

FARM LEASE, Made as of the date set opposite the signatures of the parties hereto, between MARTIN J. HICKS (hereinafter called "Lessor"), and LYNN R. POPE, (hereinafter called "Lessee");

W I T N E S S E T H:

A. RECITALS: Lessor and Lessee recite as follows:

1. Lessor and Lessee have entered into an agreement providing for Lessee to lease the real property hereafter described with option to purchase the same as set forth in this Lease.

2. The parties desire to reduce to writing the agreement which is set forth in Part B of this Lease.

B. AGREEMENT: For, and in consideration of, the covenants, agreements, and stipulations herein contained, Lessor and Lessee agree as follows:

1. Lease of Farm: Lessor leases to Lessee, and Lessee rents from Lessor, the following described real property, situate in Klamath County, State of Oregon (hereinafter called "Farm"), for agricultural and related purposes only, to-wit:

Township 40 South, Range 11, East Willamette Meridian:

Section 33: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ beginning at the brass-capped monument marking the North quarter corner of said Section 33; thence S. 89°57'48" E., along the North line of said Section 33, 547.88 feet; thence S. 44°54'52" E., 1097.27 feet to a point on the East line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$; thence S. 00°03'35" W., 548.60 feet to the 5/8" iron pin marking the Southeast corner of said NW $\frac{1}{4}$ NE $\frac{1}{4}$; thence N. 44°54'52" W., 1872.45 feet to the point of beginning, containing 13.22 acres, more or less, and with bearings based on record of survey No. 3358.

2. Term: The term of this Lease is from year to year, but not more than 99 years, commencing on the date hereof, and ending December 31, 2088, at Midnight, and shall automatically renew itself from year to year, unless Lessee shall give Lessor written notice of termination at least 30 days before the termination of any annual term of the Lease. If such notice of termination is given as provided for herein, the Lease shall expire on the last day of the term of the Lease in which notice of termination is given.

3. Rent: Lessee shall pay Lessor, without demand, the following rent:

a. Cash: \$1,000.00, on December 31, 1990, and \$1,000.00 per year thereafter, payable on December 31st of each year; provided, however, that if the Option is exercised during the term of this Lease, there shall be no annual rental paid the year the Farm is purchased by Lessee.

b. Irrigation and Drainage Charges: In addition to the foregoing, Lessee shall pay Lessor, upon demand, any charge or assessment made by any duly constituted irrigation, drainage or

improvement district pertaining to the providing of irrigation water and/or drainage, or related items, services, or maintenance for the benefit of the Farm described in this Lease. In order to implement the provisions of this subparagraph, Lessor shall, upon receipt of any statement for any of the irrigation or drainage charges or assessments referred to in this subparagraph, promptly submit to Lessee a statement showing thereon the amount due from Lessee and if Lessee should not pay such amount within thirty (30) days from the date billed by Lessor, the amount billed shall bear simple interest at the rate equal to the percentage rate required of Lessor to pay plus one per cent (1%) per annum from the expiration of said thirty (30) day grace period until paid.

4. Lessor's Obligations: Lessor shall have the following obligations and duties:

a. Taxes And/Or Assessments On Farm: To pay all ad valorem taxes and assessments levied or assessed against the Farm described in this Lease by any county, governmental body or political subdivision of the State of Oregon having the power to levy and/or assess and collect any such tax or assessment.

b. Quiet Possession: Immediately deliver possession of the Farm to Lessee and warrant and defend Lessee's possession of the Farm against any and all persons as long as this Lease remains in effect.

5. Lessee's Obligations: Lessee shall have, in addition to other obligations of Lessee, the following obligations and duties:

a. Pay Rent: To pay the rent in the manner and form specified herein when due.

b. Use of Farm: To use the Farm for agricultural purposes only; to occupy, till, and in all respects, cultivate the Farm during the Lease term in a farmer-like manner according to the usual course of farming practice in the county; to operate, manage, conserve, and maintain the Farm in a high state of husbandry at Lessee's sole cost and expense; to comply with all applicable laws, ordinances, regulations, and rulings of any governmental or quasi-governmental entity or agency; not permit the Farm to be used for illegal purposes; not commit any waste or damage to the Farm; and, at the expiration of the term of this Lease, redeliver the Farm to its owner in as good condition as the same now is, or later improved, reasonable wear and tear alone excepted. This covenant shall include, but not be limited to, compliance with all minimum requirements of all grantors or lessors of appurtenant leases, permits, or licenses however evidenced and the maintenance of fences, ditches.

c. Cost of Materials: To pay all of the cost of materials necessary for erecting fences around the Farm.

d. Avoid Liens: To, at all times, protect Lessor and save Lessor harmless from and against any and all liens and/or claims of liens upon or against the Farm, improvements or equipment, or any part

thereof, arising or created by, under or through Lessee, or any persons employed by Lessee, or any persons under contract with Lessee.

e. Permit Lessor Entry: To allow Lessor, or anyone designated by Lessor, to enter the premises at any reasonable time to inspect the property, to work and make improvements as Lessor shall deem expedient, provided such entry and work by Lessor does not injure crops already growing on the Farm.

f. Not To Hold Over: Not to retain possession of the Farm after the termination of this Lease and, if such possession is retained, to retain the same not as a new rental, but only at the will of Lessor. The provisions of ORS 105.120 pertaining to notice regarding the leasing or occupation for farming or agriculture is expressly waived.

g. Maintain Insurance: To 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. Such policy or policies shall include Lessor as an additional named insured. Lessee shall provide Lessor with copies or certificates of all policies.

