

MTC 35371 MS LAND SALE CONTRACT

THIS CONTRACT, made and entered into this 23rd day of May, 1995, by and between Marilyn Elizabeth Fox, Roberta L. Silbernagel and Curtis A. Fox, with rights of survivorship, hereinafter called **SELLER**; and Fred Nicholas Lutz and Jerry Marcus Spangler, it being the intention of the parties that the Buyers do not take title in common, but with rights of survivorship; that is that the fee shall rest in the survivor of the Buyers, 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 hereinafter all of the following described property and improvements, located in the County of Klamath, State of Oregon, legally described on Exhibit A, attached hereto and incorporated by this reference herein as if fully set forth.

SUBJECT TO contracts and/or liens for irrigation and/or drainage, reservations, easements, restrictions and rights-of-way of records 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 streets, roads or highways.

ALSO SUBJECT TO an easement created by instrument, subject to the terms and provisions thereof

Dated:: October 26, 1939

Recorded: November 22, 1939

Volume: 125, page 464, Deed Records of Klamath County, Oregon

In favor of: Pacific Telephone and Telegraph Company

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, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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, 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

The true and actual consideration for this conveyance is \$56,000.00.

GRANTORS NAME AND ADDRESS: MARILYN ELIZABETH FOX, ROBERT L. SILBERNAGEL, AND CURTIS A. FOX

GRANTEES NAME AND ADDRESS: P.O. BOX 371, BONANAZA, OR 97623
FRED NICHOLAS LUTZ & JERRY MARCUS SPANGLER

AFTER RECORDING, RETURN TO: P.O. BOX 55, DAIRY, OR 97625
MARY ELIZABETH FOX, ET AL

UNTIL A CHANGE IS REQUESTED,
SEND TAX STATEMENT TO: C/O MOUNTAIN TITLE COMPANY, 222 So. 6th Street, KFO 97601
FRED NICHOLAS LUTZ & JERRY MARCUS SPANGLER
P.O. BOX 55, DAIRY, OR 97625

and authorized to so add such amount to the contract balance, upon being tendered 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;

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 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;

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, 221 South 6th Street, Klamath Falls, Oregon, and shall enter into written escrow instructions in a 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 as designated by Buyer herein. Buyer 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;

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 Buyer has made a personal inspection of the property so as to determine its acceptability, and has personally researched and is satisfied with the ability to obtain access to the property; 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. In the event the within described property, any part thereof, or 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 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 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 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 Fifty-six Thousand Dollars (\$56,000.00), payable as follows:

(a) Buyer shall pay an initial payment in the sum of Six Thousand Dollars (\$6,000.00) and

(b) The remainder of the purchase price in the amount of Fifty Thousand Dollars (\$50,000.00) shall be payable in monthly installments of \$402.32 per month, including interest at the rate of 9% per annum on the unpaid balance, which such sum includes principal and interest; the first of such payments shall be payable on the 23rd day of June, 1995, with a further and like installment payable on the 23rd day of each and every month thereafter until the full amount of principal and interest shall have been paid in full. Buyer may make advance or excess payments without penalty, and if so made, shall first be applied toward account interest, and the remainder will be applied toward the principal balance. No partial prepayment shall excuse the payment of installments next coming due.

17. Late Payment Penalty: In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of \$20.11, in addition to the regularly scheduled payment 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 fifteen (15) days of the day due (except that if the 15 day period ends on a Saturday, Sunday, or legal holiday, the 15 day period is extended to the next business day). The Mountain Title Company payment coupon shall bear a disclosure to such effect. 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 or principal;

IN WITNESS WHEREOF, the parties have caused this agreement to be executed this 15th day of May, 1995.

SELLER:

Marilyn Elizabeth Fox
MARILYN ELIZABETH FOX

Roberta L. Silbernagel
ROBERTA L. SILBERNAGEL SILBERNAGEL RLS

Curtis A. Fox
CURTIS A. FOX

BUYER:

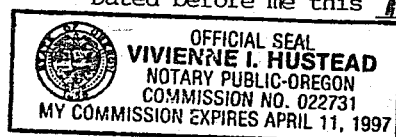
Fred Nicholas Lutz
FRED NICHOLAS LUTZ

Jerry Marcus Spangler
JERRY MARCUS SPANGLER

STATE OF OREGON/County of Klamath) ss.

PERSONALLY APPEARED the above-named Fred Nicholas Lutz and Jerry Marcus Spangler acknowledged the foregoing instrument to be their voluntary act and deed.

Dated before me this 15 day of May, 1995.

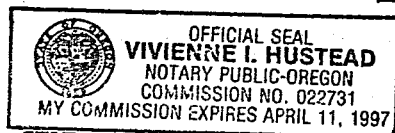


Vivienne I. Hustead
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4-11-97

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named Marilyn Elizabeth Fox and Curtis A. Fox, and acknowledged the foregoing instrument to be their voluntary act and deed.

Dated before me this 15 day of May, 1995.

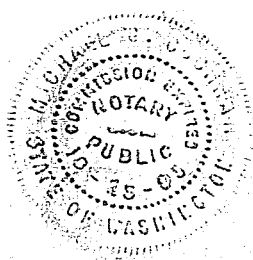


Vivienne I. Hustead
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4-11-97

STATE OF WASHINGTON, County of CLARK) ss.

PERSONALLY APPEARED the above-named Roberta L. Silbernagel, and acknowledged the foregoing instrument to be her voluntary act and deed.

Dated before me this 18th day of May, 1995.



Charles A. Lohman
NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: 10-15-95

EXHIBIT "A"
LEGAL DESCRIPTION

A portion of the NE1/4 NW1/4 of Section 34, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the South line of the NE1/4 NW1/4 of Section 34, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon, which is North 89 degrees 41' West 663 feet from the Southeast corner of said NE1/4 NW1/4, said point of beginning being the point of beginning of the tract of land conveyed to M. T. Michael and Willette W. Michael by Deed recorded in Volume 259, page 150 of Klamath County, Oregon Deed Records; thence North 89 degrees 41' West along the South line of said NE1/4 NW1/4 a distance of 100 feet; thence North and parallel to the West line of said tract conveyed to said Michaels by deed recorded in Volume 259 at page 150 to the center line of the Horsefly Irrigation District Ditch; thence Northeasterly along the centerline of said ditch to the Easterly line of said tract conveyed to said Michaels by said deed above described; thence South along the said Easterly line of said tract conveyed to said Michaels by deed above described to the point of beginning, the tract herein conveyed being the Easterly 100 feet of said tract conveyed to said Michaels by deed above described.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co the 23rd day
of May A.D., 19 95 at 2:32 o'clock P M., and duly recorded in Vol. M95,
of Deeds on Page 13639

FEE \$50.00

By Bernetha G. Leisch County Clerk
Bernetha G. Leisch