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Vol M02 Page 50025

mtc 5583b-KR

Seller's Name and Address: Art Davina  
8881 Aurora Court, Klamath Falls, OR 97603

Buyer's Name and Address: E & K Majors Enterprises, LLC  
5474 Villa Dr., Klamath Falls, Oregon 97603

After Recording Return to: AmeriTitle Collection #55836  
222 S. 6th St., Klamath Falls, OR 97601

Until Change is Requested  
Send Tax Statements to: Art Davina  
8881 Aurora Court, Klamath Falls, OR 97603

The true and actual  
consideration stated in this  
instrument is: \$ 450,000.00 .

State of Oregon, County of Klamath  
Recorded 09/04/2002 11:12 a. m.  
Vol M02, Pg 50025-35  
Linda Smith, County Clerk  
Fee \$ 71.00 # of Pgs 11

**LAND SALE CONTRACT**

**THIS CONTRACT** is made and entered into this 3rd day of September, 2002, by and between **ART DAVINA**, hereinafter called "Seller", and **E & K MAJORS ENTERPRISES, LLC**, 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 Buyer and Buyer agrees to buy from Seller for the price and on the terms and conditions set forth hereafter all of the real property situate in the County of Klamath, State of Oregon, and more particularly described on EXHIBIT "A" LEGAL DESCRIPTIONS, attached hereto and incorporated herein by reference 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 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 pursuant to this agreement as of the 3rd day of September, 2002.

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. **Purchase Price and Payments:**

a) The purchase price for the interest conveyed is the sum of **Four Hundred Fifty Thousand Dollars (\$450,000.00)** which such sum shall be payable in monthly installments (amortized over a 25 year term) in the sum of **Three Thousand Four Hundred Seventy Three and seventeen Hundredths Dollars (\$3,473.17)** per month including interest at the rate of Eight percent (8.0%) per annum on the unpaid balance; the first of such payments shall be payable on the 1st day of October, 2002, with a further and like installment payable on the same 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, such payments shall 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.

b) The parties agree that the paint booth and equipment is included within the property conveyed at a sale price in the sum of \$500.00.

4. **Late Payment Penalty:** In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of One Hundred Seventy Three and sixty six Hundredths Dollars (\$173.66), (Five percent of the monthly payment due) in addition to the regularly scheduled payments set forth herein 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. The escrow agent is authorized to add such late fee onto the balance being collected, which such charge shall be shown only as an additional charge to Buyer and not as a credit to either interest or principal.

5. **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 (in accordance with the procedure set out hereinabove), 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.

6. **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.

7. **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.

8. **Transfer of Title:** Seller shall, upon the execution hereof, make and execute in favor of Buyer a good and sufficient deed in statutory Special Warranty form 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, in escrow at AmeriTitle, 222 South Sixth Street, Klamath Falls, Oregon, and shall enter into written escrow instructions in a form satisfactory to said escrow holder and the parties hereto, instructing 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.

9. **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, with no express, implied, or other warranties by Seller.

**10. 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. 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.

**11. Time of Essence:** It is understood and agreed between the parties that time is of the essence of this contract.

**12. Default:**

A. In case Buyer shall fail to make the payments aforesaid, 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 re-vest 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.

B. Cross Default Provision: This agreement is entered into by and between the parties in accordance with a number of related agreements, including but not limited to the following:

1. Stock Redemption Agreement regarding stock of Arthur W. Davina
2. Stock Redemption Agreement regarding stock of Mary M. Davina
3. Promissory Note wherein Arthur W. Davina is promisee
4. Promissory Note wherein Mary M. Davina is promisee
5. Land Sale Contract regarding certain premises civilly described as 4343 Highway 39, Klamath Falls, Oregon
6. Lease as between E & K Majors Enterprises, LLC as lessor and Sunny D Manufacturing Co., Inc., as lessee
7. Employment Agreement as between Sunny D Manufacturing Co., as employer and Arthur W. Davina as employee
8. Employment Agreement as between Sunny D Manufacturing Co., Inc. as employer and Edward Eric Majors as employee

It is agreed by and between the parties that a default in performance of any of the said agreements shall constitute a default in performance of all others of the said agreements, and entitling the nondefaulting party to exercise any and all remedies contained therein.

