

K-40810

CONTRACT OF SALE

DATED: 9/1/88 DAVID F. BARNETT, JR.
BETWEEN: HELEN E. BARNETT
1201 CHEHALEM DRIVE
MODESTO, CALIFORNIA 95350 SELLER
AND WESLEY E. SINE
KAY M. SINE
1803 CARLSON DRIVE
KLAMATH FALLS, OREGON 97603 PURCHASER

Seller owns the real property located in Klamath County, Oregon and described as:

Lots 3, 4, and 5 in Block 2; Lots 1, S1/2-2, S1/2-3, All 4, 5, 6, 7, 8 and 9 in Block 3 Idlerest, according to the plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Seller agrees to sell the Property to Purchaser and Purchaser agrees to buy the Property from Seller for the price and on the terms and conditions set forth below:

SECTION 1. PURCHASE PRICE; PAYMENT

1.1 Purchase Price. The purchase price shall be \$45,000.00. The down payment is \$5,000.00 which will be paid upon execution of this contract. The balance of \$40,000.00 shall bear interest at the rate of 10% per annum and shall be payable at the rate of \$386.01 per month including interest. Payments shall be first applied to interest and then to principal. The first payment will become due October 1, with a like payment due upon the same day of each month thereafter until September 1, 2008.

1.2 Prepayments. At any time Purchaser may prepay all or any portion of the unpaid principal.

1.3 Place of Payments. All payments to the Seller shall be made to Seller at Klamath County Title Company.

SEP 4 AM 11:50

1.4 Tax Statement. Until a change is requested, all Tax Statements shall be sent to: Wesley E. Sine and Kay M. Sine, 1803 Carlson Drive, Klamath Falls, Oregon 97603.

SECTION 2. TAXES AND LIENS

2.1 Obligation To Pay. All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current tax year shall be prorated between Seller and Purchaser as of September 1, 1988. Purchaser shall pay when due all taxes and assessments which are levied against the property after September 1, 1988.

2.2 Right To Contest. If purchaser objects in good faith to the validity or amount of any tax, assessment or lien, Purchaser at Purchaser's sole expense, may contest the validity or amount of the tax or assessment or lien provided that Seller's security interest in the Property is not jeopardized. Purchaser shall otherwise keep the Property free from all liens which may be lawfully imposed upon the Property after closing, other than the lien of current taxes not yet due or payable.

2.3 Tax Statements. Purchaser shall upon demand provide Seller with written evidence reasonably satisfactory to Seller that all taxes and assessments have been paid when due.

2.4 Liens. Purchaser shall otherwise keep the Property free from all liens which may be lawfully imposed upon the Property after the date of closing.

SECTION 3. CLOSING

3.1 Closing Date. This transaction shall be closed on September 1, 1988. As used in this Contract the "Closing Date" means the date on which the Escrow agent is prepared to disburse funds. This closing shall occur at the offices of Klamath County Title Company, Klamath Falls, Oregon.

3.2 Responsibility of Parties. At closing Purchaser shall pay the amount of cash specified in Section 1.1 above, and Seller shall have received a commitment for the issuance of a purchaser's policy of title insurance as described in Section 9.

3.3 Prorates and Closing Costs. Except as otherwise provided in this Contract, all items to be prorated shall be prorated as of September 1, 1988. Seller shall be responsible for payment of the title insurance premium, and one half of the escrow fee. Purchaser shall be responsible for payment of the recording fees for recording a memorandum of this contract and one half of the Escrow Fee.

3.4 Collection Escrow. Seller shall deliver to Klamath County Title as escrow agent the deed described in Section 10, together with suitable instructions for authorizing delivery after all payments have been made and all other obligations of purchaser under this contract have been fulfilled. Cost of setting up such escrow shall be evenly divided between Purchaser and Seller. Periodic collection fees shall be paid by Seller.

SECTION 4. POSSESSION EXISTING TENANCIES

4.1 Possession. Purchaser shall be entitled to possession of the Property on September 1, 1988.

SECTION 5. MAINTENANCE

5.1 Maintenance. Purchaser shall keep all buildings, other improvements, and the landscape now existing or which shall be placed on the Property in good condition and repair, and shall not permit any waste or removal of the improvements, nor make any substantial improvements or alterations which reduce the value of the Property for security purposes without the prior written consent of Seller. Purchaser may remove dead or hazardous trees without Seller's consent.

SECTION 6. INSURANCE

6.1 Property Damage Insurance. Purchaser shall procure and maintain policies of fire insurance with standard extended coverage endorsements of a replacement cost basis covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Seller and Purchaser as their respective interests may appear. The policies shall be written in such form with such terms and by such insurance companies reasonably acceptable to Seller. Purchaser shall deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller. In the event of loss, Purchaser shall give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within 15 days of the casualty.

6.2 Liability Insurance. During the term of this Contract, Purchaser shall maintain liability insurance with limits of not less than \$100,000.00 for each accident. Such insurance shall cover all risks arising directly or indirectly out of Purchaser's activities on or any condition of the Property, whether or not related to an occurrence caused or contributed to by Seller's negligence; shall protect Purchaser against claims of Seller on account of the obligations assumed by Purchaser under Section 7; and shall protect Seller and Purchaser against claims of third persons. Such policies shall be written in such form, with such terms and by such insurance companies reasonably acceptable to Seller and to the holder of the existing encumbrance. Purchaser shall deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller.

