

When recorded return to:

AmeriTitle

222 South 6th St

Klamath Falls, OR 97601

Vol M02, Pg 61075-80

Linda Smith, County Clerk

Fee \$ 46<sup>00</sup> # of Pgs 6

Vol M02 Page 61075

MTC 58708

'02 OCT 25 PM3:00

**LAND CONTRACT - CONTRACT FOR DEED****Parties:**

BE IT KNOWN, this LAND CONTRACT is entered into and made between the undersigned:  
Otto N. and Mary C. Elliott, husband & wife ("Buyer"), whether one or more, whose address is

P.O. Box 338 Seal Rock Oregon 97376 and  
Floyd N. and Mildred F. Babcock, Trustees of \* ("Seller"), whether one or more whose address  
 is 2846 N.E. Purcell blvd. Bend, Oregon 97701 on this date

\_\_\_\_\_, 20\_\_\_\_. All Buyers, if more than one, covenants and agrees that their  
 obligations and liability under this Land Contract shall be joint and several. \*the FLOYD N. AND MILDRED F. BABCOCK  
 LIVING TRUST AGREEMENT, DATED MAY 11, 1994

NOW THEREFORE, the Parties hereto, intending to be legally bound in consideration of the mutual Covenants and agreements  
 set forth herein, hereby agree as follows:

**Premises:**

Seller hereby agrees to convey, sell, assign, set over and transfer unto the Buyer all of Seller's Right, Title, and Interest in the  
 property known as and/or situated at: 1751 Yoke Road, in the City of  
N/A, County of Klamath, State of Oregon, more particularly  
 described as:

Blk 1 Lot 14 Wagontrail Acreages #2

("the premises") together with all rights of ownership, tenements, improvements and appurtenances, if any, now on the Premises,  
 and subject to all easements, conditions, encumbrances, rights, whether or not such easements, conditions, encumbrances, and  
 rights are of record, zoning laws and ordinances, restrictions on use, restrictions on building and any other limitations, if any,  
 affecting the Premises, and all permanently attached fixtures which shall include but shall not be limited to windows, storm or  
 otherwise, plumbing, lights, awnings, central vacuum, ceiling fans, smoke detectors and

SEE SALES AGREEMENT # 951515

\_\_\_\_\_, now attached to or on the  
 premises. Furthermore, subject to the following conditions:

**Terms of Payment:**

Buyer hereby purchases said Premises from Seller and agrees to pay Seller the said Principal Sum of  
one hundred fifty three thousand Dollars (\$153,000.00) in the manner as follows:

(1) Fifty three thousand Dollars (\$53,000.00) on delivery of this Contract, the receipt  
 of which is hereby confessed and acknowledged by said Seller.

(2) The unpaid balance of one hundred thousand Dollars (\$100,000.00), the sum which  
 is secured by this Contract, shall be paid as follows: (check one)

a. ☐ Payable, with no interest applied, in \_\_\_\_\_ (\_\_\_\_\_) monthly  
 installments of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) each, with the first  
 installment being due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and thereafter an equal  
 amount on the same day of each month until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ when the final  
 payment of the entire indebtedness evidenced hereby shall be due.

b. ☒ Payable, together with interest on the whole sum that shall be from time to time unpaid, at the rate of  
Eight percent (8%) per annum, payable in the amount of  
seven hundred thirty three Dollars (\$733.76) per month beginning on the 5th day of  
November, 2002 and continuing on the same day of each month thereafter until the entire  
 indebtedness evidenced hereby is fully paid. Any remaining balance as of November  
1, 2003 shall be due and payable November 5, 2003

c. ☐ Payable together with interest on the whole sum that shall be from time to time unpaid, at the rate of  
 \_\_\_\_\_ percent (\_\_\_\_%) per annum, payable in the amount of \_\_\_\_\_  
 Dollars (\$\_\_\_\_\_) per month beginning on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and ending on  
 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at which time the remaining principal and interest of the entire

indebtedness evidenced hereby will be immediately due and payable.

If interest is charged, said interest shall be computed monthly and first deducted from payment and the balance of payment shall then be applied on principal.

Buyer does covenant to make payment to Seller at:

Amerititle Collections 222 S. 6 th St. Klamath Falls  
Oregon 97601 P.O. BOX 5017 or such other place as Seller may designate in writing. All payments made to Seller by Buyer shall be in the form of cash, cashier's check, money order or certified check drawn on a financial institution whose deposits are insured by a federal agency. Unless otherwise stated in this Contract, all payments by Buyer to Seller shall be in the form(s) herein specified.

Payments received from Buyer by Seller are to first be applied by Seller to the interest, if any, and then principal owing, if any, on the Premises.