13. **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.

14. **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.

15. **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.

16. **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.

17. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that no personal property is conveyed with this agreement.

18. **Guaranty:**

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, and in consideration of any loan or other financial accommodation hereto or hereafter at any time made or granted to E & K Majors Enterprises, LLC (hereinafter, together with its successors and assigns referred to as "E & K Majors Enterprises, LLC"), the undersigned Edward Eric Majors agrees that:

Undersigned hereby unconditionally guarantees the full and prompt payment when due, whether by acceleration or otherwise, and at all times hereafter, of the terms and conditions of the foregoing Land Sale Contract and the contemporaneously executed and incorporated related agreements.

Undersigned further unconditionally guarantees the faithful, prompt and complete compliance by E & K Majors Enterprises, LLC with all terms and conditions of the said instruments securing payment of the liabilities and all other agreements, documents and instruments securing payment of the liabilities (such instruments collectively referred to hereinafter as the "Redemption Documents") and the payment of all costs, expenses, charges and other expenditures required to be made by E & K Majors Enterprises, LLC, or which E & K Majors Enterprises, LLC agrees to make, under the terms and provisions of any document constituting a part of this transaction.

In the event E & K Majors Enterprises, LLC fails to perform its covenants, agreements and undertakings as provided in any Redemption Document, the undersigned shall immediately upon the written demand of Davina promptly, and with due diligence, do and perform for the benefit of Davina all of such covenants, agreements and undertakings as if they constituted the direct and primary obligations of the undersigned.

The obligations of the undersigned hereunder are independent of the obligations of E & K Majors Enterprises, LLC, and a separate action or actions for payment, damages or performance may be brought and prosecuted against the undersigned, whether or not an action is brought against E & K Majors Enterprises, LLC or the security for E & K Majors Enterprises, LLC's obligations, and whether or not E & K Majors Enterprises, LLC be joined in any such action or actions, and whether or not notice be given or demand be made upon E & K Majors Enterprises, LLC.

Davina may, without demand or notice of any kind, at any time when any amount shall be due and payable hereunder, appropriate and apply toward the payment of such amount, and in such order of application as Davina may from time to time elect, any property, balances, credits, deposits, accounts, items or monies of such undersigned in the possession or control of Davina for any purpose.

Davina may, from time to time, without notice to the undersigned and without affecting, diminishing or releasing the liability of the undersigned:

- (a) Retain or obtain a security interest in any property to secure any of the liabilities or any obligation hereunder;
- (b) Retain or obtain the primary or secondary liability of any party or parties, in addition to the undersigned, with respect to any of the liabilities;
- (c) Extend or renew for any period (whether or not longer than the original period), alter or exchange any of the liabilities;
- (d) Release or compromise any liability of any of the undersigned hereunder or any liability of any other party or parties primarily or secondarily liable on any of the liabilities;
- (e) Release its security interest, if any, in all or any property securing any of the liabilities or any obligation hereunder and permit any substitution or exchange for any such property;
- (f) Resort to the undersigned for payment of any of the liabilities, or any portion thereof, whether or not Davina shall have resorted to any property securing any of the liabilities or any obligation hereunder or shall have proceeded against any other of the undersigned or any other party primarily or secondarily liable on any of the liabilities; and
- (g) Alter, extend, change, modify, release or cancel any covenant, agreement or provision contained in any or all Redemption Documents.

Any amount received by Davina from whatever source and applied by Davina toward the payment of the liabilities shall be applied in such order of application as Davina may from time to time elect.

The undersigned hereby expressly waives:

- (a) Notice of the acceptance of this Guaranty;
- (b) Notice of the existence or creation of any Redemption Document or all or any of the liabilities;
- (c) Presentment, demand, notice of dishonor, protest, and all other notices whatever; and
- (d) All diligence on the part of Davina in collection or protection of, or realization upon, any security for any of the liabilities or in enforcing any remedy available to it under any Redemption Document.

