hereinabove as and for a late payment penalty, should Buyer fail to make any payment required to be made hereunder within ten (10) days of the day due. Seller shall be required to notify both Buyer and the escrow agent named herein (or its successor) of the accrual of such late payment charge, which such charge shall be credited only as an additional charge to Buyer and not as a credit to either interest of principal;

18. **Indemnification by Seller Regarding Past Legal Action:** Seller agrees to hold harmless the Buyer from any action or suit arising out of a pre-existing lawsuit involving Seller or either of them, with the The Nickel. Seller further agrees to hold harmless and indemnify Buyer as against any undisclosed written or unwritten encumbrances against the real property conveyed hereby.

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

**SELLER:**

*John Mullendore*  
John Mullendore

*Pauline Mullendore*  
Pauline Mullendore

**BUYER:**

*Harold J. Atkinson*  
Harold J. Atkinson

*Marilyn L. Atkinson*  
Marilyn L. Atkinson

STATE OF OREGON/County of Klamath)ss:

PERSONALLY APPEARED BEFORE ME the above-named John Mullendore and Pauline Mullendore, and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 11<sup>th</sup> day of March, 1988.

*Kristi L. Redd*  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 11/16/91

STATE OF OREGON/County of Klamath)ss.

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PERSONALLY APPEARED BEFORE ME the above-named HAROLD J. ATKINSON and MARILYN L. ATKINSON and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 15<sup>th</sup> day of March, 1988.

Kristi L. Redd  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 11/16/91

GRANTOR'S NAME AND ADDRESS  
John & Pauline Mullendore

5530 Sturdivant  
Klamath Falls, OR 97603

GRANTEE'S NAME AND ADDRESS  
Harold J. & Marilyn L. Atkinson

5728 S. Sixth St.  
Klamath Falls, OR 97603

AFTER RECORDING, RETURN TO:  
Mountain Title Company  
207 Main St.  
Klamath Falls, OR 97601

UNTIL A CHANGE IS REQUESTED  
TAX STATEMENTS SHOULD BE  
SENT TO:

SAME AS GRANTEE

~~STATE OF OREGON/County of Klamath)ss:  
I CERTIFY that the within instrument  
was received for record on the  
day of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_  
o'clock \_\_\_\_ M. and recorded in Book  
\_\_\_\_ on Page \_\_\_\_ or as File/Reel  
number \_\_\_\_ Records of Deeds of  
said County.  
WITNESS MY HAND AND SEAL OF COUNTY  
AFFIXED.~~

~~Recording Officer  
By: \_\_\_\_\_~~

EXHIBIT "A"

THAT CERTAIN REAL PROPERTY situated in the County of Klamath, State of Oregon, described as follows, to-wit:

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THAT PART of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, Township 39 South, Range 9, East, W. M., described as follows:

BEGINNING at a point 30 feet South and 145.9 feet West of the quarter section corner between Sections 1 and 2, Township 39 S., R. 9, E.W.M.; thence South 355.6 feet; thence North 70°19' West 67.2 feet; thence North 330 feet; thence East 63.3 feet to the place of beginning.

EXCEPTING that portion conveyed to State of Oregon for highway purposes by Deed recorded in Deed Volume 353 at page 414.

SUBJECT TO: Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of Enterprise Irrigation District; Regulations levies, liens, assessments, rights of way and easements of the South Suburban Sanitary District; Reservations in deed recorded August 9, 1935 in Deed Volume 100 at page 619; Ten-foot permanent easement, including the terms and provisions thereof, for relocation of irrigation facilities and for construction, operation and maintenance of highway slopes over, across and upon North portion of premises as set out in Deed recorded June 11, 1964 in Deed Volume 353 at page 414; Relinquishment of all existing future or potential common law or statutory abutter's easements of access as set out in Deed recorded June 11, 1964, in Deed Volume 353 at Page 414.

ALSO SUBJECT TO: contracts and/or liens for irrigation and/or drainage, the schedule of exclusions from coverage, together with any schedules contained in standard title policies, reservations, easements, restrictions and rights of way of record and those apparent on the land.

ALSO SUBJECT TO: the statutory powers, including the power of assessment, of Enterprise Irrigation District.

ALSO SUBJECT TO: the statutory powers, including the power of assessment, of South Suburban Sanitary District.

ALSO SUBJECT TO: reservations contained in Deed from Jesse J. Bailey, et ux, dated July 1, 1930 and recorded August 9, 1935 in Volume 100, Page 619, Deed Records of Klamath County, Oregon, as follows:

"The grantors, their heirs and assigns reserve the right to construct laterals or ditches along the lines of or across above described property for irrigation and drainage purposes."

ALSO SUBJECT TO: Ten foot permanent easement, subject to the terms and provisions thereof, for relocation of irrigation facilities and for construction, operation and maintenance of highway slopes over, across and upon North portion of premises as set out in Deed to the State of Oregon, by and through its State Highway Commission, recorded June 11, 1964 in Deed Volume 353 at Page 414, Deed Records of Klamath County, Oregon.

ALSO SUBJECT TO: Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property. Recorded June 11, 1964; Volume: 353, Page 414, Deed Records of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Company the 16th day of March A.D., 19 88 at 9:23 o'clock A M., and duly recorded in Vol. M88 of Deeds on Page 3682.  
By Evelyn Biehn, County Clerk *Phyllis Smith*

FEE \$30.00