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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

ERNEST and ARLETTA HANNAN,
Plaintiffs,
v.
STATE OF OREGON, by and through the
Oregon Department of Land Conservation and
Development,
Defendant.

Case No. 06CV0401MA
DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
(ATTORNEY'S FEES ISSUE)
(Oral Argument Requested)

ORAL ARGUMENT REQUESTED

Defendant the State of Oregon requests oral argument and estimates that 30 minutes will be required. Official court reporting services are requested.

INTRODUCTION

Plaintiffs Ernest and Arletta Hannan moved for summary judgment. The State separately moved to dismiss the Complaint because plaintiffs' claim it is moot. Plaintiffs concede that their claim is moot. Therefore, the State's motion should be granted, plaintiffs' motion denied, and this case dismissed.

Plaintiffs seek attorney's fees and costs under Section 6 of Ballot Measure 37 codified at ORS 197.352 ("Measure 37"). Measure 37 permits recovery of "reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation." Plaintiffs cannot collect any compensation because their claim for compensation is moot. Therefore, plaintiffs will not incur any recoverable fees or costs.

1 Plaintiffs' alleged entitlement to attorney's fees does not present a justiciable
2 controversy. A justiciable controversy is a threshold requirement for jurisdiction, and the court
3 cannot render judgment where it lacks jurisdiction. Consequently, the Complaint should be
4 dismissed.

5 In support of this Response, the State relies upon the files and record of this case,
6 including without limitation the Complaint, Amended Answer, and the parties' memoranda on
7 defendant's Motion to Dismiss (Mootness), the Declaration of Bryan Gonzalez filed in support
8 of defendant's Reply in Support of Motion to Dismiss and this Response, and the following
9 points and authorities.

10 POINTS AND AUTHORITIES

11 I. Factual Background

12 The facts relating to plaintiffs' ownership and acquisition of the subject real property are
13 not in dispute. Nor is there any dispute concerning plaintiffs' Measure 37 demand to the State,
14 the State's original decision or the State's Amended Final Order. The parties also agree that the
15 legal consequence of these undisputed facts is to render moot the claim asserted in plaintiff's
16 Complaint.

17 Alva and Pearl Hannan purchased the property on October 11, 1971 by entering into a
18 land sale contract with the owners, Willis and Edith Carpenter.¹ On May 17, 1973, the Hannans
19 assigned their interest in the contract to their son and his wife, the claimants and plaintiffs Ernest
20 and Arletta Hannan.² Upon full performance of the contract, the Carpenters executed a warranty
21 deed in plaintiffs' favor on November 10, 1986 ("1986 deed").³

22

23

¹ As explained more fully below, plaintiffs established these facts concerning their ownership
24 only after the State issued its Final Order and plaintiffs filed this lawsuit. Declaration of Bryan
Gonzalez, Ex 7, pp 2-6.

25 ² *Id.*, p 7.

26 ³ Decl of Gonzalez, Ex 1, p 6; Ex 2, p 9; Ex 5, p 7.

1 Plaintiffs submitted a written demand to the State for compensation under Measure 37 on
2 May 26, 2005, supported by a “form” of land sale contract and the 1986 deed.⁴ The form did not
3 establish a conveyance of the property to Alva and Pearl Hannan because it was unsigned. ORS
4 93.020. Subsequently, plaintiffs submitted additional copies of the same form of land sale
5 contract and the 1986 deed, along with a copy of an earnest money receipt.⁵ The earnest money
6 receipt did not establish that Alva and Pearl Hannan owned the property or conveyed the
7 purported contract to plaintiffs. Consequently, at the time the Department of Land Conservation
8 and Development (DLCD) issued its draft staff report, the State could conclude only that
9 plaintiffs’ claim was valid based on the 1986 deed establishing an acquisition date of November
10 10, 1986.

11 The draft report acknowledged plaintiffs’ submission of the form of land sale contract
12 and the earnest money receipt. The report specifically explained that these documents were
13 insufficient to establish ownership by Alva and Pearl Hannan or acquisition by plaintiffs prior to
14 the 1986 deed.⁶ DLCD also noted that it had made several unsuccessful attempts to obtain
15 additional documentation.⁷

16 In response to the draft report, plaintiffs again submitted the same form of land sale
17 contract and the 1986 deed,⁸ giving the State no basis to alter its preliminary conclusion
18 concerning plaintiffs’ acquisition date. The State’s Final Order approved plaintiffs’ demand and
19 granted waiver relief as of the date of the 1986 deed.⁹

20

21 ⁴ Decl of Gonzalez, Ex 1.

22 ⁵ Decl of Gonzalez, Exs 2, 3 and 5. Copies of the same form of land sale contract, the 1986
deed, and the earnest money receipt are attached to the Complaint as Exhibits 2, 1 and 3.

23 ⁶ Decl of Gonzalez, Ex 4.

24 ⁷ *Id.*

25 ⁸ Decl of Gonzalez, Ex 5.

26 ⁹ Decl of Gonzalez, Ex 6; the full Final Order M 118516 is attached as Ex 1 to the State’s Motion
to Dismiss (Mootness).

1 Plaintiffs apparently obtained a “Chain of Title Report” from Western Title and Escrow
2 Company in December 2006, and forwarded a copy to the State.¹⁰ Western Title had located and
3 produced copies of (1) a Land Sale Contract, executed October 11, 1971 by Willis and Edith
4 Carpenter (Seller) and Alva and Pearl Hannan (Purchaser) and recorded April 13, 1972, as well
5 as (2) an Assignment of Land Sale Contract from Alva and Pearl Hannan to plaintiffs, executed
6 May 17, 1973 by Alva and Pearl Hannan, and recorded May 18, 1973.¹¹ These documents
7 establish acquisition of the property by plaintiffs on May 17, 1973. Had plaintiffs provided these
8 documents to the State with their demand or in response to the draft staff report, this lawsuit and
9 the expense to the State in preparing and issuing Amended Final Order M 118516 would have
10 been avoided.

11 **II. Plaintiffs’ Motion for Summary Judgment**

12 Plaintiffs do not seek judgment on the only claim alleged in the Complaint. Rather,
13 plaintiffs ask the court to enter “a judgment finding” for the purpose of supporting an award of
14 attorney’s fees under ORS 197.352 (6) (Pls’ MSJ, p 4, lns 2-6). Plaintiffs identify no legal basis
15 for entry of “a judgment finding” and the State is aware of none. Plaintiffs’ *claim* in this lawsuit
16 is moot (*id.*, p 3, lns 17-18).

17 **III. Attorney’s Fees**

18 Plaintiffs apparently contend they are entitled to attorney’s fees under Measure 37
19 because the State “got the date of plaintiffs acquisition wrong” in the Final Order and “conceded
20 this” in the Amended Final Order (Pls’ MSJ, p 3, lns 9-13). Plaintiffs do not contend, however,
21 that the State’s “error” entitles them to compensation—that claim is moot. Moreover, the
22 evidence shows that plaintiffs failed to substantiate the “right” date and the State’s original
23 conclusion was correct under the circumstances.

24

25 ¹⁰ Decl of Gonzalez, ¶ 4 and Ex 7.

26 ¹¹ *Id.*

1 There is no dispute that the State provided plaintiffs with notice of its interpretation of
2 requirements of Oregon law in the draft report:

3 The claimants, Ernest and Arletta Hannan, acquired the subject property
4 on November 10, 1986, as reflected by a special warranty deed included with the
5 claim. A 2005 Deschutes County tax statement submitted with the claim
6 establishes the claimants' current ownership.

7 The claim includes an unsigned contract of sale, indicating that Earnest
8 [sic] Hannan's parents, Alva and Pearl Hannan may have acquired an interest in
9 the subject property on October 11, 1971. The claim also includes a 1973 earnest
10 money receipt indicating the claimants' intent to purchase the subject property.
11 Neither an unsigned contract nor an earnest money receipt is sufficient to
12 establish ownership for the purposes of ORS 197.52.¹²

13 The evidence shows that in response to the draft report plaintiffs submitted copies of the same
14 documents the State had concluded were insufficient.

15 Based on the documentation in the record as of the date the Final Order was issued, the
16 State properly concluded that plaintiffs had not demonstrated acquisition in 1973. The 1986
17 deed was the only evidence of a conveyance to plaintiffs. After plaintiffs produced copies of the
18 executed contract and the assignment, the State issued the Amended Final Order.

19 Finally, there is no dispute that plaintiffs were granted waiver relief "in lieu of
20 compensation" as provided by Measure 37. ORS 197.352 (8) and (10). The plain language of
21 Measure 37 provides for an award of fees only if a property owner collects compensation and
22 those fees must be "incurred to collect the compensation." ORS 197.352 (6). Plaintiffs are not
23 entitled to compensation, have not and will not collect compensation, and thus have incurred no
24 recoverable fees.