SECTION 7. INDEMNIFICATION

Purchaser shall forever defend, indemnify and hold Seller harmless from any claim, loss or liability arising out of or in any way connected with Purchaser's possession or use of the Property, Purchaser'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 connection with any of the above events or claims, against which Purchaser agrees to defend Seller, Purchaser shall, upon notice from Seller, vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to Seller.

SECTION 8. COVENANTS OF SELLER

8.1 Covenants of Title. Seller warrants that Seller is the owner of good and marketable title in fee simple to the Property free of all liens and encumbrances except:

1. 1988-89 taxes, a lien not yet payable.
2. Grant of Right of Way, including the terms and provisions thereof, by and between Holger B. Jacobsen, et. al. to The California Oregon Power Company, dated July 25, 1961, recorded January 5, 1962, in Volume 334 page 586, Deed records of Klamath County, Oregon.

SECTION 9. TITLE INSURANCE (PURCHASER'S POLICY)

Seller shall furnish at Seller's expense a purchaser's title insurance policy in the amount of \$45,000.00 within 10 days from the Closing Date, insuring Purchaser against loss or damage sustained by Purchaser by reason of the unmarketability of Seller's title, or liens or encumbrances affecting the Property, excepting matters contained in the usual printed exceptions in such title insurance policies, and those referred to in paragraph 8.1 of this Contract.

SECTION 10. DEED

Upon payment of the total purchase price for the Property as provided in this Contract and performance by Purchaser of all other terms, conditions, and provisions of this Contract. Sellers escrow agent set forth above shall forthwith deliver to Purchaser a good and sufficient statutory warranty deed conveying the Property free and clear of all liens and encumbrances, except all liens or encumbrances suffered by or placed upon the Property by Purchaser subsequent to the date of this Contract.

SECTION 11. DEFAULT

11.1 Events of Default. Time is of the essence of this Contract. A default shall occur under any of the following circumstances.

(a) Failure of Purchaser to make any payment within 15 days after it is due.

(b) Failure of Purchaser to perform any other obligation contained in this Contract within 30 days after notice from Seller specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence.

11.2 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 of the purchase price and 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;

11.3 Remedies Nonexclusive. The remedies provided above shall be nonexclusive and in addition to any other remedies provided by law.

SECTION 12. WAIVER

Failure of either party at anytime to require performance of any provision of this Contract shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

SECTION 13. SUCCESSOR INTERESTS

This contract shall be binding upon and inure to the benefit of the parties, their successors, and assigns but no interest of Purchaser shall be assigned, subcontracted, or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller which consent shall not be unreasonably withheld. Consent by Seller to one transfer shall not constitute consent to other transfers or waiver of this section.

SECTION 14. PRIOR AGREEMENTS

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

SECTION 15. NOTICE

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or when deposited in the U.S. mail, registered or certified, 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.

SECTION 16. APPLICABLE LAW

This Contract has been entered into in Oregon and the Property is located in Oregon. The parties agree that the laws of the state of Oregon shall be utilized in construing the Contract and enforcing the rights and remedies of the parties.

SECTION 17. COSTS AND ATTORNEY FEES

In the event Seller or Purchaser shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports,

surveyors reports and foreclosure reports and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with nonjudicial action.

SECTION 18. NUMBER, GENDER AND CAPTIONS

As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

SECTION 19. 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 and be fully enforceable thereafter in accordance with their terms.

SECTION 20. REPRESENTATIONS; CONDITION OF PROPERTY

Purchaser accepts the land, buildings, improvements, heating system and all other aspects of the Property in their present condition, AS IS, including 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. Purchaser agrees that Purchaser has ascertained, from sources other than Seller, the applicable zoning, building, housing, and other regulatory ordinances and laws and that Purchaser accepts 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, and the 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 OF COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

SECTION 21. REPRESENTATION BY ATTORNEY

The parties hereto acknowledge that this contract has been prepared by Robert D. Boivin, attorney for the Purchaser, solely on behalf of the Purchaser and that said attorney does not represent the Seller.

David F. Barnett, Jr.

Helen E. Barnett

Wesley E. Sine

Kay M. Sine

STATE OF OREGON)

) ss.

County of Klamath)

On this 1 day of September, 1988, personally appeared before me the above named David F. Barnett, Jr., and Helen E. Barnett and acknowledged the foregoing their to be their voluntary act and deed.

Debra Buckingham
Notary Public for Oregon
My commission expires: 12-19-88

STATE OF OREGON)

) ss.

County of Klamath)

On this 1 day of September, 1988, personally appeared before me the above named Wesley E. Sine and Kay M. Sine and acknowledged the foregoing their to be their voluntary act and deed.

Debra Buckingham
Notary Public for Oregon
My commission expires: 12-19-88

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co. the 1st day of Sept. A.D., 19 88 at 11:50 o'clock A. M., and duly recorded in Vol. M88 of Deeds on Page 14253.

FEE \$43.00

Return: K.C.T.C.

Evelyn Biehn County Clerk

By Pauline Mullendore

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