12-14-93P01:29 RCVD

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LAND SALE CONTRACT

THIS CONTRACT, made and entered into this 13th day of December, 1993, by and between Donald Ybarra and Elaine M. Ybarra, husband and wife, hereinafter called Seller; and Hutcheson-Van Winkle Construction Co., an Oregon corporation, hereinafter called Buyer; and E.C. Hutcheson and Lee Van Winkle, hereinafter called Guarantor (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, located in Klamath County, Oregon, and legally described as follows, to-wit:

Lot 9, SUMMERS PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

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 rights of the public in and to any portion of the herein described property lying within the boundaries of roads or highways.

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 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 November 1, 1993, 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 such property insured against loss or damage by fire or other casualty in an amount of not less than the full insurable value thereof, with loss payable to 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;

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The true and actual consideration for this conveyance is $35,000.00.

GRANTORS NAME AND ADDRESS: Donald and Elaine M. Ybarra
227 Ewauna, Klamath Falls, OR 97601

GRANTEES NAME AND ADDRESS: Hutcheson-Van Winkle Construction Co.

AFTER RECORDING, RETURN TO: Mountain Title Company
222 South 6th Street, Klamath Falls, OR 97601

UNTIL A CHANGE IS REQUESTED, SEND TAX STATEMENT TO: Hutcheson-Van Winkle Construction Co.
c/o Donald and Elaine M. Ybarra
227 Ewauna, Klamath Falls, OR 97601

5. **Waste Prohibited:** Buyer agrees that all improvements now located 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, 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.

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 herein, and will place said document, together with one of these agreements, in escrow at Mountain Title Company of Klamath County, 222 South Sixth Street, Klamath Falls, Oregon 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 herein. If received by Seller, Seller shall forward such tax statements to Buyer, who shall be required to pay the same and provide proof of such payment to Seller within thirty (30) days of the date of mailing of the said tax statement by the County Tax Collector (or Seller, as appropriate).

8. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of her own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability; that no attempt has been made to influence Buyer's 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, its rights thereunder, or in the property covered thereby without the written consent of Seller. Such consent shall not be unreasonably withheld. In the event the within described property, any part thereof, any interest therein (whether legal or equitable) is sold, agreed to be sold, conveyed, assigned or alienated by the Buyer without having first obtained the written consent or approval of the Seller, then, at the Seller's option, all obligations secured by this instrument, irrespective of the maturity date expressed herein, shall become immediately due and payable;

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 any of them punctually and upon the strict terms and at the times 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 any 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 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 Thirty-five Thousand Dollars ($35,000.00), payable as follows:

(a) Buyer shall pay an initial payment in the sum of Five Thousand Dollars ($5,000.00), and

(b) The remainder of the purchase price in the amount of Thirty Thousand Dollars ($30,000.00) shall be payable in monthly installments of Three Hundred Fifty Dollars ($350.00) per month, including interest at the rate of eleven and one-half percent (11½%) per annum on the unpaid balance, which said sum includes principal and interest, together with the applicable escrow collection fees; the first of such payments shall be payable on the 1st day of November, 1993, 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. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that the property conveyed by the within Land Sale Contract includes a range, refrigerator, and dishwasher, which said personal property items constitute an improvement to the real property conveyed by the within instrument. Buyer and Seller agree that Seller shall retain title to the said personal property items until the Land Sale Contract has been paid in full.

18. **Escrow Funds Distribution:** It is understood by and between the parties that the real property being conveyed by the within instrument is encumbered by a certain obligation securing payment of a promissory note bearing Wetern bank Loan No 247-4700661.

It is agreed that the escrow holder named herein, or its successor, upon receipt of payments from Buyer, shall remit the same to Seller. Seller agrees that that proceeds from payments made hereunder by Buyer shall be utilized by Seller in payment of the aforesaid obligation, which Buyer does not assume.