25 **IV. Conclusion**

26 Plaintiffs admit they cannot prove the only claim alleged in this case. The issue of
27 compensation is moot for all of the reasons discussed in the State's Motion to Dismiss

28 ¹² Decl of Gonzalez, Ex 4. A footnote to the quoted text of Ex 4 states, "Department staff has
29 made several attempts to obtain additional ownership information from the claimants. However,
30 claimants have not produced additional information documenting family ownership as of 1971 or
31 claimants' ownership as of 1973."

1 (Mootness) and its Reply in support of that motion. Plaintiffs' Motion for Summary Judgment
2 fails to assert or support any legal basis for an award of attorney's fees. This case should be
3 dismissed.

4 DATED this 4 day of March, 2007.

5 Respectfully submitted,

6 HARDY MYERS
7 Attorney General

8 

9 DARSEE STALEY #87351
10 ERIKA HADLOCK #91297
11 Senior Assistant Attorneys General
12 Trial Attorneys
13 Tel (503) 947-4700
14 Fax (503) 947-4792
15 darsee.staley@doj.state.or.us
16 erika.hadlock@doj.state.or.us
17 Of Attorneys for Defendant

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

ERNEST and ARLETTA HANNAN,

 Plaintiffs,

 v.

STATE OF OREGON, by and through the
Oregon Department of Land Conservation and
Development,

 Defendant.

Case No. 06CV0401MA

DECLARATION OF BRYAN GONZALEZ IN
SUPPORT OF STATE OF OREGON'S MOTION
TO DISMISS AND RESPONSE TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

I, Bryan Gonzalez, do declare and say:

1. I have been employed by the Oregon Department of Land Conservation and Development (DLCD) as an Administrative Specialist 2 since October 11, 2006. Among my present responsibilities, I assist attorneys and legal assistants at the Department of Justice in Measure 37 lawsuits by coordinating production of DLCD documents. I make this declaration based on my personal knowledge and in support of the State's Motion to Dismiss (Mootness), and the State's Response to Plaintiffs' Motion for Summary Judgment.

2. The following Exhibits, attached hereto, are true and correct copies of documents (a) maintained in the files of the DLCD and (b) contained in the *Record* created by DLCD and the Department of Administrative Services (DAS) in accordance with OAR 125-145-0105 on Measure 37 claim number 118516 (Ernest and Arletta Hannan):

- Exhibit 1 is the form of land sale contract and the 1986 deed submitted to the State by plaintiffs with their Measure 37 demand on May 26, 2005 (*Record*, § 2, pp 16-20 and 10-11);

ge 1 - DECLARATION OF BRYAN GONZALEZ IN SUPPORT OF STATE OF OREGON'S
MOTION TO DISMISS AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

DS1/slc/TRIR0518

- 1 • Exhibit 2 is a letter from plaintiffs' counsel to Deschutes County Measure 37 Investigator
2 (a copy of which was sent to the State), enclosing the same form of land sale contract and
3 the 1986 deed, along with an earnest money receipt dated April 30, 1973 (*Record*, § 3, pp
4 1-12);
- 5 • Exhibit 3 is an email from Arletta Hannan to DLCD staff (Darren Nichols) attaching the
6 same earnest money receipt (*Record*, § 3, pp 18-20);
- 7 • Exhibit 4 is page 3 of the Draft Staff Report and Recommendation issued on March 20,
8 2006 (§ 4, p 16);
- 9 • Exhibit 5 is a letter from plaintiffs' counsel to DLCD in response to Draft Staff Report,
10 enclosing same form of land sale contract and the 1986 deed (*Record*, § 5, pp 1-10); and
- 11 • Exhibit 6 is page 6 of the Final Order and Final Staff Report and Recommendation issued
12 on April 4, 2006 (*Record*, § 6, p 6).

13 3. Attorneys for the State served the complete *Record* on plaintiffs by mail to Edward P.
14 Fitch, counsel for plaintiffs, on December 21, 2006.

15 4. On or about December 12, 2006, the State received a "Chain of Title Report" issued
16 by Western Title & Escrow Company to Bryant Emerson & Fitch, counsel for plaintiffs.

17 Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the Chain of Title
18 Report, including:

- 19 • Land Sale Contract, executed October 11, 1971 by Willis and Edith Carpenter (Seller)
20 and Alva and Pearl Hannan (Purchaser) and recorded April 13, 1972; and
- 21 • Assignment of Land Sale Contract, executed May 17, 1973 by Alva and Pearl Hannan,
22 and recorded May 18, 1973.
- 23
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1 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
2 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE
3 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

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5 DATED this 6th day of March, 2007.

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CONTRACT OF SALE

THIS AGREEMENT made this ^{17th} ~~17th~~ day of ^{October} ~~September~~, 1971,

BETWEEN:

WILLIS C. CARPENTER and EDITH A. CARPENTER,
husband and wife,

hereinafter called Seller,

AND

ALVA E. HANNAN and PEARL D. HANNAN,
husband and wife,

hereinafter called Purchaser,

W I T N E S S E T H:

The Seller agrees to sell to Purchaser and Purchaser agrees to purchase that certain land, and all improvements thereon, situated in Deschutes County, state of Oregon, described as:

In Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon:

Section Twenty-five (25): That portion of the Northwest Quarter of the Southeast Quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road,

Subject to existing telephone, telegraph, and power lines, roads, railroads, highways, ditches, canals, and pipelines, and subject to a ditch as shown on assessor's map.

PURCHASE PRICE AND TERMS: The purchase price of the property which Purchaser agrees to pay shall be the sum of Thirty-five Thousand Dollars (\$35,000), payable as follows:

- (a) The sum of \$2,000, which has previously been paid as earnest money.
- (b) The sum of \$1,000, which is paid upon execution hereof.
- (c) The remaining balance of \$32,000 shall be paid in monthly installments of \$200 including interest at the rate of 7 percent per annum on the unpaid balances, the first of such installments to be paid on or before

the 15th day of November, 1971, and on or before the 15th day of each and every month thereafter until the entire purchase price, principal and interest, is paid in full.

- (d) In addition to the above-specified payments, Purchaser shall pay the sum of \$5,000 on January 2, 1972.

All payments hereunder shall be paid to Seller at such place as Seller may hereafter designate.

INTEREST: Interest on all unpaid balances shall commence on the 15th day of October, 1971.

POSSESSION: Purchasers shall be entitled to possession of the premises as of the 15th day of October, 1971.

PREPAYMENT PRIVILEGES: After January 1, 1972, Purchaser shall have the privilege of making advance payments, or increasing any monthly payment, or prepaying the whole consideration at any time.

TAXES: All taxes levied against the above described property for the current tax year shall be prorated between Seller and Purchaser as of October 15, 1971. Purchaser agrees to pay when due all taxes which are hereafter levied against the property and all public, private, and statutory liens which may be hereafter lawfully imposed upon the premises.

INSURANCE: Purchaser agrees to keep the buildings on said premises insured against loss by fire with extended coverage endorsement as follows: Dwelling, \$7,000; Barn, \$500; Shop, \$300, with loss payable to the parties hereto as their interests appear at the time of loss with priority in payment to Seller. Any amount received by Seller under the insurance in payment of a loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Purchaser on or after the date Purchaser becomes entitled to possession.

IMPROVEMENTS, ALTERATIONS AND REPAIRS: Purchaser agrees that all improvements now located or which shall hereafter be placed on the premises 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. Purchaser shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all improvements thereon and all alterations thereof, in good condition and repair.

COVENANTS OF TITLE: Seller covenants that they are the owner of the above described property free of all encumbrances, except as hereinabove set forth.

EVIDENCE OF TITLE: Seller shall furnish at their expense a Purchaser's title insurance policy in the amount of ~~\$10,000~~^{\$33,000} within 30 days from the date hereof insuring Purchaser against loss or damage sustained by them by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions in such title insurance policies, easements, conditions, and restrictions of record and encumbrances herein specified, if any.

DELIVERY OF DEED: Upon payment of the entire purchase price for the property as provided herein, and performance by Purchaser of all other terms, conditions, and provisions hereof, Seller shall forthwith execute and deliver to Purchaser a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as above provided and those placed upon the property or suffered by Purchaser subsequent to the date of this agreement.

REPRESENTATIONS: Purchaser has purchased the property solely upon Purchaser's own inspection and personal knowledge of the premises and opinion of the value thereof, and no promise

Contract of Sale

GRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
SEASIDE, OREGON 97138

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to alter, repair, or improve said premises has been made by the Seller or by any agent of the Seller.