**Late Charges:**

If Buyer fails to pay, any installment due hereunder, within fifteen (15) days after the due date of said installment, Buyer shall be required to pay an additional charge of FIVE percent (5 %) of the late installment as allowed by applicable OREGON STATE law. Said additional charge shall be immediately due and paid to Seller at the time of payment of the past due installment.

**Returned Check and Stop Payment:**

In the event any instrument offered by Buyer to Seller for any amount due under this Contract is returned for lack of sufficient funds, a "stop payment" or any other reason, Buyer shall be liable to and pay Seller a returned check charge of Thirtyeight Dollars (\$38.00), which does not exceed the maximum amount allowed by applicable OREGON STATE law.

**Early Payment By Buyer:**

Buyer shall have the right to accelerate the payment of the indebtedness, and to pay the whole, or any part of the balance remaining unpaid on this Contract, at any time before the same, by the terms hereof, becomes due and payable.

**Date of Payments:**

The date of payment, if sent by mail, shall be determined by the postmark on the envelope, or the date of the paying instrument, whichever is later; or the date of actual delivery if hand delivered.

**Notices:**

All written notices permitted or required by this Contract to be given to the parties hereto shall identify this Contract by DATE, PARTIES, and DESCRIPTION and shall be binding and deemed sufficiently served upon said parties respectively when sent by First Class mail of the United States Postal Service, pre-paid, certified, return receipt requested to the Seller and Buyer at the following addresses:

- Seller at: 2846 N.E. Purcell Blvd Bend, Or. 97701
- Buyer at: 1751 Yoke Road LaPine Or. 97739

Either party may change such location by giving written notice to the other Party specifying the new location.

**Improvements:**

All buildings, trees or other improvements now on said Premises, or hereafter made or placed thereon, shall be considered a part of the Premises, and shall be security for the performance of this Contract, and may not be removed from Premises, except as may be necessary to improve Premises by constructing a driveway or building site. Buyer shall not commit, or suffer any other person to commit, any waste or damage to Premises and shall keep Premises in its new and/or improved condition.

**Buyer's Acceptance of Premises – "As-Is":**

Buyer Accepts Premises as-is, and agrees that no verbal promises have been made which do not appear in writing. Buyer assumes full responsibility as to suitability of Premises for any particular purpose.

**Taxes and Adjustments:**

While this Contract is in effect, Buyer shall promptly pay, when due, all taxes and assessments of every nature, which shall

become a lien on Premises after the date hereof, however, the current year's taxes, if any, shall be prorated, and shall be treated as though paid in arrears. Seller reserves the right to pay any taxes or assessments, and to bill Buyer for full reimbursement, and if such become delinquent thirty days past notification to Buyer, then the amount expended shall become a lien on the Premises, and Seller may add said amount to the principal balance remaining on this Contract, said amount to be due at once, and to bear interest at Twelve percent (12 %) per annum.

**Insurance:**

While this Contract is in effect, Buyer shall, in an amount of not less than two hundred thousand Dollars (\$200,000.00), keep any buildings on Premises insured, against loss by fire and windstorm, naming Seller as additional insured. All policies against loss by fire and windstorm shall be deposited with Seller. Should Buyer fail to keep said buildings insured, Seller may pay the same and have the buildings insured and the amounts thus expended shall be treated in the same manner as with unpaid taxes, with Seller to bill Buyer for full reimbursement, and if such become delinquent thirty days past notification to Buyer, then the amount expended shall become a lien on the Premises, and Seller may add said amount to the principal balance remaining on this Contract, said amount to be due at once, and to bear interest at TWELVE percent (12 %) per annum.

Initials: Buyer: O.N.E.  
MCE

In the event any insurance proceeds become available due to loss or damage to the Premises, the Buyer may elect to repair or rebuild any or all damaged parts of the premises providing Buyer gives Seller written notice of Buyer's election to repair or rebuild Premises within sixty (60) days of said loss or damage. If Buyer elects to repair or rebuild Premises, and thus notifies Seller as herein stipulated, the insurance proceeds herein mentioned shall be used for such purpose. Any unused or remaining amount of said insurance proceeds, if any, remaining after completion of said repairing or rebuilding, or all of said insurance proceeds if the Buyer elects not to repair or rebuild the Premises, shall be applied in the following manner:

- (1) First, toward the satisfaction of any existing defaults under the terms of this contract;
- (2) Second, as a prepayment on the principal balance of any remaining indebtedness secured by this Contract with no such prepayment deferring the time for payment of any remaining payments required by this Contract;
- (3) Third, the remaining proceeds, if any, after the satisfaction of defaults and the prepayment on the principal balance, shall be paid to Buyer;

**Insurance of Buyer's Personal Property Within or On Premises:**

Both parties expressly agree that Buyer shall be solely responsible for obtaining insurance on Buyer's personal property and/or belongings situated within or on the Premises. Buyer hereby releases Seller of any responsibility whatsoever for the loss of Buyer's personal property or belongings situated within or on the Premises.

