

CONTRACT OF SALE

VOL 70 PAGE 3555

THIS AGREEMENT, made and entered into this 29 day of July, 1966, by and between HENRY OBERHEIDE and ALINE OBERHEIDE, husband and wife, hereinafter referred to as Sellers, and GARRY FREITAG and GERTRUDE FREITAG, husband and wife, hereinafter referred to as Purchasers,

WITNESSETH:

In consideration of the stipulations, covenants and agreements herein contained, Sellers hereby agree to sell, and the Purchasers agree to purchase, the following described real property situated in the County of Klamath, State of Oregon, to-wit:

PARCEL 1: All that part of the SW 1/4 of the SE 1/4 of Section 5, Township 39 South, Range 11 E.W.M., lying North of the Klamath Falls-Lakeview Highway, (Dairy-Bonanza Section), as now located over and across said quarter;

PARCEL 2: All that part of the SE 1/4 of the SW 1/4 of Section 5, Township 39 South, Range 11 E.W.M., lying North of the Klamath Falls-Lakeview Highway, (Dairy-Bonanza Section);

PARCEL 3: That portion of the SE 1/4 of the SE 1/4 of Section 5, Township 39 South, Range 11 E.W.M., which lies South and West of the Main Canal of the Horsefly Irrigation District, LESS any portion thereof which may lie within the right of way of the Dairy-Bonanza Highway;

PARCEL 4: The SW 1/4 of the NW 1/4, the W 1/2 of the SW 1/4 of Section 5, and the SE 1/4 of the SE 1/4 of Section 6, Township 39 South, Range 11 E.W.M., LESS that portion heretofore conveyed for highway purposes;

PARCEL 5: All that portion of the NE 1/4 of the NE 1/4 of Section 8, Township 39 South, Range 11 E.W.M., which lies Southerly of the Main Canal of Horsefly Irrigation District and Northerly of Klamath Falls-Lakeview Highway (Dairy-Bonanza Section).

SUBJECT TO: Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder; Liens and assessments of Klamath Project and Horsefly Irrigation District and Klamath Water Users Association, and contracts, easements, and water and irrigation rights in connection therewith; reservations, restrictions, agreements, conditions, easements and rights of way of record, and those apparent on the land; Agreement, including the terms and provisions thereof, between Eli Ross, Henry Oberheide and David B. Turner, first parties, and W.H. Casebeer, second party, which agreement was dated August 17, 1945, recorded August 24, 1945, in Book 179 at page 269, Deed Records of Klamath County, Oregon; Saving and excepting a strip of land, if any, which lies between the Klamath Falls-Lakeview High-

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1 way (Dairy-Bonanza section) and the former right of way of
 2 the Walker-Hovey Railroad as described in Book 91 at page
 3 530, Deed records of Klamath County, Oregon; Mortgage, in-
 4 cluding the terms and provisions thereof, executed by Henry
 5 Oberheide and Aline Oberheide, husband and wife, to the
 6 Federal Land Bank of Spokane, a corporation, in the amount
 7 of \$16,000.00, dated December 26, 1956, recorded January 2,
 8 1957, in Volume 174 of Mortgages, page 584, records of Klamath
 9 County, Oregon, which Sellers herein assume and agree to pay
 10 according to the terms and tenor thereof, and hold Purchasers
 11 harmless therefrom; Financing Statement filed September 6,
 12 1963, under instrument Number 82429, from Henry Oberheide
 13 and Aline Oberheide, husband and wife, to Klamath Production
 14 Credit Association, which Sellers agree to pay and hold
 15 Purchasers harmless therefrom, ALSO, Agreements of record,

16 at and for the price of \$80,000.00, payable as follows, to-wit:
 17 \$2,500.00 at the time of the execution of this agreement, the re-
 18 ceipt of which is hereby acknowledged; \$5,500.00 on the 1st day
 19 of December, 1966; \$7,000.00 on or before April 1, 1967; and the
 20 balance of \$65,000.00 with interest at the rate of 6% per annum
 21 from the 1st day of April, 1967, payable in annual installments
 22 of not less than \$5,500.00, inclusive of interest, the first such
 23 annual installment to be paid on or before the 1st day of April,
 24 1968, and a further installment on or before the 1st day of every
 25 April thereafter until the full balance and interest are paid.