DEFAULT: In the event Purchaser shall fail to perform any of the terms of this agreement, time of payment and performance being of the essence, Seller shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this contract by strict foreclosure in equity.
- (b) To declare the full unpaid balance of the purchase price immediately due and payable.
- (c) To specifically enforce the terms of this agreement by suit in equity.
- (d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option all of the right, title, and interest of Purchaser shall revert and re-vest in Seller without any act of re-entry or without any other act by Seller to be performed, and Purchaser agrees to peaceably surrender said premises to Seller, or in default thereof Purchaser may, at the option of Seller, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payment as provided for herein until notice of said default has been given by Seller to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser or one of them, at their last known address. If Purchaser shall fail to make payment as herein provided and said failure shall

Contract of Sale

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ATTORNEYS AT LAW
1044 BOND STREET
BEND OREGON 97701

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continue for more than 30 days after the payment becomes due, Purchaser shall be deemed in default and Seller shall not be obligated to give notice to Purchaser of a declaration of said default.

WAIVER: No waiver of a breach of any covenant, term, or condition of this agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term, or condition or as a waiver of the covenant, term, or condition itself.

INTERPRETATION: The covenants, conditions, and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors, and assigns of the parties hereto.

LITIGATION FEES AND EXPENSES: In the event suit or action be instituted to enforce any of the terms or conditions of this agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

Willis C. Carpenter

Edith A. Carpenter

SELLER

Alva E. Hannan

Pearl D. Hannan

PURCHASER

Contract of Sale

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1844 BOND STREET
BEND OREGON 97701

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D105447 RE

FORM No. 411 - WARRANTY DEED (Not a deed of Gift)

87- 421 SPECIAL WARRANTY DEED

0139-1834

KNOW ALL MEN BY THESE PRESENTS, That WILLIS C. CARPENTER AND EDITH A. CARPENTER, HUSBAND AND WIFE

herinafter called the grantor, for the consideration hereinafter stated, to grantor paid by ERNEST A. HANNAN AND ARLETTA JEAN HANNAN, HUSBAND AND WIFE, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of DESCHUTES and State of Oregon, described as follows, to-wit: In Township Fifteen (15) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon: Section Twenty-five (25): That portion of the Northwest quarter of the Southeast quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road.

SUBJECT TO ANY LIENS OR ENCUMBRANCES PLACED OR SUFFERED TO BE PLACED UPON THE PROPERTY BY THE GRANTEE HEREIN OF THIS FULFILLMENT DEED ON AND AFTER OCTOBER 11, 1971.

To Have and to hold the same unto the said grantee and grantee's heirs, successors and assigns forever And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances Except for telephone, telegraph, and power lines, road, railroads, highways, ditches, canals and pipelines and subject to a ditch as shown on assessor's map.

and that grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 35,000.00

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals

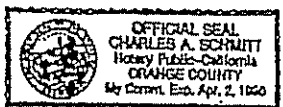
In Witness Whereof, the grantor has executed this instrument this 10th day of November, 1966; If a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

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 FOR ANY APPLICABLE LAWS.

Willis C. Carpenter Edith A. Carpenter

State of California } On this the 10th day of November, 1966 before me, County of Orange } Charles A. Schmitt

HOUSEHOLD BANK } the undersigned Notary Public personally appeared Willis C. and Edith A. Carpenter



personally known to me proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that they executed it WITHIN my hand and official seal

Charles A. Schmitt Notary's Signature

GENERAL ACKNOWLEDGMENT FORM. RECORDING, ORANGE COUNTY. DESCHUTES COUNTY TITLE COMPANY, REDMOND BRANCH, RE 46. ERNEST A. HANNAN ET UX, 4178 SW 58th, Redmond, Oregon 97756. DESCHUTES COUNTY TITLE CO, P.O. BOX 325, GENO. OREGON 97701.

BRYANT
EMERSON
& FITCH, LLP
Attorneys at Law

KP
118516

Ronald L. Bryant *
Craig P. Emerson
Edward P. Fitch
Geoffrey J. Gokey
Steven D. Bryant
Michael R. McLane
John E. Laherty **
* Also admitted in Washington
** Also admitted in Utah

June 14, 2005

Mr. Larry S. Shaw
Measure 37 Investigator
Deschutes County, Legal Counsel
1300 NW Wall Street, Ste 200
Bend, OR 97701

Re: Measure 37 Claim: Ernest A. and Arletta J. Hannan

Dear Larry:

Enclosed are the following documents:

- 1 Contract of Sale dated October 11, 1971;
- 2 Earnest Money Receipt dated April 25, 1973, evidencing the acceptance of the October 1971 contract by Ernest and Arletta Hannan from Ernest's parents; and
- 3 The deed from November 1986 from Carpenter to Ernest and Arletta Hannan.

The date of acquisition for the current owners would be April 25, 1973. The claim for compensation by reason of family members would go back to October 11, 1971.

Ernest and Arletta Hannan continue to be the sole owners of the subject property. I do not believe there is any mortgage on the property.

This property comprises 17.53 acres. It is the intent of our clients to divide this into approximately three parcels. This division would have been allowed under the zoning regulations in effect in 1972. It is not allowed now. All the regulations implemented by the County since 1972 would be the relevant regulations that have diminished the value of the property.

Regarding devaluation, please note that in other claims, you have received a number of real estate valuation reports which indicate that a five acre parcel in this area would have an approximate value of \$175,000 to \$200,000. If this property were to be divided into three parcels, it would have a value of \$600,00 to \$700,000. The current value is \$375,000, which would result in the diminution of value of \$225,000 to \$325,000.

888 W. Evergreen Ave. P.O. Box 457 Redmond, OR 97756-0103
(541) 548-2151 Fax (541) 548-1895 E-mail bel@redmond-lawyers.com

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BRYANT
EMERSON
& FITCH
Attorneys at Law

Mr. Larry Shaw
June 14, 2005
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If you have any other questions or need any further information, Larry, let me know. Thanks.

Very truly yours,

Edward P. Fitch

EPP:aj
enclosures

c Risk Manager, state of Oregon, w/encl.
Ernest & Arletta Hanjan
C:\WP51\EPP\37\Hanjan, Ernest\slaw letter.wpd

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Page 2

Exhibit 2
Page 2 of 12

CONTRACT OF SALE

THIS AGREEMENT made this 11th day of September, 1971, ^{corrected}

BETWEEN:

WILLIS C. CARPENTER and EDITH A. CARPENTER,
husband and wife,

hereinafter called Seller,

AND

ALVA E. HANNAN and PEARL D. HANNAN,
husband and wife,

hereinafter called Purchaser,

W I T N E S S E T H:

The Seller agrees to sell to Purchaser and Purchaser agrees to purchase that certain land, and all improvements thereon, situated in Deschutes County, state of Oregon, described as:

In Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon:

Section Twenty-five (25): That portion of the Northwest Quarter of the Southeast Quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road,

Subject to existing telephone, telegraph, and power lines, roads, railroads, highways, ditches, canals, and pipelines, and subject to a ditch as shown on assessor's map.

PURCHASE PRICE AND TERMS: The purchase price of the property which Purchaser agrees to pay shall be the sum of Thirty-five Thousand Dollars (\$35,000), payable as follows:

- (a) The sum of \$2,000, which has previously been paid as earnest money.
- (b) The sum of \$1,000, which is paid upon execution hereof.
- (c) The remaining balance of \$32,000 shall be paid in monthly installments of \$200 including interest at the rate of 7 percent per annum on the unpaid balances, the first of such installments to be paid on or before

Contract of Sale

GRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
SEASIDE, OREGON 97138

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the 15th day of November, 1971, and on or before the 15th day of each and every month thereafter until the entire purchase price, principal and interest, is paid in full.

- (d) In addition to the above-specified payments, Purchaser shall pay the sum of \$5,000 on January 2, 1972.

All payments hereunder shall be paid to Seller at such place as Seller may hereafter designate.

INTEREST: Interest on all unpaid balances shall commence on the 15th day of October, 1971.

POSSESSION: Purchasers shall be entitled to possession of the premises as of the 15th day of October, 1971.

PREPAYMENT PRIVILEGES: After January 1, 1972, Purchaser shall have the privilege of making advance payments, or increasing any monthly payment, or prepaying the whole consideration at any time.

TAXES: All taxes levied against the above described property for the current tax year shall be prorated between Seller and Purchaser as of October 15, 1971. Purchaser agrees to pay when due all taxes which are hereafter levied against the property and all public, private, and statutory liens which may be hereafter lawfully imposed upon the premises.

INSURANCE: Purchaser agrees to keep the buildings on said premises insured against loss by fire with extended coverage endorsement as follows: Dwelling, \$7,000; Barn, \$500; Shop, \$300, with loss payable to the parties hereto as their interests appear at the time of loss with priority in payment to Seller. Any amount received by Seller under the insurance in payment of a loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Purchaser on or after the date Purchaser becomes entitled to possession.

Contract of Sale

GRAY, FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
SENO, OREGON 97704

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IMPROVEMENTS, ALTERATIONS AND REPAIRS: Purchaser agrees that all improvements now located or which shall hereafter be placed on the premises 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. Purchaser shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all improvements thereon and all alterations thereof, in good condition and repair.

