

RECORDING COVER SHEET

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State of Oregon, County of Klamath
Recorded 05/16/2002 3:40 p m.
Vol M02, Pg 29346 55
Linda Smith, County Clerk
Fee \$ 66⁰⁰ # of Pgs 10

AFTER RECORDING RETURN TO:

et: Andrew C. Brandsness
411 Pine Street
Klamath Falls, or 97601

MAIL TAX STATEMENTS:

James and Trudi D. Evans
17649 Highway 39
Klamath Falls, OR 97603

Document to be Recorded: Land Sale Contract dated May 14, 2001.

Consideration: \$225,000.00

**Seller: Thurston K. Henzel and Sam A. Henzel
20201 Highway 97 South
Klamath Falls, OR 97603**

**Buyer: James Evans and Trudi Evans
17649 Highway 39
Klamath Falls, OR 97603**

bb

Grantors Name and Address _____

Grantees Name and Address: _____

After Recording Return to: _____

Until Change is Requested, Send Tax Statements to: _____

The true and actual consideration stated in this instrument is
\$ 225,000.00.

LAND SALE CONTRACT

THIS CONTRACT is made and entered into this 14 day of May, 2001, by and between **THURSTON K. HENZEL and SAM A. HENZEL** hereinafter called "Seller", and **JAMES EVANS and TRUDI EVANS, 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 has purchased on contract real property (described on Exhibit "A" attached hereto and incorporated herein as if fully set forth) from the Oregon Department of Veterans' Affairs pursuant to the terms of a Contract of Sale dated the 15th day of May, 1989, wherein the Oregon Department of Veterans' Affairs is the Seller and Seller is the purchaser, hereinafter called the "Contract". The Contract was recorded the 17th day of May, 1989, at Volume M90, page 8539, Deed Records of Klamath County, Oregon, and is expressly incorporated herein by reference.

Pursuant to an agreement between the Seller and the Buyer, the Buyer agreed to purchase the real property described on Exhibit "A" from the Seller by assuming the obligations owed on the Contract between the Seller and the Oregon Department of Veterans' Affairs. Buyer has already taken possession of the real property. The Klamath County Circuit Court has rendered judgment in Klamath County Circuit Court Case No. 9900679CV determining the rights of the parties in the property and the Contract. The judgment shall hereinafter be referred to as the "Judgment," and is expressly incorporated herein by that reference.

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 has been in possession of the property since the date of the verbal agreement between the Seller and the Buyer.

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. Any pre-payment shall be subject to the terms of the Judgment.

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 prorated 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 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 therefor.

4. **Insurance:** It is agreed that Buyer will keep any building or improvements on said 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, deliver to Buyer evidence of transfer of all water rights (including transfer of shares in Van Brimmer). Seller shall further, upon the execution hereof make and execute in favor of Buyer a Special Warranty Deed conveying said property free and clear of all liens and encumbrances, except as provided hereinabove and shall place said documents, together with one of these agreements, at AmeriTitle, 222 South Sixth Street, Klamath Falls, Oregon 97601, as collection escrow agent, and when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said collection escrow agent shall deliver said documents to Buyer, but in case of default by Buyer said collection escrow agent shall, on demand, surrender said documents to Seller. Each of the parties shall be responsible to pay one-half of the collection escrow set-up fees and one-half of the monthly check issuance fees.

7. **Tax Payment Procedures:** Until a change is requested, all tax statements shall be sent to the address designated by Buyer. 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 said tax statement by the Klamath County tax collector.

8. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of its 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 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, with no express, implied, or other warranties by Seller.

9. **Consent to Assignment:** Buyer shall not assign this agreement, Buyer's rights thereunder, or in the property covered thereby without the written consent of Seller. Such consent shall not be unreasonably withheld. It shall be considered reasonable for Seller to withhold consent to assignment in the event that such transaction does not include either payment in full of the underlying contract owing to the Oregon Department of Veterans' Affairs or a novation whereby the assignee is substituted with reference to all rights and liabilities under the said contract. 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 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 referred to hereinafter, or make 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 Seller, shall, at his option, have the following rights, in addition to other remedies provided under Oregon law:

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 Buyer as against Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above described and all other rights acquired by Buyer hereunder shall revert to and revest in 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 moneys 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. 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 all 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 Seller's security

interest herein, and in the event possession is so taken by Seller, Seller shall not be deemed to have waived Seller's 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 thereof 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 owing on the contract to the Oregon Department of Veterans' Affairs, and performance of the obligations contained therein. Buyer shall pay to the Oregon Department of Veterans' Affairs all sums due as they come due pursuant to the terms of the ODVA contract, on the date and in the amounts required until the entire balance is paid in full.