26 It being specifically agreed that Purchasers shall not pay
 27 more than twenty nine per cent (29%) of the total purchase price
 28 of said real property during the year 1966, but that Purchasers
 29 shall have the right and privilege, at any time thereafter, to pre-
 30 pay any payment, or pay the entire balance due and interest, with-
 31 out penalty.

32 Sellers warrant and represent that they will make all pay-
 33 ments on the above mentioned mortgage as the same becomes due and
 34 agree to furnish Purchasers a copy of the receipt therefor within
 35 thirty days after said payments are due and that in the event of
 36 their failure to do so, Purchasers may pay the same and file a re-
 37 ceipt therefor with the escrow holder and any amount so paid shall
 38 be credited on the next installment or installments becoming due
 39 under this contract.

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1 Purchasers agree to make said payments promptly on the dates
 2 above named to the order of the Sellers, or the survivors of them,
 3 at the First National Bank of Oregon, Klamath Falls Branch, Klamath
 4 Falls, Oregon; to keep said property at all times in as good condi-
 5 tion as the same now are, that no improvement now on or which may
 6 hereafter be placed on said property shall be removed or destroyed
 7 before the entire purchase price has been paid and that said pro-
 8 perty will be kept insured in companies approved by Sellers against
 9 loss or damage by fire in a sum not less than the insurable value
 10 with loss payable to the parties as their respective interests may
 11 appear, said policy or policies of insurance to be held by the
 12 respective parties hereto; that Purchasers shall pay regularly and
 13 seasonably and before the same shall become subject to interest
 14 charges, all taxes, assessments, liens and encumbrances of whatso-
 15 ever nature and kind and agree not to suffer or permit any part
 16 of said property to become subject to any taxes, assessments, liens,
 17 charges or encumbrances whatsoever having precedence over the
 18 rights of the Sellers in and to said property.

19 Purchasers shall be entitled to the possession of the dwelling
 20 house located upon said real property on September 1, 1966, and
 21 shall be entitled to the possession of the remaining subject real
 22 property on January 1, 1967, it being specifically understood and
 23 agreed that Sellers shall retain as their sole and separate pro-
 24 perty all crops presently growing and/or to be harvested and all
 25 pasture rights on the subject real property during the year 1966.

26 It is further mutually understood and agreed as follows:

27 1. That Sellers will, on the execution hereof, make and exe-
 28 cute in favor of Purchasers a good and sufficient Warranty deed
 29 conveying a fee simple title to said property free and clear as of
 30 this date of all encumbrances whatsoever except as above set forth,
 31 which Purchasers assume, except said mortgage, and financing state-
 32 ment, and will place said deed and a Purchaser's Policy of Title

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1 Insurance, together with one of these agreements, in escrow
 2 at the First National Bank of Oregon, Klamath Falls Branch, Klamath
 3 Falls, Oregon, and shall enter into written escrow instructions in
 4 form satisfactory to said escrow holder, instructing said escrow
 5 holder that when, and if, Purchasers shall have paid the balance
 6 of the purchase price in accordance with the terms and conditions
 7 of this agreement, said escrow holder shall deliver said instru-
 8 ments to Purchasers, but that in case of default by Purchasers
 9 said escrow holder shall, on demand, surrender said instruments
 10 to Sellers.

11 2. The initial escrow fees in the sum of \$83.00 shall be
 12 equally divided between the Purchasers and Sellers, The escrow
 13 holder may deduct the cost of the necessary revenue stamps from
 14 the final payment made hereunder.

15 3. Real property taxes, and all other taxes and assessments,
 16 including the irrigation charges of Horsefly Irrigation District,
 17 shall be pro-rated by and between the parties hereto as of January
 18 1, 1967, and, the fire insurance premium shall be pro-rated by and
 19 between the parties hereto as of September 1, 1966.

20 4. Purchasers shall not sell, assign, transfer, lease or in
 21 any way dispose of, or set over, any of their right, title and in-
 22 terest in and to the above described real property without first
 23 obtaining the written consent of Sellers, provided, however, that
 24 Sellers shall not unreasonably withhold such consent.