The creation or existence from time to time of liabilities in excess of the amount to which the right of recovery under this Guaranty is limited is hereby authorized, without notice to the undersigned, and shall in no way affect or impair this Guaranty.

Davina may, without notice of any kind, sell assign or transfer all or any of the liabilities, and in such event each and every immediate and successive assignee, transferee, or holder of all or any of the liabilities, shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder, as fully as if such assignee, transferee or holder were herein by name specifically given such rights, powers and benefits. Davina shall have an unimpaired right, prior and superior to that of any such assignee, transferee or holder, to enforce this Guaranty for the benefit of Davina, as to so much of the liabilities as Davina has not sold, assigned or transferred.

No delay or failure on the part of Davina in the exercise of any right or remedy shall operate as a waiver thereof and no single or partial exercise by Davina of any right or remedy herein shall preclude other or further exercise thereof or the exercise of any other right or remedy whether contained herein or in any other Redemption Document. No action of Davina permitted hereunder shall in any way impair or affect this Guaranty. No right or power of E & K Majors Enterprises, LLC or any one else to assert any claim or defense as to the invalidity or unenforceability of any Redemption Document or of the liabilities shall impair or affect the obligations of the undersigned hereunder. Until all of the liabilities shall have been paid to Davina in full, the undersigned shall have no right to subrogation, and until such time the undersigned waives any right to enforce any remedy which the undersigned now has or may hereafter have against E & K Majors Enterprises, LLC, and waives any benefit of any right to participate in any security now or hereafter held by Davina.

It is fully understood that until each and every one of the covenants and agreements of this Guaranty are fully performed, the undersigned's obligations shall not be released, in whole or in part, by any action or thing which might, but for this provision of this instrument, be deemed a legal or equitable discharge of a surety or guarantor, or by reason of any waiver, extension, modification, forbearance of delay or other act or omission of Davina or its failure to proceed promptly or otherwise, or by reason of any action taken or omitted by Davina, whether or not such action or failure to act varies or increases the risk of or

affects the rights or remedies of the undersigned, or by reason of any further dealings between E & K Majors Enterprises, LLC, Davina, or any guarantor, and the undersigned hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing acts, omissions, things, agreements or waivers of any of them; it being the purpose and intent of the parties hereto that the covenants, agreements and all obligations hereunder are absolute, unconditional and irrevocable under any and all circumstances except as provided hereinafter.

Any notice, demand or request by Davina, Davina's successors or assigns, to the undersigned shall be in writing, and shall be deemed to have been duly given or made if either delivered personally to the undersigned or mailed by certified or registered mail to the undersigned at the address for such guarantor specified below:

Edward Eric Majors  
5474 Villa Dr.  
Klamath Falls, Oregon 97603

Davina shall be entitled to assign this Guaranty and all of its rights, privileges, interest and remedies hereunder to any other person, firm, entity, bank or corporation whatsoever, and such assignee shall be entitled to the benefits of this Guaranty and to exercise all such rights, interest and remedies as fully as Davina.

Provided that no default or event of default then exists under any Redemption Documents, this Guaranty shall terminate when, and only when, each of the following conditions shall have been met:

Davina shall have been paid in full, including interest thereon, for all liabilities. When such conditions have been met, Davina will upon request furnish written cancellation of this Guaranty.

This Guaranty shall inure to the benefit of Davina, Davina's successors and assigns, and shall bind each of the undersigned jointly and severally, together with their heirs, legal representatives, successors and assigns. If more than one party shall execute this Guaranty, the term "undersigned" shall mean all parties executing this Guaranty, and all such parties shall be jointly and severally obligated hereunder.

This Guaranty shall be construed in accordance with the laws of the State of Oregon and such laws shall govern the interpretation, construction and enforcement hereof. Whenever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law such provision shall be ineffective to the extent of such prohibition or invalidity.