19. **Guaranty:** In consideration of the extension of credit and the granting of possession of the real property referred to by the within instrument, the undersigned, E.C. Hutcheson and Lee Van Winkle referred to herein as Guarantor, absolutely and unconditionally guarantee the full, prompt and faithful payment as due of any and all indebtedness of Buyer to Seller, including any indebtedness which may now or hereafter be acquired in compliance with the terms and provisions of the Land Sale Contract. E.C. Hutcheson and Lee Van Winkle absolutely and unconditionally further guarantees the full, prompt and faithful performance by Buyer of any and all terms, conditions and covenants required to be performed by the Buyer under the within instrument, or any other instrument or obligation evidencing or securing Buyer's responsibility to Seller under the within instrument. It is agreed that:

(a) This is a continuing guaranty; and

(b) This guaranty shall be binding upon the undersigned and the undersigned's heirs, executors and administrators; and

(c) The undersigned expressly waives presentment, demand, protest or notice of any kind, and hereby consents to any extension of time of payment, performance, or renewal or modification of any instrument or obligation or indebtedness guaranteed; and

(d) This guaranty includes, without limitation (1) the full, prompt and faithful payment of the amount of any damages or deficiencies suffered or incurred by Seller by reason of any default by Buyer in connection with any indebtedness or as provided in any instrument evidencing or securing such indebtedness resultant from the requirement of performance of the terms and conditions of the within Land Sale Contract, and (2) the full, prompt and faithful payment of all attorney's fees, costs and expenses reasonably incurred by Seller in the enforcement of this guaranty, and the terms and provisions of the within Land Sale Contract; and

(e) No amendment, refinancing, extension or transfer of any instrument, obligation, or indebtedness guaranteed, or waiver of variation of any of the terms and conditions or change in the time or the amount of payment due, will affect the liability of Guarantor under this guaranty; and

(f) All rights of Seller shall inure to the benefit of Seller's successors or assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed this 13th day of December, 1993.

SELLER:

Donald Ybarra
DONALD YBARRA

Elaine M. Ybarra
ELAINE M. YBARRA

BUYER:

HUTCHESON-VAN WINKLE CONSTRUCTION CO.

BY: E.C. Hutcheson
E.C. HUTCHESON

Lee Van Winkle
LEE VAN WINKLE

GUARANTORS:

E.C. Hutcheson
E.C. HUTCHESON

Lee Van Winkle
LEE VAN WINKLE

STATE OF OREGON/County of Klamath) ss.

PERSONALLY APPEARED the above-named Donald Ybarra and Elaine M. Ybarra, E.C. Hutcheson and Lee Van Winkle, and acknowledged the foregoing instrument to be their voluntary act and deed.

Dated before me this 13th day of December, 1993.

Helen M Fink
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4/20/96

STATE OF OREGON/County of Klamath) ss.

We, E.C. Hutcheson and Lee Van Winkle, President and Secretary of Hutcheson-Van Winkle Construction Co., an Oregon corporation, respectively being first duly sworn, depose and say: That E.C.HUTCHESON is the President and that LeeVan Winkle is the Secretary of Hutcheson-Van Winkle Construction Co., a corporation, and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME this 13th day of December, 1993.

Helen M Fink
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4/20/96

NOTARY PUBLIC FOR OREGON
MY COMMISSION EXPIRES

OFFICIAL SEAL
HELEN M. FINK
NOTARY PUBLIC - OREGON
COMMISSION NO. 014756
MY COMMISSION EXPIRES APR. 20, 1996

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State of Oregon

County of KLAMATH } ss.

Dec 13, 1993

Personally appeared the above named DONALD YBARRA AND ELAINE E YBARRA and acknowledged the foregoing instrument to be THEIR voluntary act and deed.

WITNESS My hand and official seal. (seal)

Helen M. Fink

Notary Public for Oregon

My Commission expires: 4/20/96

OFFICIAL SEAL
HELEN M. FINK
NOTARY PUBLIC - OREGON
COMMISSION NO. 014766
MY COMMISSION EXPIRES APR 20, 1996

State of Oregon

County of KLAMATH } ss.

Dec 13, 1993

Personally appeared the above named E.C. HUTCHESON AND LEE VAN-WINKLE and acknowledged the foregoing instrument to be THEIR voluntary act and deed.

WITNESS My hand and official seal. (seal)

Helen M. Fink

Notary Public for Oregon

My Commission expires: 4/20/96

OFFICIAL SEAL
HELEN M. FINK
NOTARY PUBLIC - OREGON
COMMISSION NO. 014766
MY COMMISSION EXPIRES APR 20, 1996

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 14th day of Dec. A.D., 19 93 at 1:29 o'clock P M., and duly recorded in Vol. M93 of Deeds on Page 33220.

FEE $45.00

Evelyn Biehn County Clerk

By Pauline Millendore