In addition to the amounts states above, this contract secures payment of the Judgment rendered in the Circuit Court for Klamath County, Oregon in Case No. 9900679CV in the principal sum of \$67,830.83, plus interest at 9%, pursuant to the terms of the Judgment, which Judgment is expressly incorporated herein by this reference.

17. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that the property conveyed by the within Land Sale Contract does not include any personal property, excepting that property conveyed in the contract between Seller and the Oregon Department of Veterans' Affairs, either located on ~~or located on~~ the real property subject to this agreement.

18. **Assumption of Contract:** It is understood by and between the parties that the real property being conveyed by the within instrument is encumbered by a certain contract, including the terms and provisions thereof, more particularly described herein, owing to the Oregon Department of Veterans' Affairs. Buyer does assume the Oregon Department of Veterans' Affairs

EXHIBIT "A"

A tract of land situated in the SW $\frac{1}{4}$ of Section 21, T 40 S., R. 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at a point from which the east 1/4 corner of said Section 21 bears N. 72°53'24" E. 4666.77 feet and the southeast corner of a potato cellar bears N. 14°33'10" W. 22.3 feet; thence S. 49°10'30" W. 132.51 feet to a point from which the southwest corner of said potato cellar bears S. 67°36' W. 63.3 feet; thence South 189.73 feet to the north line of the John Hess property; thence East along said line 100.00 feet; thence North 276.12 feet to the point of beginning, containing 0.53 acres, more or less; Together with the right to construct and maintain a water line from the present well house, (from which the east 1/4 corner of said section 21 bears N. 72°42'49" E. 4202.32 feet) to the above described tract to land. The bearings of the above tract of land are based on a solar observation. The above tract of land is subject to all easements of record or apparent; Also subject to a road easement over and across to Fred Hess and Paul Hess. A tract of land situated in Sections 20, 21, 28, and 29, all in T. 40 S., R. 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at the point of intersection of the northeasterly right of way line of State Highway No. 39 (Merrill Highway) and the section line common to said section 28 and 29; thence Northwesterly along said Northeasterly right of way line to the West line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 20; thence Northerly along the West line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 20 to the centerline of the U.S.B.R. drain; thence Easterly along said drain to the section line common to said sections 20 and 21; thence East to the East line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section 21; thence Southerly along the East line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section 21 and the east line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28 to the southwesterly right of way line of the Southern Pacific Railroad; thence southeasterly along said railroad right of way line to the south line of the NW $\frac{1}{4}$ of said section 28; thence Westerly along the South line of the said NW $\frac{1}{4}$ to the Southwest corner of the NW $\frac{1}{4}$ of said section 28; thence Northerly along the West line of the NW $\frac{1}{4}$ of said Section 28 to the Point of Beginning. The above described tract of land includes the right of Fred Hess, John Hess and Paul Hess, their heirs or assigns to use and maintain the existing road beginning at the intersection of Highway 39 and the line common to sections 28 and 29, T. 40 S., R. 10 E.W.M., running thence Northerly and Easterly to the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21.

EXHIBIT "A"

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SAVING AND EXCEPTING, a Tract of land situate in the NW $\frac{1}{4}$ of Section 28, T. 40 S.R. 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at the intersection of the East line of the NW $\frac{1}{4}$ of said Section 28 with the Northerly right of way line of State Highway No. 39; thence North along said East line 1744 feet more or less to the centerline of an irrigation ditch; thence S. 54°34' W. along said centerline 240 feet more or less; thence leaving said centerline; N. 81°32'41" W., 46.22 feet to the centerline of the U.S. U.R. Drain; thence Southwesterly along the centerline of said drain, the following courses and distances: S. 08°27'19" W. 865 feet; S. 38°35'09" W. 293 feet more or less to said Northerly right of way line of State Highway No. 39; thence S. 46°17'55" E., along said right of way line 762 feet more or less to the point of beginning.

SAVING AND EXCEPTING, All that portion of the NW $\frac{1}{4}$ of Section 28, Township 40 South, Range 10 E.W.M., which lies Southwesterly of the Southwesterly line of the Southern Pacific Railroad right of way.