COVENANTS OF TITLE: Seller covenants that they are the owner of the above described property free of all encumbrances, except as hereinabove set forth.

EVIDENCE OF TITLE: Seller shall furnish at their expense a Purchaser's title insurance policy in the amount of ^{25,000} ~~\$25,000~~ within 30 days from the date hereof insuring Purchaser against loss or damage sustained by them by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions in such title insurance policies, easements, conditions, and restrictions of record and encumbrances herein specified, if any.

DELIVERY OF DEED: Upon payment of the entire purchase price for the property as provided herein, and performance by Purchaser of all other terms, conditions, and provisions hereof, Seller shall forthwith execute and deliver to Purchaser a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as above provided and those placed upon the property or suffered by Purchaser subsequent to the date of this agreement.

REPRESENTATIONS: Purchaser has purchased the property solely upon Purchaser's own inspection and personal knowledge of the premises and opinion of the value thereof, and no promise

Contract of Sale

CRAY, FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
SEASIDE, OREGON 97138

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to alter, repair, or improve said premises has been made by the Seller or by any agent of the Seller.

DEFAULT: In the event Purchaser shall fail to perform any of the terms of this agreement, time of payment and performance being of the essence, Seller shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this contract by strict foreclosure in equity.
- (b) To declare the full unpaid balance of the purchase price immediately due and payable.
- (c) To specifically enforce the terms of this agreement by suit in equity.
- (d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option all of the right, title, and interest of Purchaser shall revert and re-vest in Seller without any act of re-entry or without any other act by Seller to be performed, and Purchaser agrees to peacefully surrender said premises to Seller, or in default thereof Purchaser may, at the option of Seller, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payment as provided for herein until notice of said default has been given by Seller to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser or one of them, at their last known address. If Purchaser shall fail to make payment as herein provided and said failure shall

Contract of Sale

GRAY FANCHEL, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
BEND, OREGON 97701

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continue for more than 30 days after the payment becomes due, Purchaser shall be deemed in default and Seller shall not be obligated to give notice to Purchaser of a declaration of said default.

WAIVER: No waiver of a breach of any covenant, term, or condition of this agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term, or condition or as a waiver of the covenant, term, or condition itself.

INTERPRETATION: The covenants, conditions, and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors, and assigns of the parties hereto.

LITIGATION FEES AND EXPENSES: In the event suit or action be instituted to enforce any of the terms or conditions of this agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

Willis C. Carpenter

Edith A. Carpenter
SELLER

Alva E. Hannan

Pearl D. Hannan
PURCHASER

OWNER'S
EARNEST MONEY RECEIPT

RECEIVED OF Ernest A. and Arletta I. Hannan, March 1973, husband and wife, hereinafter called purchaser, \$ 100.00 as earnest

money and in part payment for the following described real estate situated in the City of Deschutes, State of Oregon, County of Deschutes, described as follows, to-wit: In Township 15 S., Range 12 East of Willamette Meridian, that portion of NW 1/4, SE 1/4 lying easterly of SW 58th Avenue except that portion lying within the right-of-way of a road,

for the sum of Thirty Four Thousand and no/100 which we have this day sold to the purchaser on the following terms, to-wit: The earnest money hereinabove received for Dollars \$ 34,000.00 upon acceptance of title and delivery of deed or delivery of contract \$ 100.00 4,275.00 balance of Twenty Nine Thousand and no/100 \$ 4,900.00 5,000.00 payable as follows: Land sale contract on Lane County, Oregon property in the amount of \$2,775.00 payable at \$50 including 7 1/2% interest. and an assumption of existing contract for subject property between sellers and Willis C. Carpenter and Edith A. Carpenter in the approximate amount of \$26,225.00 payable at \$200 or more per month.

It is understood and agreed by the seller that an amount of \$3,500 in the form of said land sale contract mentioned above on Lane Co. property may be substituted reducing the down payment of cash to \$4,275.

A title insurance policy from a reliable company insuring marketable title in the seller in an amount equal to said purchase price is to be furnished purchaser in due course at seller's expense; preliminary to closing, seller may furnish a title insurance company's title report showing its willingness to issue title insurance, and such report shall be conclusive evidence as to status of seller's record title.

It is agreed that if the title to the said premises is not marketable or cannot be made so within thirty days after notice, with a written statement of defects is delivered to seller, the earnest money herein receipted for shall be refunded. But if the title to the said premises is marketable and the purchaser neglects or refuses to comply with any of the conditions of this sale within ten days and to make payments promptly, as hereinabove set forth, then the earnest money herein receipted for shall be forfeited to the seller as liquidated damages, and this contract shall hereupon be of no further binding effect.

The property is to be conveyed by good and sufficient deed free and clear of all liens and encumbrances except zoning ordinances building restrictions taxes due and payable for the current tax year reservations in federal patents and state deeds easements of record and ditch as shown on Assessor's map

All irrigation, ventilating, cooling, plumbing and heating fixtures and equipment (including stoker and oil tanks but excluding fire place fixtures and equipment), water heaters, electric light and bathroom fixtures, light bulbs and fluorescent lamps, venetian blinds, wall-to-wall carpeting, awnings, window and door screens, storm doors and windows, attached floor coverings, attached television antenna, all plants, shrubs and trees and all fixtures except none are to be left upon the premises as part of the property purchased.

The following personal property is also included as part of the property sold for said price: NONE

Seller and purchaser agree to prorate the taxes which become due and payable for the current tax fiscal year on a fiscal year basis. Possession of said premises is to be delivered to purchaser on or before April 30, 1973. Time is of the essence hereof. This contract is binding upon the heirs, executors, administrators, successors and assigns of the purchaser and seller. However the purchaser's rights hereunder are not assignable without written consent of seller. In any suit or action brought on this contract, the losing party agrees to pay the prevailing party's reasonable attorney's fees to be fixed by the trial court, and on appeal the prevailing party's reasonable attorney's fees to be fixed by the appellate court.

Further conditions: The sellers accept no tax liability should buyer not qualify for continuing farm deferral. No prorates shall exist.

Arletta I. Hannan
Ernest A. Hannan Owners

I hereby agree to purchase the above property and to pay the price of Thirty four thousand and no/100 (\$ 34,000.00) Dollars as specified above

Address
Name

Purchaser Ernest A. Hannan
Arletta I. Hannan

D105447 R.

FORM No. 413-SECURITY DEED (Revised 1-7-83)

87- 421 SPECIAL WARRANTY DEED

0139-1834

KNOW ALL MEN BY THESE PRESENTS, That WILLIS C. CARPENTER AND EDITH A. CARPENTER, HUSBAND AND WIFE

hereinafter called the grantor, for the consideration hereinafter stated to grantor paid by ERNEST A. HANNAN AND ABLETTA JEAN HANNAN, HUSBAND AND WIFE, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of DESCHUTES and State of Oregon, described as follows, to-wit: In Township Fifteen (15) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon: Section Twenty-five (25): That portion of the Northwest quarter of the Southeast quarter lying Easterly of Southwest 50th Avenue, and also EXCEPT that portion lying within the right of way of a road.

SUBJECT TO ANY LIENS OR ENCUMBRANCES PLACED OR SUFFERED TO BE PLACED UPON THE PROPERTY BY THE GRANTEE HEREIN OF THIS FULFILLMENT DEED ON AND AFTER OCTOBER 11, 1971

IN SAID INSTRUMENT, CONTAINING DESCRIPTION OF SEVERAL LOTS

To Have and to hold the same unto the said grantee and grantee's heirs, successors and assigns forever And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances Except for: telephone, telegraph, and power lines, road, railroads, highways, ditches, canals and pipelines and subject to a ditch as shown on assessor's map.

and that grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whatsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 35,000.00

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals

In Witness Whereof, the grantor has executed this instrument this day of November 19 86; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS, BEFORE SIGNED OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT FOR ANY APPLICABLE ZONING REGULATIONS.

Willis C. Carpenter Edith A. Carpenter

Notary Public section for Charles A. Schmitt, Notary Public - California, Orange County, My Comm. Exp. Apr. 2, 1990. Includes text: On this 10th day of November 1986 before me Charles A. Schmitt the undersigned Notary Public, personally appeared Willis C. and Edith A. Carpenter [X] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that they executed it in their individual and official capacity.

GENERAL ACKNOWLEDGMENT FORM. Includes fields for Recording Office (Deschutes County Title Company, Redmond Branch, RE 46), Grantor (Ernest A. Hannan et al), and Notary (Charles A. Schmitt, Notary Public, Oregon). Includes recording information: RECORDED FOR RECORDING USE, Record of Deeds of said county, Witness my hand and seal of County aforesaid.

0021-0010

0139-1835

STATE OF OREGON }
COUNTY OF DESCHUTES } SS.