**Default / Breach By Buyer:**

If Buyer is in default due to Buyer's failure to perform or comply with the covenants, conditions or terms of this Contract, Seller may give Buyer written notice specifying the default which has occurred and inform Buyer in such notice that such default must be cured within fifteen (15) days from the date of the Notice. In the event the default is not cured in the fifteen (15) day time period, then Seller may give Buyer written notice specifying Buyer's failure to cure the default and notifying Buyer that if the default continues for a period of an additional fifteen (15) days after service of the notice of failure to cure, that without further notice, this Contract shall immediately thereafter be void, cancelled and forfeit, and all improvements, buildings and all payments made on this Contract, including taxes and assessments, shall be forfeited to Seller as liquidated damages. In addition, Seller shall be entitled to recover such other damages caused by the acts or negligence of Buyer as they may be due, and Seller shall be entitled to immediate peaceable possession of premises.

Initials: Buyer: O.N.E.  
MCE

Seller may, on default being made, unless prohibited by applicable State law, ACCELERATE the entire remaining indebtedness secured by this Contract, whereby the whole sum remaining unpaid under this Contract, including the entire principal balance and unpaid interest, shall become immediately due and payable, notwithstanding that the date previously specified in this Contract for full payment of the whole sum may not then have expired, and Seller may take appropriate action against Buyer for collection of same according to the laws of the State of OREGON.

Initials: Buyer: O.N.E.  
MCE

In the event of default and the remaining indebtedness being accelerated, Buyer shall have the right of reinstatement as allowed

under the laws of the State of OREGON, provided that Buyer:

- a. Pays all sums due under this Contract as if no acceleration had occurred;
- b. Cures any other then existing defaults due to Buyer's failure to perform or comply with the covenants, conditions or terms of this Contract;
- c. Pays all expenses incurred in enforcing this Contract, including, but not limited to, reasonable attorneys' fees, and all other fees incurred for the purpose of protecting Seller's interest in the Premises and Seller's rights under this Contract.

Upon reinstatement by Buyer, this Contract and the obligations secured by this Contract shall remain in full force and effect as if no acceleration had occurred.

In the event of default, Buyer shall pay to Seller, Seller's reasonable and actual attorneys' fees and expenses incurred by Seller in enforcement of any rights of Seller. All attorneys' fees shall be payable prior to Buyer being deemed to have corrected or cured any such default.

In the event of termination of this Contract and Buyer's failure to vacate the Premises, it is expressly agreed by all parties that Seller shall have the right to obtain possession by any legal means necessary, including action against Buyer in an appropriate court of law.

**Waiver:**

For the purposes of this Contract, the word "may" gives sole discretion without any obligation to take action, and thus, failure of Seller to exercise his/her rights under this Contract shall not be deemed as a waiver by Seller to exercise said rights at any time. Seller may enforce his/her (Seller's) rights under this Contract according to the laws of the State of OREGON.

**Default / Breach By Seller:**

If the Seller fails to perform any of the Covenants or Conditions contained in this contract, the aforesaid money paid by the Buyer, at the option of the Buyer, shall be returned to the Buyer on demand; or the Buyer shall have only the right of specific performance.

In the event the Seller shall default upon any now existing or future mortgage or land contract regarding the Premises, Buyer shall have the right to do the acts and/or make payments necessary to cure such default and shall be immediately and automatically reimbursed, for so doing, by receiving credit to this Contract, in the amount of the payment to cure such default, to be applied to the remaining indebtedness, whether due or to become due, secured by this Contract.

**Conveyance of Deed:**

If Buyer shall, in the time and manner above specified, make all the payments, observe and perform all covenants and conditions herein made and herein provided, Seller shall thereupon, at Seller's expense, by good and sufficient Warranty Deed, convey the Premises to Buyer on the conditions herein agreed, free and clear of any liens or encumbrances other than taxes and assessments for the current year, however, if permissible by applicable state law, the Deed shall be limited so as to except acts or negligence of parties other than Seller subsequent to the date of this Contract. In any event, Buyer hereby agrees to hold Seller harmless for any acts or negligence of parties other than Seller subsequent to the date of this Contract. Except for costs resulting from acts, negligence, or death of Seller, all cost of additional evidence of title shall be the obligation of Buyer.

**Possession of Premises:**

Possession of Premises may be taken by Buyer on the execution of this Contract. Buyer may enjoy peaceful enjoyment of Premises as long as Buyer is not in default of the covenants and conditions contained in this Contract, including the timely payment of monies stipulated herein.

