

MTC 31078-KR  
REAL ESTATE CONTRACT

THIS CONTRACT, made this 1<sup>st</sup> day of October, 1993, between LUISE L. LANE, (Seller) and HENRY CHARLES GERBER CHEYNE (Buyer).

1. Property. Seller agrees to sell and buyer agrees to buy the real Property located in Langell Valley, Klamath County, Oregon, legally described as follows E 1/2 W 1/2 Section 35 Township 39 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon and personal property consisting of: three (3) 1/4-mile wheel lines, one (1) 40-hp pump and panel, approximately 2,300 feet of 6" main line, and approximately 1,000 feet of 10" main line, hereinafter referred to as "the Property".

2. Consideration. Actual consideration for this contract is One Hundred Sixty Five Thousand Dollars (\$165,000) payable as set out below, deferred balances to bear interest at 8% per annum.

3. Payment Terms. Seller acknowledges a down payment in the amount of \$30,000 at closing. The remaining amount shall be paid in annual installments of not less than \$15,771.99, which shall include interest. In addition, Buyer shall pay taxes and insurance when due and payable. Each annual payment is due on the first day of October of each year commencing on October 1, 1994. All payments shall be applied first to interest accrued, and then to principal. All sums are due no later than October 1, 2008. Buyer shall have the right of prepayment without penalty; provided, however, that all such prepayments shall be in addition to and not in lieu of the annual payments called for herein.

4. Use / Transfer. Buyer warrants to and covenants with the seller that the Property described in this contract is not primarily for Buyer's personal, family and household purposes. Buyer shall not transfer any interest or possession in the Property without first obtaining the written consent of Seller, which consent shall not be unreasonably withheld. Any transfer without Seller's written consent shall be void.

5. Replacement of Personal Property. Buyer shall have the right to make replacements, improvements, and additions to the irrigation equipment, so long as any replacement shall be with irrigation equipment of like or better quality and value. Any such replacements, improvements or additions shall become part of "the property" and shall be subject to the Seller's security interest in the property during the life of the contract.

Return: MTC

6. Buyer's Covenants. Buyer agrees to: keep Property in good condition and will not suffer or permit any waste or strip; will keep Property free of all liens and hold Seller harmless therefrom, and reimburse Seller for all costs and attorney's fees incurred from any liens; pay all taxes, providing evidence of such payment to Seller, pay water rent, public charges, etc., before any shall become past due; keep the Property insured against loss or damage by fire (with extended coverage) in an amount not less than the market value and carry minimum liability coverage of at least One Million dollars (\$1,000,000.00), listing Seller as an other insured. Buyer shall provided Seller with evidence that such insurance is in force.

7. Seller's Covenants. Upon payment in full, Seller shall give to Buyer a Bargain and Sale Deed free of encumbrances except for any listed on the Preliminary Title Report dated September 21, 1993, and attached hereto as Exhibit A; and except for those encumbrances arising through Buyer. Seller represents that the Property is free and clear of monetary encumbrances.

8. Remedies. Time is of the essence in this contract, and in case Buyer shall fail to make payments punctually within 30 days of the due date, or fail to keep any agreement herein contained and after notice of any non-monetary breach, fail to cure said breach or commence to cure in good faith within 30 days of notice of the non-monetary breach, then Seller, at his option, shall have all remedies provided by law, including but not limited to the following rights:

- (A.) To declare a forfeiture pursuant to law;
- (B.) To declare the whole unpaid principal balance of the purchase price with interest thereon at once due and payable;
- (C.) To foreclose this contract as provided by law;
- (D.) To specifically enforce the terms of this Agreement;
- (E.) To retake possession of the premises;
- (F.) To have a receiver appointed after notice to Buyer with the receiver's right to enter upon and take possession of said property or any part thereof to preserve the premises and collect all rents, profits, proceeds and other monies and apply the same, less costs and expenses, upon the indebtedness; and
- (G.) The right to record Buyer's deed as provided in paragraph 12, below.

In any such cases, Seller's repossession of the property and collection of monies and the application or release, as aforesaid, shall not cure nor waive any default or notice of default hereunder.