I, MARY SUE PEHOLLOW, COUNTY CLERK AND
REGISTRAR OF DEEDS, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE BIRTH
NOTIFICATION WAS RECORDED THIS DAY.

1997 JAN -8 PM 3:37

MARY SUE PEHOLLOW
COUNTY CLERK

BY *M. Peelow* DEPUTY
NO. 87 421 FILE 10
DESCHUTES COUNTY CLERK'S OFFICE

86-25829

0138-1773

DECLARATION OF DEDICATION

ERNEST A. HANNAN and ARLETTA JEAN HANNAN, husband and wife, do hereby dedicate to the public for road and utility purposes the following described real property:

Commencing at a 3/4" pipe monumenting the East 1/4 corner of Section 25 T.15S., R.12E.W.M., the Initial Point; thence S89°59'04"W along the North line of the Southeast Quarter (SE1/4) of said Section 25 - 1393.46 feet to the East line of the Northwest Quarter of said SE1/4 (NW1/4SE1/4); thence S00°24'35"W along said East line - 1322.93 feet to the South line of said NW1/4SE1/4 and the true POINT OF BEGINNING; thence N89°40'38"W along said South line - 1251.44 feet to the centerline of SW 58th Street; thence N60°30'06"E along said centerline - 1315.56 feet to the North line of said NW1/4SE1/4; thence N89°59'04"E along said North line - 30.00 feet; thence S00°30'06"W parallel with said centerline - 1165.36 feet; thence 188.87 feet along the arc of a 120.00 foot radius curve concave Northeast forming a central angle of 90°10'44" and a long chord bearing S44°35'16"E - 169.97 feet; thence S85°40'38"E parallel with and 30.00 feet North of the South line of said NW1/4SE1/4 - 1101.02 feet to the East line of said NW1/4SE1/4; thence S00°24'35"W along said East line - 30.00 feet to the POINT OF BEGINNING. Containing approximately 1.62 land acres.

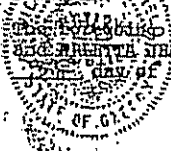
IN WITNESS WHEREOF, this document is executed this 3rd day of December, 1986.

Ernest A. Hannan
ERNEST A. HANNAN

Arletta Jean Hannan
ARLETTA JEAN HANNAN

STATE OF OREGON)
County of Deschutes) ss.

That the foregoing instrument was acknowledged before me by ERNEST A. HANNAN and ARLETTA JEAN HANNAN this 3rd day of December, 1986.



William R. Mayfield
Notary Public for Oregon
My Commission Expires: 6-23-87

0138-1774

DESCHUTES COUNTY, acting by and through its Board of County Commissioners, does hereby accept the above dedication as a public road pursuant to ORS 92.014

DATED this 17th day of December, 1986.

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Lois Bristow Prante, Chair

Lauresce W. Tuttle, Commissioner

Dick Haudlin, Commissioner

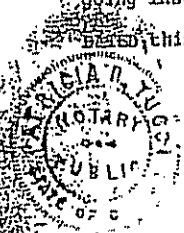
ATTEST:

Patricia R. Chucci, Recording Secretary

STATE OF OREGON)
County of Deschutes) ss.

Before me, a Notary Public, personally appeared LOIS BRISTOW PRANTE, LAURENCE A. TUTTLE, and DICK HAUDLIN, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED, this 17th day of December, 1986.



Patricia R. Chucci, Notary Public for Oregon, My Commission Expires: 9-14-90

Co. Files

STATE OF OREGON) ss.
COUNTY OF DESCHUTES)
MARY SUE WENHOLLOW, COUNTY CLERK AND
RECORDER OF COUNTY INSTRUMENTS AND
COUNTY, SO HEREBY CERTIFY THAT THE
FORUMPT HAS RECORDED THIS DAY.
1986 DEC 23 AM 9:07
MARY SUE WENHOLLOW
COUNTY CLERK
DEPUTY
86-25829 FILE
DESCHUTES COUNTY OFFICIAL RECORDS

2 DECLARATION OF DEDICATION

Darren Nichols - another ernest money receipt

From: "Arletta Jean Hannan" <ajhannan@bendnet.com>
To: NICHOLS Darren <Darren.Nichols@state.or.us>
Date: 9/29/2005 5:09:00 PM
Subject: another ernest money receipt

FORM No. 10

OWNER'S
EARNEST MONEY

RECEIVED OF Frank A. and Arlene L. Hanks

money and in part payment for the following described real estate in
County of Deschutes State of Oregon

In Township 15 S., Range 12 East of Willamette Meridian
lying easterly of SW 58th Avenue except that portion
a road.

for the sum of Thirty Four Thousand and no/100

on the following terms, to-wit: The earnest money hereinabove received
upon acceptance of title and delivery of deed or delivery of contract
balance of Twenty Nine Thousand and no/100

payable as follows: Land sale contract on Lane County
payable at \$50 including 7% interest
and an assumption of existing contract for subject
Willis C. Carpenter and Edith A. Carpenter in the
at \$200 or more per month by Oregon Earnest Money

It is understood and agreed by the seller that an a
sale contract mentioned above on Lane Co. proper
payment of cash to \$4,275.

A title insurance policy from a reliable company insuring marketable title
shall be purchased in due course at seller's expense; preliminary to closing; seller's
willingness to issue title insurance, and such report shall be conclusive evidence.

It is agreed that if the title to the said premises is not marketable, or can
not be cured, or if a report of defects is delivered to seller, the earnest money herein received for sale
shall be of no further binding effect.

The property is to be conveyed by good and sufficient deed free and clear

OWNER'S
EARNEST MONEY RECEIPT

RECEIVED OF Ernest L. and Arletta I. Eganau, husband and wife, March 7, 1973

hereinafter called purchaser, \$ 100.00 as earnest money and in part payment for the following described real estate situated in the City of Deschutes County of Deschutes State of Oregon, described as follows to-wit: In Township 15 S, Range 12 East of Willamette Meridian, that portion of NW 1/4, SE 1/4 lying easterly of SW 58th Avenue except that portion lying within the right-of-way of a road.

which we have this day sold to the purchaser for the sum of Thirty Four Thousand and no/100 Dollars \$ 34,000.00 on the following terms to-wit: The earnest money herewith received for upon acceptance of title and delivery of deed or delivery of contract \$ 100.00 balance of Twenty Nine Thousand and no/100 Dollars \$ 29,000.00 payable as follows: Land sale contract of Lane County, Oregon property in the amount of \$2,275.00 payable at \$50 including 7.75% interest. and an assumption of existing contract for subject property between sellers and Willis C. Carpenter and Edith A. Carpenter in the approximate amount of \$26,225.00 payable at \$29.00 or more per month.

It is understood and agreed by the seller that an amount of \$3,500 in the form of said land sale contract mentioned above on Lane Co. property may be substituted reducing the down payment of cash to \$4,275.

A title insurance policy from a reliable company insuring marketable title in the seller in an amount equal to said purchase price is to be furnished in due course at seller's expense; preliminary to closing, seller may furnish a title insurance company's title report showing its findings as to title and encumbrances and such report shall be conclusive evidence as to status of seller's record title. It is agreed that if the title to the said premises is not marketable or cannot be made so within thirty days after notice, with a written statement of reasons in hand, the seller the earnest money herein received for shall be refunded. But if the title to the said premises is marketable and the purchaser neglects or refuses to comply with any of the conditions of this sale within ten days and to make payments as provided hereinafter set forth, then the earnest money herein received for shall be forfeited to the seller as liquidated damages and this contract shall have the effect of no further binding effect. The property is to be conveyed by good and sufficient deed free and clear of all liens and encumbrances except zoning ordinances binding on the property and payable for the current tax year 1973 such as federal patents and state debts, encumbrances of record and as shown on Assessor's Map. All fixtures, including, including, plumbing and heating fixtures and equipment (including stove and oil tanks but excluding floor place fixtures and equipment) water heaters, electric light and bathroom fixtures light bulbs and fluorescent lamps, venetian blinds, wall-to-wall carpeting, window shades and door screens, storm doors and windows, attached floor coverings, attached television antenna, all plants, shrubs or trees and all fixtures to be left upon the premises as part of the property purchased except NONE. The following personal property is also included as part of the property sold for said price: NONE.

Seller and purchaser agree to pay into the taxes which become due and payable for the current tax fiscal year on a fiscal year basis.

Delivery of said premises is to be delivered to purchaser on or before April 25, 1973. Title is of the estate hereof. This receipt is binding upon the heirs, executors, administrators, successors and assigns of the purchaser and seller. However, the purchaser's rights hereunder are not assignable without written consent of seller. In any suit or action brought on this contract, the losing party agrees to pay the prevailing party's reasonable attorney's fees to be fixed by the trial court and on appeal the prevailing party's reasonable attorney's fees to be fixed by the appellate court.