6. Fencing of Farm: Lessor gives Lessee permission to fence the parameter of the Farm.

7. Acceptance of Farm: Lessee hereby acknowledges that Lessee is familiar with the quality of the soil and all soil conditions of the Farm and is also familiar with the irrigation accessories and improvements upon said Farm; Lessee accepts the Farm without any warranty or guaranty on the part of Lessor as to said Farm, and Lessee accepts the Farm as it now is.

8. Option To Purchase Real Property: For so long as Lessee is not in substantial default in the performance of any term of this Lease, Lessee shall have the option to purchase the real property described herein for a purchase price of \$13,220.00, upon the terms and conditions set forth in that certain Earnest Money Receipt dated November 8, 1988, and recorded December 6, 1988, in Vol. M-88, Page 20661, Records of Klamath County, Oregon (Earnest Money Receipt), provided that such transfer does not transgress land use regulations and such option shall be exercised upon the following:

a. Written Notice by Lessor: Upon the written notice by Lessor of Lessor's willingness to sell the Farm to Lessee and the allowance by Lessor to Lessee of 60 days to remit the sale price under the terms of the Earnest Money Receipt.

b. Sale by Lessor of Surrounding Real Property: If Lessor sells, or transfers ownership of, the real property owned by Lessor surrounding the Farm, then this Option is automatically initiated.

9. Condemnation: If any portion of the Farm should be taken by any governmental agency or other entity having the power of eminent domain, or if any portion of the Farm should be sold to such governmental agency or body having power of eminent domain in lieu of eminent domain proceedings, Lessor shall retain all proceeds from any such taking or sale. In event any such taking or sale should exceed more than 50% of the farmable acreage of Farm or Farm shall become uneconomical to farm by reason of such sale or taking, either party may rescind this Lease. To extent that there should be any growing crops on the Farm at the time of any such sale or taking by eminent domain proceedings, and compensation should be payable therefor, the proceeds allowed for growing crops shall be divided between Lessor and Lessee in the same proportion as the crop would be divided as rent.

10. Arbitration: In the event of any dispute concerning any term, covenant, or provision of this Lease, either party may submit such controversy to binding arbitration in accordance with ORS 33.210 through ORS 33.340, and the parties shall be bound by the arbitration results. Findings of an arbitrator as provided in this paragraph shall be final and binding on the parties. The arbitrator shall decide, in addition, whether any party is entitled to recover costs, including, but not limited to, accounting and appraisal fees and fees of other experts. Venue for arbitration hereunder shall be proper only in Klamath Falls, Oregon. The parties intend to make submission to arbitration provided for herein an express condition precedent to any court action except for breach of Lessee's covenants to pay or perform the obligations set forth in this Lease under category of "Rent" or for any action to recover possession of the Farm. The law of the State of Oregon pertaining to arbitration shall apply; provided, however, said provisions shall not be deemed to impair or limit provisions of this paragraph but shall be deemed to apply only to extent necessary to implement and further arbitration proceedings provided for in this paragraph.

11. Default of Lessee and Remedies of Lessor: Time is agreed to be the essence of this Lease. The following provisions shall govern what constitutes Lessee's default and the Lessor's remedies therefor:

a. Events Of Default: Lessee shall be in default under this Lease upon the happening of any of the following events or conditions:

(1) Failure To Pay Rent: Lessee's failure to pay or perform (within 30 days of the date specified for such performance) the covenants pertaining to rent.

(2) Insolvency, Etc.: Insolvency of Lessee, business failure of Lessee, appointment of a receiver for Lessee by a State court, assignment by Lessee for benefit of Lessee's creditors, transfer of Lessee's interest herein by operation of law, levy or execution upon Lessee's interest herein by a creditor of Lessee, or the commencement of any proceeding under any state bankruptcy or insolvency law by or against Lessee, or any one or more of the foregoing.

(3) Failure of Lessee to Perform After Notice: Failure of Lessee to perform any of Lessee's covenants (other than non-performance specified in the immediately preceding subparagraphs)

after 30 days written notice by Lessor to Lessee of such non-performance and failure.

b. Remedies For Default: In the event of Lessee's default as aforesaid, Lessor shall have the following cumulative rights, which Lessor may, at Lessor's election, exercise sequentially or contemporaneously:

(1) Recover For Breach: Pursue any remedy provided by law to recover for the breach and continue the Lease in force.

(2) Re-Enter Farm: Re-enter the Farm and take full possession of the Farm.

(3) Declare Lease Forfeited: Declare the Lease forfeited and re-enter the Farm and take possession of the Farm and remove Lessee, Lessee's property, and all persons claiming by or through Lessee, therefrom, and recover all damages provided by law.