9. Condition of Property. Except as set out in the next paragraph, Buyer agrees and represents that Buyer is purchasing the Property "as is," reasonable wear and tear until Closing excepted. In making and executing this Agreement, Buyer has not relied upon nor been induced by any statements or representations of any person (other than those expressly set forth in this Agreement) in respect to the physical condition of the Property, including the environmental conditions present on the Property, or of any other matter affecting or relating to the physical condition of the Property. Buyer has, on the contrary, relied solely on such representations, if any, as are expressly set forth herein and on such investigations, examination, and inspections as Buyer has chosen to make or has made. Buyer acknowledges that Seller has afforded Buyer the opportunity for full and complete investigations, examinations, and inspections of the Property. Buyer acknowledges that this clause was a negotiated part of this Agreement and serves as an essential component of the consideration for this Agreement.

Without limiting the generality of the foregoing, the parties specifically acknowledge that Buyer has had an opportunity to inspect the Property with regard to environmental concerns and the purchase price has been negotiated to eliminate claims relating to environmental matters.

Consequently, this clause bars all claims brought by the Buyer concerning the condition of the Property pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, the Federal Response Conservation and Recovery Act (RCRA), as amended, and any applicable, similar federal and state legislation. Notwithstanding the parties' intent that this clause bar all such claims, should a court of competent jurisdiction deem otherwise, the presence of this clause shall serve as the overwhelming, primary factor in any equitable apportionment of liability or damages under CERCLA, RCRA, and other such Acts.

Buyer hereby waives, release, acquits, and forever discharges Seller, its employees or agents or any other person acting on behalf of Seller of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on account of or in any way growing out of or in connection with any physical characteristics or existing condition including, without limit, subsurface conditions and solid and hazardous wastes, and hazardous substances, on, under, or related to the real Property, or any law or regulation applicable thereto.

10. Seller's Representations. Seller makes the following representations and warranties to Buyer:

A. The Property, together with all improvements located thereon, are properly and completely reflected on the Klamath County Property Tax Roll without significant omission or inaccuracy;

B. Seller has no notice or knowledge of any immediately prospective assessments, taxes, liens, or other charges pertaining to the Property, except real property taxes for the year ending June 30, 1994 and the Langell Valley Irrigation District water assessment for 1994 irrigating season.

C. Seller has not received any notices of violation, or advisory action by regulatory agencies, regarding environmental matters, Hazardous Substances, or permit compliance with respect to the Property;

D. There are no governmental, administrative, or judicial actions, or proceedings pending, or to the best of Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of Hazardous Substances on the Property;

E. Seller has all necessary right and authority to execute and fully perform this Agreement.

F. Seller has no knowledge of any environmental concerns, including the location of hazardous substances, upon the property either at the present time or at any time in the past. This representation specifically includes, but is not limited to, underground storage tanks for the storage of petroleum products.

11. Title Insurance. Seller has furnished Buyer a title report issued on September 21, 1993, by Mountain Title Company of Klamath County, Order No. 31078-KR. Upon recording of the memorandum of this contract, Seller shall deliver to Buyer a purchaser's policy of title insurance in accordance with such title report, at Seller's expense free and clear of all encumbrances, except those encumbrances listed in the title report attached hereto as Exhibit A and referred to in Paragraph 7, above.

12. Additional Term in Lieu of Guarantee. Buyer shall furnish to Seller at time of closing a Bargain and Sale Deed signed by Buyer, which West One Bank of Boise, Idaho shall hold and upon any default by Buyer, Seller shall be entitled to record



to effect transfer of title back to Seller. Upon recording of the deed Buyer shall have no further rights under this contract.

13. Escrow. This transaction shall be closed in escrow through the offices of Mountain Title Company of Klamath County, Klamath Falls, Oregon. Possession of the premises shall be delivered to Buyer on Closing. Closing costs shall be borne equally by Buyer and Seller, including but not limited to recording fees, and escrow fees. Pro-rates for taxes, insurance premiums if Buyer assumes existing policies, and other prepaid expenses and deposits attributable to the Property shall be made as of the date of closing.

14. Collection Escrow. A collection escrow account shall be established at West One Bank, Boise, Idaho at the time of closing. Annual payments by Buyer, under the terms of this contract, shall be deposited into said account for transmittal to Seller. West One Bank of Boise, Idaho shall also hold the Bargain and Sale Deed required under Section 12, above. Initial cost of the establishment of this account will be divided equally between Buyer and Seller. Thereafter the costs of maintaining the account will be borne by Buyer.

15. Recording of Memorandum. The parties acknowledge Oregon law requires that this agreement be recorded by Seller not less than fifteen (15) days after it is executed. (ORS 93.635) A memorandum of this agreement may be recorded in lieu of the complete agreement.