**19. Representation By Attorney:** The parties hereto acknowledge that this contract was prepared by NEAL G. BUCHANAN,

Attorney at Law, 435 Oak Avenue, Klamath Falls, Oregon 97601, solely on behalf of the Seller / Vendor and that said attorney in no way represents the Buyer / Vendee nor the Guarantor, each of whom has been advised to seek the advice of his independent counsel and tax advisor.

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

**SELLER:**

  
ART DAVINA

**BUYER:**

E & K MAJORS ENTERPRISES, LLC

by: 

by: Krisalou Majors

**GUARANTOR:**

  
EDWARD ERIC MAJORS

STATE OF OREGON, County of Klamath ) ss.

PERSONALLY APPEARED the above-named Art Davina and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 3rd day of September, 2002.

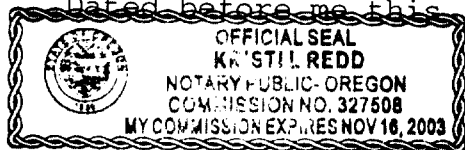


  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON, County of Klamath ) ss.

This instrument was acknowledged before me on the 3rd day of September, 2002, by Edward E. Majors & Krisalou Majors as Managers/Members of E & K Majors Enterprises, LLC, an Oregon Limited Liability Company on behalf of whom the instrument was executed.

Dated before me this 3rd day of September, 2002.

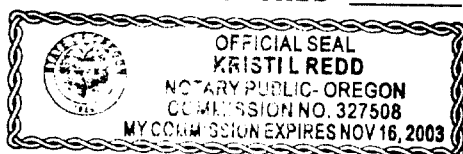


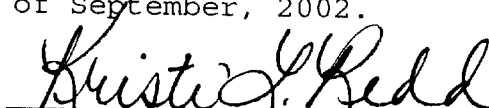
  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON, County of Klamath ) ss.

PERSONALLY APPEARED the above-named Edward Eric Majors and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 3rd day of September, 2002.



  
NOTARY PUBLIC FOR OREGON

PARCEL 1:

A tract of land situated in the SW1/4 SW1/4 of Section 7, Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at an iron pin on the East right of way line of the Klamath Falls-Merrill Highway from which the Southwest corner of said Section 7 bears South 910.6 feet and North 89 degrees 27' West 30.00 feet distant; thence South along the said East right of way line of said Highway 175.00 feet; thence East at right angles to said Highway right of way line to the centerline of the Enterprise Irrigation District Canal; thence Northeasterly along the centerline of said canal to a point which is East 965.19 feet from the point of beginning; thence West 965.19 feet to the point of beginning, with bearings based on Deed Volume M65, page 3502, as recorded in the Klamath County Deed Records.

Tax Account No: 3910 007CC 00400 (Portion)

PARCEL 2:

A tract of land situated in the SW1/4 SW1/4 of Section 7, Township 39 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at a point on the East right of way line of the Klamath Falls-Merrill Highway from which the Southwest corner of said Section 7 bears South 745.6 feet and North 89 degrees 26' West 30.00 feet distant; said point also being the the Southwest corner of that tract of land described in Deed Volume M76, page 6844, as recorded in the Klamath County Deed Records; thence South along said East right of way line of said Highway 20.0 feet; thence East at right angles to said Highway right of way line 335.0 feet; thence North parallel to said highway right of way line 20.0 feet; thence West 335.0 feet to the point of beginning, with bearings based on Deed Volume M65, page 3502, as recorded in the Klamath County Deed Records.

Tax Account No: 3910 007CC 00400 (Portion)

PARCEL 3:

All that portion of the SW1/4 SW1/4 of Section 7, Township 39 South, Range 10, East of the Willamette Meridian, Klamath County, Oregon lying Southerly and Easterly of those certain parcels of land described in instrument recorded December 30, 1976 in Volume M76, page 20951, Microfilm Records of Klamath County, Oregon and Northerly of that certain parcel of land described in instrument recorded August 29, 1988 in Volume M88, page 13921, Microfilm Records of Klamath County, Oregon.

Tax Account No: 3910 007CC 00500