25 5. Purchasers shall not, until the deferred principal balance
 26 is less than \$25,000.00, plow under any pasture unless the same is
 27 replanted within ^{THREE YEARS} ~~the same year~~ in a permanent and perennial crop,
 28 and likewise shall not plant more than fifty acres of the subject
 29 real property in potatoes in any one farm year and shall reseed
 30 all potato land after harvesting of the same, to a permanent crop
 31 within two years of harvesting.

32 6. That Purchasers shall at all times farm said real property

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1 in a good, farmerlike manner and according to the usual course
 2 and custom practiced on like farms in Langell Valley, Klamath
 3 County, Oregon, and Purchasers shall further maintain all water
 4 ways, ditches, flumes and fences in a good condition and repair.

5 7. That Purchasers certify that this contract of purchase is
 6 accepted and executed on the basis of their own examination and
 7 personal knowledge of the premises and opinion of the value there-
 8 of; that no attempt has been made to influence their judgment;
 9 that no representations as to the condition or repair of said
 10 premises have been made by Sellers or by any agent of Sellers;
 11 that no agreement or promise to alter, repair, or improve said
 12 premises has been made by Sellers or by any agent of Sellers; and
 13 that Purchasers take said property and the improvements thereon in
 14 the condition existing at the time of this agreement.

15 8. That Purchasers shall make all payments as herein provided
 16 on the dates above named to the Order of Sellers at the First
 17 National Bank of Oregon, Klamath Falls Branch, Klamath Falls,
 18 Oregon, not later than sixty (60) days from the due date thereof,
 19 time being of the essence of this agreement.

20 9. That in the event Purchasers fail to keep the property
 21 free and clear of unpaid taxes, assessments or other charges, or
 22 in the event they fail to cause to be paid the above referred to
 23 fire insurance premiums, then Sellers may, with or without notice,
 24 and without waiver of such default, pay such taxes, assessments or
 25 other charges, or any part thereof, and may secure and pay for such
 26 fire insurance, or any part thereof, and any payments thus made by
 27 Sellers shall be added to and become a part of the debt secured by
 28 this agreement and shall bear interest at the rate aforesaid and
 29 the escrow holder is hereby instructed to so add such payments as
 30 made by Sellers to said debt upon receipt of payment thereof and
 31 without notice to purchasers.

32 10. That Sellers shall, on or before January 1, 1967, pay

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1 all their indebtedness to Klamath Production Credit Associa-
 2 tion and shall promptly thereafter cause the present Financing
 3 Statement above referred to, to be satisfied in full, and that in
 4 the event of their failure to do so, Purchasers may pay the same
 5 and file a receipt therefor with the escrow holder and any amount
 6 so paid shall be credited on the next installment or installments
 7 becoming due under this contract.

8 11. That in addition to the subject real property, there is
 9 also included in the within and foregoing Contract of Sale, an H-D 5
 10 Cat and a New Holland Baler, Model 78, of a value of \$5,000.00 and
 11 it is agreed that Purchasers shall be entitled to a Bill of Sale
 12 to said personal property in the event they shall not be in default
 13 on April 10, 1968.

14 12. It is agreed that \$14,000.00 of the purchase price is
 15 allocated to the dwelling house on the subject real property, to-
 16 gether with one acre on which the same is situated and that \$5,000.00
 17 of the purchase price is allocated to the personal property above
 18 referred to.

19 13. Should Purchasers, while in default, permit the premises
 20 to become vacant, Sellers may take possession of same for the pur-
 21 pose of protecting and preserving the property and their security
 22 interest therein, and in the event possession is so taken by Sellers
 23 they shall not be deemed to have waived their right to exercise any
 24 of the foregoing rights.

25 14. And in case suit or action is instituted to foreclose
 26 this contract or to enforce any of the provisions hereof, Purchasers
 27 agree to pay reasonable cost of title report and title search and
 28 such sum as the trial court may adjudge reasonable as attorney's
 29 fees to be allowed plaintiff in said suit or action, and if an
 30 appeal is taken from any judgment or decree of such trial court,
 31 the Purchasers further promise to pay such sum as the appellate
 32 court shall adjudge reasonable as plaintiff's attorney's fees on

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2 15. Purchasers further agree that failure by Sellers at any
3 time to require performance by Purchasers of any provision hereof
4 shall in no way affect Sellers' rights hereunder to enforce the
5 same, nor shall any waiver by Sellers of any breach of any provision
6 hereof be held to be a waiver of any succeeding breach of any such
7 provision, or as a waiver of the provision itself.