**Buyer's Assignment:**

Buyer: (check one)

- a. ☐ May assign, sell, transfer or convey his/her (Buyer's) Interest in this Contract, any part thereof, or any Interest in the subject property, provided such assignment or conveyance shall not result in the probability of waste or other impairment of Seller's security in the Premises or the probability of default on behalf of Buyer as a result of any such assignment or

conveyance. Under no circumstances shall any assignment or conveyance release Buyer from his/her (Buyer's) obligations under this Contract unless Seller releases Buyer in writing. No assignment, however, shall be valid until written notice thereof has been given to Seller.

- b. ☒ May not assign, sell, transfer or convey his/her (Buyer's) Interest in this Contract, any part thereof, or any Interest in the subject property of this Contract without first securing the written consent of the Seller.

**Seller's Assignment and Subordination:**

Seller reserves the right to convey his/her (Seller's) Interest in the Premises, and this Contract. Seller may, during the lifetime of this Contract, place, continue and renew a mortgage on the Premises, which shall be a lien on the Premises, superior to the rights of Buyer, provided that on the date that any new or renewed mortgage commences, the principal amount of said mortgage is not greater than the principle amount due on this Contract at that time and under no circumstances shall said mortgage have a term beyond or scheduled date of satisfaction on a date later than this Contract is scheduled to be satisfied. Priority of lien for same shall be secured by giving written notice to Buyer within fifteen (15) days of the execution all such new mortgages and renewals containing the name and address of the lien holder, the rate of interest of such mortgage, the amount and due date of payments and maturity of principal.

**Eminent Domain:**

If the premises or any part thereof or any estate therein, or any other part of the premises materially affecting Buyer's use of the premise, shall be taken by eminent domain, this Contract shall terminate on the date when title vests pursuant to such taking. Any award from such taking shall be applied in the following manner:

- (1) First, toward the satisfaction of any existing defaults under the terms of this contract;
- (2) Second, as a payment on the principal balance of any remaining indebtedness secured by this Contract;
- (3) Third, the remaining proceeds, if any, after the satisfaction of defaults and the payment on the principal balance, shall be paid to Buyer;

Both Buyer and Seller expressly agree that in the event such award is insufficient in amount to secure Seller's interest in this Contract by compensating Seller, in full, for any then existing defaults under the terms of this contract, as well as, the principal balance of any remaining indebtedness secured by this Contract, then Buyer shall not be entitled to any part of the award for such taking or any payment in lieu thereof.

**Time:**

Buyer and Seller expressly understand and agree that time is of the essence of this Contract.

**Paragraph Headings:**

The headings of particular paragraphs and subparagraphs are inserted only for convenience and are not part of this Agreement and are not to act as a limitation on the scope of the particular paragraph to which the heading refers.

**Binding:**

Each and every provision in this Contract shall inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives, executors and administrators of each party, and all successors in the interest of the parties. No person shall have a right or cause of action arising or resulting from this agreement except those who are parties to it and their successors in interest.

**Entire Agreement:**

This document and any Attachments constitutes the final and entire Agreement between the parties hereto, and no promises or representations, other than those contained here and those implied by law, have been made by Seller or Buyer. Neither Seller or Buyer shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained unless made in writing and signed by both Seller and Buyer.

**Severability:**

The provisions of this Contract are severable and in the event any provision, clause, sentence, section or part thereof is held to be invalid, illegal, unconstitutional, inapplicable or unenforceable to any person or circumstances, such invalidity, illegality, unconstitutionality, inapplicability or unenforceability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, parts of the agreement or their application to Buyer or other persons or circumstances. It is understood and agreed that the terms, conditions and covenants of this Contract would have been made by both parties if such invalid, illegal,

unconstitutional, inapplicable or unenforceable provision, sentence, clause, section or part had not been included therein. To the extent that any portion of this Contract found to be invalid, illegal, unconstitutional, inapplicable or unenforceable may be valid by striking of certain words or phrases, such words or phrases shall be deemed to be stricken and the remainder of the provisions and the remainder of the other portions of this Contract shall remain in full force and effect. It is further agreed that this Contract may be executed in counterparts, each of which when considered together shall constitute the original agreement.

Additional Provisions:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Otto N. Elliott  
 BUYER

Mary C. Elliott  
 BUYER  
Michael J. Babcock Trustee  
 SELLER

SELLER Floyd N. Babcock Trustee

NOTARY

State of OREGON

County of DESCHUTES

On this 24TH day of OCTOBER, 20 02, before me, the undersigned Notary Public, personally appeared OTTO N. ELLIOTT AND MARY C. ELLIOTT and MARY C. ELLIOTT, TRUSTEE AND\*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who signed and executed the foregoing instrument in their authorized capacity.  
 My Commission Expires: 10/07/06

\* FLOYD N. BABCOCK, TRUSTEE WHO SIGNED BY  
 STAMP IN MY PRESENCE