The following described real property situate in Klamath County, Oregon:

A tract of land situated in Section 21, Township 40 South, Range 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at the Northwest corner of the SW $\frac{1}{4}$ of said Section 21; thence Southerly along the West line of the SW $\frac{1}{4}$ of said Section 21 to the centerline of the U.S.B.R. drain; thence East to the Westerly bank of Lost River, also being the right bank of said Lost River; thence Northerly and Westerly along the said right bank to the West line of said Section 21; thence Southerly to the point of beginning.

EXCEPTING THEREFROM the following parcels of land:

PARCEL 1: A tract of land situated in the SW $\frac{1}{4}$ of Section 21, Township 40 South, Range 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at a point from which the East quarter corner of said Section 21 bears N 72°53'24" E. 4666.77 feet and the Southeast corner of a potato cellar bears N. 14°33'30" W. 22.3 feet; thence S. 49°10'30" W. 132.51 feet to a point from which the Southwest corner of said potato cellar bears S. 67°36' W. 63.3 feet; thence South 189.73 feet to the North line of the John Hess property; thence East along said line 100.00 feet; thence North 276.12 feet to the point of beginning.

EXHIBIT "A"

Page 2 of 3

PARCEL 2: A tract of land situated in the SW $\frac{1}{4}$ of Section 21, Township 40 South, Range 10 E.W.M., Klamath County, Oregon, more particularly described as follows: Beginning at a point from which the East quarter corner of said Section 21 bears N. 69°53'25" E. 4178.84 feet and the Southeast corner of a barn bears S. 84°30'30" W. 91.3 feet; thence East 100.0 feet; thence South 212.36 feet to the North line of the Paul Hess property; thence West along said line 100.00 feet; thence North 212.36 to the point of beginning.

PARCEL 3: A tract of land situated in the S $\frac{1}{2}$ of Section 21, T40S, R10E, W12E, Klamath County, Oregon, more particularly described as follows:

Beginning at a point from which the E $\frac{1}{2}$ corner of said Section 21 bears N68°00'43"E 4124.07 feet; thence South 105 feet to the Southeast corner of a tract of land described as Parcel 1 in Volume M76-4925, as recorded in the Klamath County deed records; thence East 1692 feet, more or less, to the Westerly line of Lost River; thence Northwesterly, along said Westerly line to a point which bears East of the point of beginning; thence West to the point of beginning, containing 4 acres, more or less.

TOGETHER with the following described mobile home which is firmly affixed to the property:

1975 CONCORD 14' x 60' Serial No. 295450S3226.

29355

contract and the obligations contained therein. Buyer is to pay the obligations under that contract directly. In so assuming the said contract, Buyer shall also be entitled to receive all benefits related thereto.

19. **Representation By Counsel:** The parties understand and agree that this contract was prepared by counsel for both Seller and Buyer. Seller and Buyer have been advised to seek legal and financial counsel, and by executing this agreement acknowledged that they have done so to their satisfaction.

IN WITNESS WHEREOF the parties have caused this agreement to be executed as of the day and year first above written.

SELLER:

BUYER:

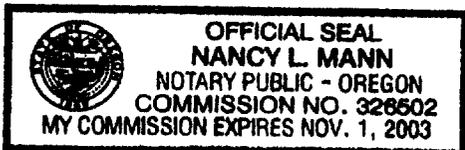
Sam A Henzel
Thurston K Henzel

James M Evans
Trudi D Evans

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named Sam A. Henzel and acknowledged the foregoing instrument to be his voluntary act and deed.

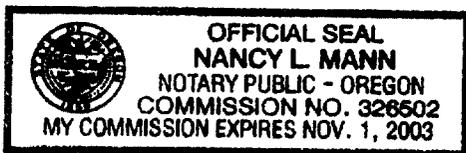
Dated before me this 20 day of March, 2002



Nancy L Mann
NOTARY PUBLIC FOR OREGON
My commission expires: 11-1-03

PERSONALLY APPEARED the above-named Thurston K. Henzel and acknowledged the foregoing instrument to be his voluntary act and deed.

Dated before me this 20 day of March, 2002



Nancy L Mann
NOTARY PUBLIC FOR OREGON
My commission expires: 11-1-03

Acknowledgment in an Individual Capacity

State of OREGON

County of Klamath

This instrument was acknowledged before me on May 14, 2002 by James M Evans and Trudi D Evans

[Signature]
Notary Public - State of Oregon

My commission expires: November 19, 2005