Further conditions: The sellers accept no tax liability should buyer not qualify for continuing farm deferral. No prorates shall exist.

Ernest L. Eganau
Owners

I hereby agree to purchase the above property and to pay the price of Thirty four thousand and no/100

(\$ 34,000.00) Dollars as specified above

Address
Phone

Purchaser *Ernest L. Eganau*
Arletta I. Eganau

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claimants, Ernest and Arletta Hannan, acquired the subject property on November 10, 1986, as reflected by a special warranty deed included with the claim. A 2005 Deschutes County tax statement submitted with the claim establishes the claimants' current ownership.

The claim includes an unsigned contract of sale, indicating that Ernest Hannan's parents, Alva and Pearl Hannan, may have acquired an interest in the subject property on October 11, 1971. The claim also includes a 1973 earnest money receipt indicating the claimants' intent to purchase the subject property. Neither an unsigned contract nor an earnest money receipt is sufficient to establish ownership for the purposes of ORS 197.352.²

Conclusions

The claimants, Ernest and Arletta Hannan, are "owners" of the subject property, as that term is defined by ORS 197.352(11)(C), as of November 10, 1986.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim states, "All statewide land use regulations and ordinances restricting the ability of the applicant to divide the land [restrict] ability of applicant to divide and develop land." Conversation with the claimants indicates that state laws have restricted the property so that it cannot be divided into two 5-acre parcels and one 7.53-acre parcel for residential development.

The claim is based generally on Deschutes County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3 in accordance with ORS 215 and OAR 660, division 33,

² Department staff has made several attempts to obtain additional ownership information from the claimants. However, claimants have not produced additional information documenting family ownership as of 1971 or claimants' ownership as of 1973.

CONTRACT OF SALE

THIS AGREEMENT made this ^{21st} 7th day of September, 1971,

BETWEEN:

WILLIS C. CARPENTER and EDITH A. CARPENTER,
husband and wife,

hereinafter called Seller,

AND

ALVA E. HANNAN and PEARL D. HANNAN,
husband and wife,

hereinafter called Purchaser,

W I T N E S S E T H:

The Seller agrees to sell to Purchaser and Purchaser agrees to purchase that certain land, and all improvements thereon, situated in Deschutes County, state of Oregon, described as:

In Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon:

Section Twenty-five (25): That portion of the Northwest Quarter of the Southeast Quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road,

Subject to existing telephone, telegraph, and power lines, roads, railroads, highways, ditches, canals, and pipelines, and subject to a ditch as shown on assessor's map.

PURCHASE PRICE AND TERMS: The purchase price of the property which Purchaser agrees to pay shall be the sum of Thirty-five Thousand Dollars (\$35,000), payable as follows:

- (a) The sum of \$2,000, which has previously been paid as earnest money.
- (b) The sum of \$1,000, which is paid upon execution hereof.
- (c) The remaining balance of \$32,000 shall be paid in monthly installments of \$200 including interest at the rate of 7 percent per annum on the unpaid balances, the first of such installments to be paid on or before

Contract of Sale

GRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BOND STREET
BEND OREGON 97701

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the 15th day of November, 1971, and on or before the 15th day of each and every month thereafter until the entire purchase price, principal and interest, is paid in full.

- (d) In addition to the above-specified payments, Purchaser shall pay the sum of \$5,000 on January 2, 1972.

All payments herounder shall be paid to Seller at such place as Seller may hereafter designate.

INTEREST: Interest on all unpaid balances shall commence on the 15th day of October, 1971.

POSSESSION: Purchasers shall be entitled to possession of the premises as of the 15th day of October, 1971.

PREPAYMENT PRIVILEGES: After January 1, 1972, Purchaser shall have the privilege of making advance payments, or increasing any monthly payment, or prepaying the whole consideration at any time.

TAXES: All taxes levied against the above described property for the current tax year shall be prorated between Seller and Purchaser as of October 15, 1971. Purchaser agrees to pay when due all taxes which are hereafter levied against the property and all public, private, and statutory liens which may be hereafter lawfully imposed upon the premises.

INSURANCE: Purchaser agrees to keep the buildings on said premises insured against loss by fire with extended coverage endorsement as follows: Dwelling, \$7,000; Barn, \$500; Shop, \$300, with loss payable to the parties hereto as their interests appear at the time of loss with priority in payment to Seller. Any amount received by Seller under the insurance in payment of a loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Purchaser on or after the date Purchaser becomes entitled to possession.

IMPROVEMENTS, ALTERATIONS AND REPAIRS: Purchaser agrees that all improvements now located or which shall hereafter be placed on the premises 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. Purchaser shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all improvements thereon and all alterations thereof, in good condition and repair.

COVENANTS OF TITLE: Seller covenants that they are the owner of the above described property free of all encumbrances, except as hereinabove set forth.

EVIDENCE OF TITLE: Seller shall furnish at their expense a Purchaser's title insurance policy in the amount of ~~\$24,000~~^{\$3,000} within 30 days from the date hereof insuring Purchaser against loss or damage sustained by them by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions in such title insurance policies, easements, conditions, and restrictions of record and encumbrances herein specified, if any.

DELIVERY OF DEED: Upon payment of the entire purchase price for the property as provided herein, and performance by Purchaser of all other terms, conditions, and provisions hereof, Seller shall forthwith execute and deliver to Purchaser a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as above provided and those placed upon the property or suffered by Purchaser subsequent to the date of this agreement.

REPRESENTATIONS: Purchaser has purchased the property solely upon Purchaser's own inspection and personal knowledge of the premises and opinion of the value thereof, and no promise

Contract of Sale

GRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 BURNS STREET
SEASIDE OREGON 97138

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Section 5
Page 4

Exhibit 5
Page 4 of 10

to alter, repair, or improve said premises has been made by the Seller or by any agent of the Seller.

DEFAULT: In the event Purchaser shall fail to perform any of the terms of this agreement, time of payment and performance being of the essence, Seller shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this contract by strict foreclosure in equity.
- (b) To declare the full unpaid balance of the purchase price immediately due and payable.
- (c) To specifically enforce the terms of this agreement by suit in equity.
- (d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option all of the right, title, and interest of Purchaser shall revert and revest in Seller without any act of re-entry or without any other act by Seller to be performed, and Purchaser agrees to peaceably surrender said premises to Seller, or in default thereof Purchaser may, at the option of Seller, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payment as provided for herein until notice of said default has been given by Seller to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser or one of them, at their last known address. If Purchaser shall fail to make payment as herein provided and said failure shall

continue for more than 30 days after the payment becomes due, Purchaser shall be deemed in default and Seller shall not be obligated to give notice to Purchaser of a declaration of said default.

WAIVER: No waiver of a breach of any covenant, term, or condition of this agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term, or condition or as a waiver of the covenant, term, or condition itself.

INTERPRETATION: The covenants, conditions, and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors, and assigns of the parties hereto.

LITIGATION FEES AND EXPENSES: In the event suit or action be instituted to enforce any of the terms or conditions of this agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

Willis C. Carpenter

Edith A. Carpenter
SELLER

Alva E. Hannan

Pearl D. Hannan
PURCHASER

Contract of Sale

Page - 5

GRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1041 OSMUN STREET
SEASIDE OREGON 97138

Section 5
Page 6

Exhibit 5
Page 6 of 10

0105447 R. 6

FORM No. 101 - WARRANTY DEED (Individual or Corporation)

SPECIAL WARRANTY DEED

0139-1834

87- 421

KNOW ALL MEN BY THESE PRESENTS, That WILLIS C. CARPENTER AND EDITH A. CARPENTER, HUSBAND AND WIFE hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by ERNEST A. HANNAN AND ARLETA JEAN HANNAN, HUSBAND AND WIFE, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of DESCHUTES and State of Oregon, described as follows, to-wit: In Township Fifteen (15) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon: Section Twenty-five (25): That portion of the Northwest quarter of the Southeast quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road.

SUBJECT TO ANY LIENS OR ENCUMBRANCES PLACED OR SUFFERED TO BE PLACED UPON THE PROPERTY BY THE GRANTEE HEREIN OF THIS FULFILLMENT DEED ON AND AFTER OCTOBER 11, 1971

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances Except for: telephone, telegraph, and power lines, road, railroads, highways, ditches, canals and pipelines and subject to a ditch as shown on assessor's map.

and that grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 35,000.00

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals

In Witness Whereof, the grantor has executed this instrument this ... day of November 19 86 ; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

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 SUCH USE.

Willis C. Carpenter
Edith A. Carpenter

State of California }
County of Orange }

On this the 10th day of November 1986 before me

Charles A. Schmitt
the undersigned Notary Public, personally appeared

HOUSEHOLD BANK t.s.b.

Willis C. and Edith A. Carpenter

personally known to me
 proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) SEE subscribed to the within instrument, and acknowledged that they executed it. WITNESS my hand and official seal.