16. Attorney Fees, Costs, Expenses. In the event it becomes necessary for either party to take any legal or equitable action to enforce this agreement, it is agreed that the party prevailing shall be allowed its reasonable attorney's fees and costs and expenses, including those on appeal therefrom, if any. Collection costs and expenses include, without limitation, all of a party's attorney fees, expert expenses and the cost of a foreclosure guaranty(ies) or other title reports, whether or not action is instituted, and attorney fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals or any anticipated post-judgment collection services.

17. Contract Preparation. This contract has been prepared by Seller's attorneys and Buyer has sought his own counsel and has received no legal advice from Seller's attorneys nor relied upon any representation from the Seller other than that which is written into this agreement.

18. Notices. Notices to either party shall be deemed given after four (4) days (or seven [7] days if a party is outside the

Continental United States) if the same are committed to a writing and sent by United States mail, with proper postage attached, Certified Mail with a return receipt, to the parties at the following respective addresses, or any current address provided in the same manner as described in this paragraph:

TO SELLER:

Luise L. Lane  
4221 S.W. Patrick Place  
Portland, OR 97201

TO BUYER:

Henry Charles Gerber Cheyne  
9961 East Langell Valley Rd.  
Bonanza, OR 97623

Copies of any notices shall go to the respective party's attorneys, whose current addresses are:

SELLER'S ATTORNEY:

James L. Lane  
Parker & Bush  
1618 SW First #205  
Portland, OR 97201

BUYER'S ATTORNEY:

James C. Lynch  
Attorney at Law  
620 North First Street  
Lakeview, Oregon 97630

19. Notice of Default. Any notice of a default under this contract shall be provided, by the Seller, to the escrow agent, West One Bank, who shall then notify the Buyer of such default. The time period for curing any monetary or other defect under this contract shall commence upon the mailing of notice, by certified mail postage prepaid by West One Bank to the Buyer at his last known address.

20. Entire Agreement. This agreement sets forth the entire agreement between the parties, and supersedes and replaces all prior written and oral agreements pertaining to the property. Modifications or additions to this agreement shall be considered valid only when mutually agreed upon in writing.

21. Cooperation. The parties agree to fully cooperate in carrying out this agreement, including the execution of all documents reasonably necessary to effectuate the intention of the parties.

22. Survival of Representations and Warranties. All representations and warranties made in this agreement and liability of the parties for the breach, inaccuracy, or other failure of such representations and warranties shall survive the closing of this agreement, and shall remain in full force and effect thereafter.



23. **Brokers.** Seller acknowledges Seller has engaged the services of Stilwell-Weider Real Estate. Seller shall be solely responsible for payment for all brokerage fees to, and shall hold Buyer harmless from liability to, such broker in connection with this transaction. Subject to the foregoing, both parties represent and warrant that no other brokers, realtors or similar agents have been engaged in connection with this transaction.

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.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the dates listed below.

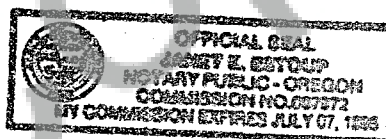
*Luise L. Lane*  
LUISE L. LANE

*Henry Charles Gerber Cheyne*  
HENRY CHARLES GERBER CHEYNE

STATE OF OREGON )  
County of Multnomah ) ss.

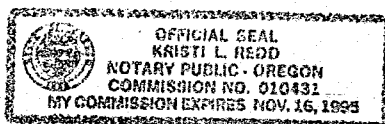
On this 29<sup>th</sup> day of September, 1993, personally appeared the above-named Luise L. Lane, and acknowledged the foregoing instrument to be her voluntary act and deed.

*Janet K. Estoup*  
Notary Public for Oregon



STATE OF OREGON )  
County of Klamath ) ss.

On this 1<sup>st</sup> day of October, 1993, personally appeared the above-named Henry Charles Gerber Cheyne and acknowledged the foregoing instrument to be his voluntary act and deed.



*Kristi L. Redd*  
Notary Public for Oregon

*My Commission Expires: 11/16/95*

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 1<sup>st</sup> day of Oct. A.D. 19 93 at 1:47 o'clock PM., and duly recorded in Vol. M93 of Deeds on Page 25538

FEE \$60.00

Evelyn Biehn County Clerk  
By *Ronnie M. Henderson*