(4) Obtain Receiver: Obtain, ex parte from a court of competent jurisdiction, the appointment of a receiver to take possession of the Farm.

For the purposes of this paragraph, damages shall include the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss for the same period that Lessee can prove could be reasonably avoided. Nothing herein contained shall be deemed to prevent or prohibit Lessor from reletting the Farm in an effort to mitigate damages, from the implementation of all remedies now or hereafter provided by law, nor preventing Lessor from electing any part of the remedies available to Lessor.

12. Nonwaiver: Lessor's waiver of a breach of a covenant or condition of this Lease is not a waiver of the covenant or condition itself, or any subsequent breach of it, or of any other covenant or condition herein. Lessor's subsequent acceptance of rent herein is not a waiver of any preceding breach by Lessee of a covenant or condition of this Lease, other than of Lessee's failure to pay when due the rent accepted.

13. Attorney Fees: In the event either party institutes any suit or action against the other to recover any rent, or for breach of any agreement or condition herein contained, or if any summary action be brought by Lessor for forfeiture of this Lease or to recover possession of said premises, the prevailing party shall recover from the other reasonable attorney fees to be fixed by the court for both trial and on appeal.

14. Notices: Any notice by any party to the other required by this Lease shall be deemed to have been fully given when written and deposited in a sealed envelope with the United States Postal Service as certified mail with postage prepaid and addressed to the party to receive the same at the following addresses:

Lessor
P.O. Box 93
Merrill, Oregon 97633

Lessee
HC-62, Box 28
Merrill, Oregon 97633

15. No Partnership And Lessee Independent Contractor: Notwithstanding anything else provided herein, nothing contained herein shall be construed as creating a general partnership between Lessor and Lessee. Lessee shall, at all times, be an independent contractor and the manner and means of Lessee's performance of Lessee's covenants shall be Lessee's responsibility. Lessee shall be entirely and solely responsible for Lessee's own acts, and the acts of Lessee's agents, employees, and subcontractors, engaged in Lessee's undertaking specified in this Lease.

16. Obligations Joint and Several: All obligations created by this Lease shall be joint and several.

17. Entire Agreement: This Lease embodies the entire agreement of the parties. It may not be modified or terminated except as provided herein, or by other written agreement.

18. Waiver of Conflict of Interest: Each party to this Lease understands the firm of Giacomini & Knieps, Attorneys at Law, 635 Main Street, Klamath Falls, Oregon 97601 (Attorneys), has assisted the parties in drafting this Lease. Each party understands that, to the extent that a conflict of interest should otherwise arise in the performance of such services, each has acknowledged such conflict and each, with opportunity to consult independent counsel, has consented to the preparation of this Lease by Attorneys. Lessor acknowledges Lessee is the client of Attorneys and Lessee acknowledges that Lessor's attorney, Michael L. Brant, has requested the incorporation of provisions in this Lease and the same have been incorporated.

19. Construction: All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Lease shall be interpreted as if such invalid agreements or covenants were not contained herein. The headings contained in this Lease are for convenience only and are not to be construed as part of this Lease. Pronouns used in this Lease shall be construed in accordance with the appropriate gender or neuter, and as either singular or plural, as the context requires. This Lease shall not be construed against the party preparing it, but shall be construed as if all parties prepared it. Any such exhibit attached hereto is incorporated into this Lease as though fully set forth at the place in this Lease at which reference to such exhibit is made. All rights and liabilities hereunder shall be determined in accordance with the laws of the State of Oregon.

20. Binding Effect: Subject to the provisions hereinabove contained against the transfer, assignment and sublease, this Lease shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

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SIGNED on the date set opposite the signatures of the party signing the same.

DATE

12-27-1989

27 Dec 89

SIGNATURE

Martin J. Hicks
MARTIN J. HICKS, Lessor

Lynn R. Pope
LYNN R. POPE, Lessee

STATE OF OREGON, County of Klamath) ss: Dec 27, 1989

Before me personally appeared MARTIN J. HICKS and acknowledged the foregoing instrument to be his voluntary act and deed.

(SEAL) C. Barnes
C. BARNES
NOTARY PUBLIC OREGON
My Commission Expires 9-6-92

C. Barnes
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-6-92

STATE OF OREGON, County of Klamath) ss: Dec 27, 1989

Before me personally appeared LYNN R. POPE and acknowledged the foregoing instrument to be his voluntary act and deed.

(SEAL)

C. Barnes
C. BARNES
NOTARY PUBLIC OREGON
My Commission Expires 9-6-92

C. Barnes
NOTARY PUBLIC FOR

My Commission Expires: 9-6-92

WHEN RECORDED MAIL TO:

GIACOMINI & KNIIPS
ATTORNEYS AT LAW
635 MAIN STREET
KLAMATH FALLS, OR 97601

STATE OF OREGON

County of Klamath } ss:

I certify that the within instrument was received for record on the 2nd day of Jan., 1990, at 4:06 o'clock PM., and recorded in Book M90 on Page 40 or as filing fee number 9707.

Record of Deeds of said County.

Witness my hand and seal of County affixed.

Evelyn Biehn

County Clerk

Title

BY: Pauline Muelenders

Deputy