Charles A. Schmitt
Notary's Signature

GENERAL ACKNOWLEDGMENT FORM

FORM 1443 n 8c

11 RECORDING, INSTRUMENT #1130
 12 PLATE #
 13 DATE RECEIVED
 14 RECORDING OFFICE
 15 DESCHUTES COUNTY TITLE COMPANY
 16 REDWOOD BRANCH
 17 RE AG
 18 NAME, ADDRESS, ZIP
 19 ERNEST A HANNAN ET UX
 20 4178 SW 58th
 21 Redmond, Oregon 97756
 22 NAME, ADDRESS, ZIP
 23 DESCHUTES COUNTY TITLE CO
 24 P. O. BOX 523
 25 BEAV, OREGON 97701

11 DATE RECEIVED
 12 FOR
 13 RECORDING USE
 14 at _____ o'clock _____ M. and recorded
 15 in book/roll/volume No. _____ on
 16 page _____ or as fee/file/instru-
 17 ment/microfilm/reception No. _____
 18 Record of Deeds of said county.
 19 Witness my hand and seal of
 20 County affixed.
 21 NAME
 22 TITLE
 23 By _____ Deputy

0021-0010

0139-1835

STATE OF OREGON)
COUNTY OF DESCHUTES) SS.
I, MARY SUE PENHOLLOW, COUNTY CLERK AND
RECORDER OF DEEDS, IN AND FOR SAID
COUNTY, DO HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT WAS RECORDED THIS DAY.

1907 JAN -8 PM 3:37
MARY SUE PENHOLLOW
COUNTY CLERK

BY *M. Penhollow* DEPUTY
NO. 87- 421 REC'D
DESCHUTES COUNTY OFFICIAL RECORDS

86-25829

0138-1773

DECLARATION OF DEDICATION

ERNEST A. HANNAN and ARLETTA JEAN HANNAN, husband and wife, do hereby dedicate to the public for road and utility purposes the following described real property:

Commencing at a 3/4" pipe monumenting the East 1/4 corner of Section 25 T.15S., R.12E.W.H., the Initial Point; thence S89°59'04"W along the North line of the Southeast Quarter (SE1/4) of said Section 25 - 1393.46 feet to the East line of the Northwest Quarter of said SE1/4 (NW1/4SE1/4); thence S00°24'35"W along said East line - 1322.93 feet to the South line of said NW1/4SE1/4 and the true POINT OF BEGINNING; thence N89°40'30"W along said South line - 1251.44 feet to the centerline of SW 50th Street; thence N00°30'06"E along said centerline - 1315.56 feet to the North line of said NW1/4SE1/4; thence N89°59'04"E along said North line - 30.00 feet; thence S00°30'06"W parallel with said centerline - 1165.36 feet; thence 188.87 feet along the arc of a 120.00 foot radius curve concave Northeast forming a central angle of 90°10'44" and a long chord bearing S44°35'16"E - 169.97 feet; thence S89°40'30"E parallel with and 30.00 feet North of the South line of said NW1/4SE1/4 - 1101.02 feet to the East line of said NW1/4SE1/4; thence S00°24'35"W along said East line - 30.00 feet to the POINT OF BEGINNING. Containing approximately 1.82 land acres.

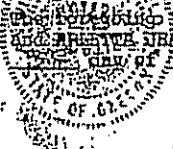
IN WITNESS WHEREOF, this document is executed this 3rd day of December, 1986.

Ernest A. Hannan
ERNEST A. HANNAN

Arletta Jean Hannan
ARLETTA JEAN HANNAN

STATE OF OREGON)
County of Deschutes) ss.

This instrument was acknowledged before me by ERNEST A. HANNAN and ARLETTA JEAN HANNAN this 3rd day of December, 1986.



William R. Mayfield
Notary Public for Oregon
My Commission Expires: 6-25-87

1 DECLARATION OF DEDICATION

0138-1774

DESCHUTES COUNTY, acting by and through its Board of County Commissioners, does hereby accept the above dedication as a public road pursuant to ORS 92.014

DATED this 17th day of December, 1986.

BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

Lois Bristow Prante, Chair

LAURENCE A. TUTTLE, Commissioner

DICK HAUDLIN, Commissioner

ATTEST:

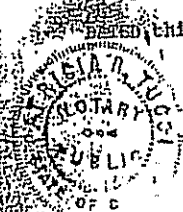
Patricia P. Ducci, Recording Secretary

STATE OF OREGON) County of Deschutes) ss.

Before me, a Notary Public, personally appeared LOIS BRISTOW PRANTE, LAURENCE A. TUTTLE, and DICK HAUDLIN, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 17th day of December, 1986.

Patricia P. Ducci, Notary Public for Oregon, My Commission Expires: 9-14-90



Co. Files

STATE OF OREGON - ss. COUNTY OF DESCHUTES: MARY SUE PENHOLLOW, COUNTY CLERK AND CLERK OF COURTHOUSE, BY AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY. 1986 DEC 23 AM 9:07 MARY SUE PENHOLLOW COUNTY CLERK. B. Buck DEPUTY NO. 86-25829 REC. 8 -DESCHUTES COUNTY OFFICIAL RECORDS

2 DECLARATION OF DEDICATION

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(1)(C) defines "owner" as "the present owner of the property, or any interest therein "

Findings of Fact

The claimants, Ernest and Arletta Hannan, acquired the subject property on November 10, 1986, as reflected by a special warranty deed included with the claim. A 2005 Deschutes County tax statement submitted with the claim establishes the claimants' current ownership.

The claim includes an unsigned contract of sale, indicating that Ernest Hannan's parents, Alva and Pearl Hannan may have acquired an interest in the subject property on October 11, 1971. The claim also includes a 1973 earnest money receipt indicating the claimants' intent to purchase the subject property. Neither an unsigned contract nor an earnest money receipt is sufficient to establish ownership for the purposes of ORS 197.352.²

Conclusions

The claimants, Ernest and Arletta Hannan, are "owners" of the subject property, as that term is defined by ORS 197.352(1)(C), as of November 10, 1986.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim states, "All statewide land use regulations and ordinances restricting the ability of the applicant to divide the land . . . [restrict] ability of applicant to divide and develop land." Conversation with the claimants indicates that state laws have restricted the property so that it cannot be divided into two 5-acre parcels and one 7.53-acre parcel for residential development.

The claim is based generally on Deschutes County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3 in accordance with ORS 215 and OAR 660, division 33,

² Department staff has made several attempts to obtain additional ownership information from the claimants. However, claimants have not produced additional information documenting family ownership as of 1971 or claimants' ownership as of 1973.

WESTERN TITLE & ESCROW COMPANY

BEND OFFICE • 1345 NW Wall Street, Suite 200 • Bend, Oregon 97701 • (541) 389-5751 • FAX (541) 382-9182

Date: December 6, 2006

BRYANT, EMERSON & FITCH
ATTN: MARY
888 W EVERGREEN
REDMOND, OR 97756

Report No: 10-0390406
Your No:

CHAIN OF TITLE REPORT

CHAIN OF TITLE REPORT \$200.00

We have searched our Tract Indices as to the following described real property:

The Property described in Exhibit "A" attached hereto and made a part hereof.

and dated as of November 29, 2006 at 5:00 p.m.

We find the following conveyances:

SEE ATTACHED EXHIBIT "B"

This Chain of Title is to be utilized for information only, and in no way is this to be construed as a Preliminary Title Report or a Policy of Title Insurance. The liability of Western Title & Escrow Company is limited to the addressee, and shall not exceed the premium paid hereunder.

For copies of exceptions, please contact our Central Services Department at (541) 312 – 7100 or email your request to centralservices@westerntitle.com

15.12.72

15773

VOL 17 PAGE 145

CONTRACT OF SALE

THIS AGREEMENT made this 11th day of ^{original} September, 1971.

BETWEEN:

WILLIS C. CARPENTER and EDITH A. CARPENTER,
husband and wife,

hereinafter called Seller,

AND

ALVA E. HANNAN and PEARL D. HANNAN,
husband and wife,

hereinafter called Purchaser,

W I T N E S S E T H:

The Seller agrees to sell to Purchaser and Purchaser agrees to purchase that certain land, and all improvements thereon, situated in Deschutes County, state of Oregon, described as:

~~In Township Fifteen (15) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon:~~

Section Twenty-five (25): That portion of the Northwest Quarter of the Southeast Quarter lying Easterly of Southwest 58th Avenue, and also EXCEPT that portion lying within the right of way of a road,

Subject to existing telephoe, telegraph, and power lines, roads, railroads, highways, ditches, canals, and pipelines, and subject to a ditch as shown on assessor's map.

