

LAND SALE CONTRACT

MTC 37232KR

THIS CONTRACT, made and entered into this 9 day of January, 1996, by and between MARVIN J. KIEWER and MARIE J. KIEWER, husband and wife, hereinafter called Seller; and CLIFFORD E. FRICKS and CYNTHIA K. FRICKS, husband and wife, 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 hereafter all of the following described real property and improvements legally described on Exhibit A, attached hereto and incorporated by this reference herein as if fully set forth, subject to the encumbrances also set forth on Exhibit A.

SUBJECT TO contracts and/or liens for irrigation and/or drainage, 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 streets, 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, 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 Buyer's 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, 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 amount 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

The true and actual consideration for this conveyance is \$62,000.00.

GRANTORS NAME AND ADDRESS:	<u>MARVIN J. KIEWER AND MARIE J. KIEWER</u>
GRANTEES NAME AND ADDRESS:	<u>6821 Henley Road Klamath Falls, OR 97603</u>
	<u>CLIFFORD E. FRICKS AND CYNTHIA K. FRICKS</u>
AFTER RECORDING, RETURN TO:	<u>4946 Tingley Lane Klamath Falls, OR 97601</u>
	<u>MOUNTAIN TITLE COMPANY</u>
UNTIL A CHANGE IS REQUESTED,	<u>222 SOUTH SIXTH STREET KLAMATH FALLS, OR 97601</u>
SEND TAX STATEMENT TO:	<u>CLIFFORD E. FRICKS AND CYNTHIA K. FRICKS</u>
	<u>4946 Tingley Lane Klamath Falls, OR 97601</u>

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 Sellers' 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, 222 South 6th 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 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 Buyer's 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, his rights thereunder, or in the property covered thereby without the written consent of Seller. 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 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 terminate, 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 Sixty Two Thousand Dollars (\$62,000.00), 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 Fifty Seven Thousand Dollars (\$57,000.00) shall be payable in monthly installments of \$561.31, including interest at the rate of 8½ percent per annum on the unpaid balance, which such sum includes principal and interest together; with one half of the applicable monthly collection escrow fee and/or check issuance charges; the first of such payments shall be payable on the 1st day of March, 1996, with a further and like installment payable on the 1st day of each 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, such payments 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. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that the property conveyed by the within Land Sale Contract includes a stove, refrigerator and two natural gas stoves, 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.

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IN WITNESS WHEREOF, the parties have caused this agreement to be executed this 9th day of February, 1996.

SELLER:

Marvin J. Kliever
MARVIN J. KIEWER

Marie J. Kliever
MARIE J. KIEWER

BUYER:

Clifford E. Fricks
CLIFFORD E. FRICKS
by Cynthia K. Fricks Attorney in fact
Cynthia K. Fricks
CYNTHIA K. FRICKS

STATE OF OREGON/County of Klamath) ss.

PERSONALLY APPEARED the above-named Marvin J. Kliever and Marie J. Kliever, and acknowledged the foregoing instrument to be their voluntary act and deed.

Dated before me this 9 day of February, 1996.



Lisa Legget-Weatherby
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/20/99

Klamath) ss.

Cynthia K. Fricks for herself and Attorney-in-Fact for Clifford E. Fricks
PERSONALLY APPEARED the above-named ~~Clifford E. Fricks and Cynthia K. Fricks~~ and acknowledged the foregoing instrument to be their voluntary act and deed.

Dated before me this 9 day of February, 1996.



Lisa Legget-Weatherby
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/20/99

EXHIBIT "A"
LEGAL DESCRIPTION

All of Lots 10 and 11 of IMPERIAL ACRES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPTING THEREFROM the following:

Beginning at the most Southerly corner of said Lot 11; thence Northwesternly along the Southwesterly line of said Lot, 200 feet to a point; thence in a Northeasterly direction to a point on the East line of said Lot 11, said point being 183.5 feet Northwesternly of the Northerly line of Old Midland Road, which 183.5 feet is measured from the most Easterly corner of said Lot 11; thence in a Southeasterly direction to a point on said North line of a road which is 136 feet Northeasterly from the point of beginning; thence Southwesterly along said North line of road, 136 feet to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title the 12th day
of Feb A.D., 19 96 at 11:13 o'clock A M., and duly recorded in Vol. M96
of Deeds on Page 3952

FEE \$50.00

By Bernetha G. Letsch, County Clerk

Pauline Mullens