8 16. Time is of the essence of this agreement and the Pur-
9 chasers covenant to promptly make all payments of principal and
10 interest when due and otherwise to fully and promptly perform each
11 and every of their obligations under this contract, and in the
12 event Purchasers fail to make the payments aforesaid, or any of
13 them, pursuant to the terms hereof and at the times above specified,
14 or fail to keep any of the other terms or conditions of this agree-
15 ment, time of payment and strict performance being declared to be
16 the essence of this agreement, then Sellers shall have the following
17 rights, (1) To foreclose this contract by strict foreclosure in
18 equity; (2) To declare the full unpaid balance immediately due and
19 payable; (3) To specifically enforce the terms of this agreement
20 by suit in equity; (4) To declare this contract null and void, and
21 in any of such cases, except exercise of the right to specifically
22 enforce this agreement by suit in equity, all the right and interest
23 hereby created or then existing in favor of Purchasers derived under
24 this agreement shall utterly cease and determine, and the premises
25 aforesaid shall revert and revest in Sellers without any declaration
26 of forfeiture or act of re-entry, and without any other act by
27 Sellers to be performed and without any right of Purchasers of re-
28 clamation or compensation for money paid or for improvements made,
29 as absolutely, fully and perfectly as if this agreement had never
30 been made, and, all improvements, including growing crops or har-
31 vested, then located upon said subject real property shall become
32 the property of Sellers and shall be forfeited unto Sellers as

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1 liquidated damages.

2 In the event Sellers elect to foreclose this contract by
3 strict foreclosure in equity as above provided, it is understood
4 and agreed that Sellers shall thereupon be entitled to the possess-
5 ion of the subject real and personal property and that such right
6 to possession in the Sellers shall not be deemed inconsistent with
7 the suit for strict foreclosure but shall be in furtherance thereof,
8 and in the event Purchasers shall refuse to deliver possession upon
9 the filing of such suit, Purchasers by the execution of this agree-
10 ment and the covenants of the parties to be kept and performed here-
11 in, consent to the entry of an interlocutory order granting possess-
12 ion of said property unto Sellers immediately upon the filing of
13 any such suit for strict foreclosure without the necessity of the
14 Sellers posting an undertaking or having a receiver appointed.

15 In addition to the aforementioned remedies, Sellers may have
16 any and all other remedies provided by law.

17 This agreement shall bind and inure to the benefit of, as the
18 circumstances may require, the parties hereto and their respective
19 heirs, legal representatives and assigns.

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

22 Sellers:

Henry C. Oberheide
Henry Oberheide
Aline Oberheide
Aline Oberheide

23 Purchasers:

Garry Freitag
Garry Freitag
Gertrude Freitag
Gertrude Freitag

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RECORDED
MAR 10 1970
National Bank of Oregon, Portland
Klamath Falls Branch
Klamath Falls, Oregon 97604

STATE OF OREGON)
COUNTY OF KLAMATH) ss.

July 29, 1966

Personally appeared the above named HENRY OBERHEIDE and ALINE OBERHEIDE, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

One J. K. Overly
Notary Public for Oregon
My Commission expires: 9/23/69

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1 STATE OF OREGON)
2 COUNTY OF KLAMATH) ss.

July 29, 1966

3 Personally appeared the above named GARRY FREITAG and
4 GERTRUDE FREITAG, husband and wife, and acknowledged the foregoing
instrument to be their voluntary act and deed.
5 BEFORE ME:

6 Orville H. Oliver
Notary Public for Oregon
My Commission expires: 9-23-69

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EXHIBIT "1"

The E 1/2 of the SE 1/4 of Section 5, EXCEPTING 2.77 acres South and West of the Main Canal of the Horsefly Irrigation District; and that portion of the NE 1/4 NE 1/4 of Section 8, lying North and East of the Main Canal of the Horsefly Irrigation District, all being in Township 39 South, Range 11 East, W.M., Klamath County, Oregon, EXCEPTING rights of way for ditches and roadways.

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:
Transamerica Title Co.

on this 1 day of April A. D., 19 70
at 4:23 o'clock P. M. and duly
recorded in Vol. M-70 of Deeds
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WM. D. MILNE, County Clerk

Fee 15.00 By [Signature] Deputy.

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Bowin & Bowin