PURCHASE PRICE AND TERMS: The purchase price of the property which Purchaser agrees to pay shall be the sum of Thirty-five Thousand Dollars (\$35,000), payable as follows:

- (a) The sum of \$2,000, which has previously been paid as earnest money.
- (b) The sum of \$1,000, which is paid upon execution hereof.
- (c) The remaining balance of \$32,000 shall be paid in monthly installments of \$268 including interest at the rate of 7 percent per annum on the unpaid balances, the first of such installments to be paid on or before

Page - 1

Contract of Sale GRAY, FANCHER, HOLMES & MURLEY
ATTORNEYS AT LAW
1044 BONS STREET
BEND, OREGON 97701

4-13-72

the 15th day of November, 1971, and on or before the 15th day of each and every month thereafter until the entire purchase price, principal and interest, is paid in full.

(d) In addition to the above-specified payments, Purchaser shall pay the sum of \$5,000 on January 2, 1972.

All payments hereunder shall be paid to Seller at such place as Seller may hereafter designate.

INTEREST: Interest on all unpaid balances shall commence on the 15th day of October, 1971.

POSSESSION: Purchasers shall be entitled to possession of the premises as of the 15th day of October, 1971.

PREPAYMENT PRIVILEGES: After January 1, 1972, Purchaser shall have the privilege of making advance payments, or increasing any monthly payment, or prepaying the whole consideration at any time.

TAXES: All taxes levied against the above described property for the current tax year shall be prorated between Seller and Purchaser as of October 15, 1971. Purchaser agrees to pay when due all taxes which are hereafter levied against the property and all public, private, and statutory liens which may be hereafter lawfully imposed upon the premises.

INSURANCE: Purchaser agrees to keep the buildings on said premises insured against loss by fire with extended coverage endorsement as follows: Dwelling, \$7,000; Barn, \$500; Shop, \$300, with loss payable to the parties hereto as their interests appear at the time of loss with priority in payment to Seller. Any amount received by Seller under the insurance in payment of a loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Purchaser on or after the date Purchaser becomes entitled to possession.

Contract of Sale

CRAY FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1008 BOND STREET
BEND, OREGON 97701

VN 17 ~~147~~

IMPROVEMENTS, ALTERATIONS AND REPAIRS: Purchaser agrees that all improvements now located or which shall hereafter be placed on the premises 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. Purchaser shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all improvements thereon and all alterations thereof, in good condition and repair.

COVENANTS OF TITLE: Seller covenants that they are the owner of the above described property free of all encumbrances, except as hereinabove set forth.

EVIDENCE OF TITLE: Seller shall furnish at their expense a Purchaser's title insurance policy in the amount of ~~125,000~~ ^{235,000} ~~125,000~~ ^{235,000} within 30 days from the date hereof insuring Purchaser against loss or damage sustained by them by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions in such title insurance policies, easements, conditions, and restrictions of record and encumbrances herein specified, if any.

DELIVERY OF DEED: Upon payment of the entire purchase price for the property as provided herein, and performance by Purchaser of all other terms, conditions, and provisions hereof, Seller shall forthwith execute and deliver to Purchaser a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as above provided and those placed upon the property or suffered by Purchaser subsequent to the date of this agreement.

REPRESENTATIONS: Purchaser has purchased the property solely upon Purchaser's own inspection and personal knowledge of the premises and opinion of the value thereof, and no promise

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Contract of Sale

GRAY, FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1044 EDMS STREET
SEASIDE, OREGON 97138

to alter, repair, or improve said premises has been made by the Seller or by any agent of the Seller.

DEFAULT: In the event Purchaser shall fail to perform any of the terms of this agreement, time of payment and performance being of the essence, Seller shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this contract by strict foreclosure in equity.
- (b) To declare the full unpaid balance of the purchase price immediately due and payable.
- (c) To specifically enforce the terms of this agreement by suit in equity.
- (d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option all of the right, title, and interest of Purchaser shall revert and re-vest in Seller without any act of re-entry or without any other act by Seller to be performed, and Purchaser agrees to peacefully surrender said premises to Seller, or in default thereof Purchaser may, at the option of Seller, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payment as provided for herein until notice of said default has been given by Seller to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser or one of them, at their last known address. If Purchaser shall fail to make payment as herein provided and said failure shall

Contract of Sale

GRAY, FANCHER, HOLMES & MURLEY
ATTORNEYS AT LAW
1204 BOND STREET
SEASIDE, CALIFORNIA 92701

continue for more than 30 days after the payment becomes due, Purchaser shall be deemed in default and Seller shall not be obligated to give notice to Purchaser of a declaration of said default.

WAIVER: No waiver of a breach of any covenant, term, or condition of this agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term, or condition or as a waiver of the covenant, term, or condition itself.

INTERPRETATION: The covenants, conditions, and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors, and assigns of the parties hereto.

LITIGATION FEES AND EXPENSES: In the event suit or action be instituted to enforce any of the terms or conditions of this agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.
1978

Willis C. Carpenter
WILLIS C. CARPENTER
Edith A. Carpenter
EDITH A. CARPENTER
SELLER
Alva E. Hannan
ALVA E. HANNAN
Pearl D. Hannan
PEARL D. HANNAN
PURCHASER

STATE OF OREGON
County of Deschutes
I hereby certify that the within instrument of writing was received for Record on the 13 day of April, A.D. 1978 at 11:10 o'clock A.M. and recorded in Book 14 on Page 149 Records of Deschutes County, Oregon
ROSEMARY PATTERSON
County Clerk
By Janice Deputy

Contract of Sale

GRAY, FANCHER, HOLMES & HURLEY
ATTORNEYS AT LAW
1000 BING AVENUE
BEND, OREGON 97701

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, for the consideration hereinafter stated, has sold and assigned and hereby does grant, bargain, sell, assign and set over unto Ernest A. Hannan and Arietta E. Hannan, husband and wife, all of the vendor's right, title and interest in and to that certain contract for the sale of real estate dated October 11th, 1921, between Willis C. Carpenter and Edith A. Carpenter, husband and wife, as seller and Alva E. Hannan and Beurl D. Hannan, husband and wife, County, Oregon, which contract is recorded in the Deed, Mortgages and Records of Deschutes County, Oregon, in book 177 on page 165, together with all of the right, title and interest of the undersigned in and to the real estate described therein; the undersigned hereby expressly covenants with and warrants to the assignee above named that the unpaid balance of the purchase price thereof is not more than \$25,660.35 with interest paid thereon to December 31, 1922; further, upon compliance by said assignee with the terms of said contract, the undersigned directs that conveyance of said real estate be made and delivered to the order of said assignee.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$8,000.00.

However, the actual consideration consists of or includes other property or value given or promised which is consideration (indicate which).

In construing this assignment, it is understood that if the context so requires, the singular shall be taken to mean and include the plural, the masculine shall include the feminine and the neuter and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to one or more individuals and/or corporations.

IN WITNESS WHEREOF, the undersigned assignor has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal to be affixed hereunto by its officers duly authorized thereunto by order of its board of directors.

DATED: May 17, 1923

Alva E. Hannan
Beurl D. Hannan

STATE OF OREGON,
County of Deschutes
MAY 17, 1923
Personally appeared the above named
Alva E. Hannan
Beurl D. Hannan
and acknowledged the foregoing instrument to be their voluntary act and deed.

Notary Public for Oregon
My commission expires 10/1/24

STATE OF OREGON County of Deschutes
Personally appeared _____ who, being duly sworn, each for himself and not one for the other, did say that the former is the president and that the latter is the secretary of _____ a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My commission expires _____

OFFICIAL SEAL

Assignment of CONTRACT
Alva E. Hannan and Beurl D. Hannan, H. and W. to Ernest A. Hannan and Arietta E. Hannan, H. and W.

WHEN RECORDED RETURN TO
Ernest A. Hannan
at 715 N. 5th St
Portland 2156

STATE OF OREGON
County of Deschutes
I certify that the within instrument was received for record on the 17 day of May, 1923, at 11 o'clock P.M. and recorded in book 18 on page 328 of the Deschutes Records of said County.

Witness my hand and seal of County aforesaid
Ernest A. Hannan
Notary Public for Oregon


578-73

1 **CERTIFICATE OF SERVICE**

2 I certify that on March 6, 2007, I served the foregoing *Defendant's Response to*
3 *Plaintiffs' Motion for Summary Judgment* upon the parties hereto by the method indicated below,
4 and addressed to the following:

5 Edward Fitch
6 Bryant, Emerson & Fitch, LLP
7 888 SW Evergreen Avenue
8 PO Box 457
9 Redmond, OR 97756-0103

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 TELECOPY (FAX)

10 
11 DARSEE STALEY #87351
12 ERIKA L. HADLOCK #91297
13 Sr. Assistant Attorneys General
14 Trial Attorneys
15 Tel (503) 947-4700
16 Fax (503) 947-4792
17 darsee.staley@doj.state.or.us
18 erika.hadlock@doj.state.or.us
19 Of Attorneys for State of Oregon
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