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Vol. 171 PAGE 2508

AGREEMENT

THIS AGREEMENT, made this 19th day of May, 1971, by Alex W. Chernabaeff and Ann Chernabaeff, husband and wife, hereinafter called VENDOR, and Richard J. Smith, hereinafter called PURCHASER.

WITNESSETH:

VENDOR agrees to sell to PURCHASER and PURCHASER agrees to purchase that certain land, and all improvements thereon, situated in Klamath County, State of Oregon, described as follows:

SW 1/4 of Section 21, Township 39 South, Range 9 East of the Willamette Meridian; EXCEPTING those portions deeded to the United States of America by deeds recorded in Volume 28, page 245, and Volume 93, page 281; ALSO EXCEPTING that portion deeded to William M. Gray and Retha B. Gray by deed recorded in Volume 282, page 547, all in Deed Records of Klamath County, Oregon.

SUBJECT TO: Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, and water and irrigation rights in connection therewith; rights of the public in and to any portion of said premises lying within the limits of public roads or highways; easement, including the terms and provisions thereof, to the United States of America, recorded April 10, 1906, in Deed Volume 19 at page 636, Records of Klamath County, Oregon; easement, including the terms and provisions thereof, to the United States of America, recorded May 1, 1908, in Deed Volume 24 at page 149, Records of Klamath County, Oregon; Mortgage, including the terms and provisions thereof, dated September 5, 1962, recorded September 14, 1962, in Mortgage Volume 212 at page 604, given to secure the payment of \$21,000.00 with interest thereon and such future advances as may be provided therein, executed by Wendell G. Beyer and Alice F. Beyer, husband and wife, to The Federal Land Bank of Spokane, a corporation, and in the present amount of \$18,963.52 with interest; and that certain Contract of Purchase dated November 20, 1964 between Wendell G. Beyer and Alice F. Beyer, sellers, and Alex W. Chernabaeff and Ann Chernabaeff, buyers, covering the property described above having a present unpaid balance of \$16,895.86, which purchaser agrees to pay, Contracts, water rights and assessments of Klamath Basin Improvement District.

The purchase price of the property, which PURCHASER agrees to pay, shall be the sum of EIGHTY FIVE THOUSAND AND NO/100 (\$85,000.00 DOLLARS as follows:

- \$20,000.00 which is paid upon execution hereof.
- \$ 18,623.97 by assumption of that certain Federal Land

RICHARD J. SMITH  
ATTORNEY AT LAW  
210 NORTH 4TH STREET  
KLAMATH FALLS, ORE.  
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Page 1 - Agreement

THE MORTGAGOR, James A.

GRANTORS. BOBBY

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1 Bank Mortgage described above as of December 2, 1971;

2 *P.W.C.* c. \$ 14,895.86 by assuming to pay the balance of that  
3 certain Contract with Wendell G. Beyer and Alice F. Beyer, described  
4 above as of December 2, 1971;

5 *P.W.C.* d. The remaining balance of \$ 31,480.17 shall be  
6 paid in three annual installments, equally, plus accrued interest  
7 at the rate of 6 1/2% per annum from November 1, 1971, with the first  
8 of said payments due December 1, 1972 and a like payment on December  
9 1, 1973 and 1974.

10 PURCHASER shall have the privilege of increasing any  
11 payment or prepaying the whole consideration at any time, after  
12 one year from the date of this contract.

13 VENDOR agrees to make the Federal Land Bank payment and  
14 BEYER payment heretofore described due December 1, 1971.

15 PURCHASER agrees to pay when due all taxes which are  
16 hereafter levied against the property and all public, municipal and  
17 statutory liens which may be hereafter lawfully imposed upon the  
18 premises, and the parties agree to pro rate property taxes on said  
19 property as of November 1, 1971, and PURCHASER agrees to pay all  
20 water charges against said property for the water year 1972.

21 PURCHASER agrees to keep the building on said premises  
22 insured against loss by fire or other casualty in an amount not less  
23 than their insurable value with loss payable to the parties hereto  
24 as their interests appear at the time of loss. All uninsured losses  
25 shall be borne by PURCHASER on or after the date PURCHASER becomes  
26 entitled to possession. Fire insurance premiums due shall be paid  
27 by PURCHASER after November 1, 1971, and until said date, VENDOR  
28 shall be responsible for insurance as stated herein.

29 PURCHASER shall be entitled to possession of the premises  
30 not later than November 1, 1971 or three days after all grain presently  
31 being grown on the premises is removed, whichever date shall occur  
32 first.

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Page 2 - Agreement

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16 insurance shall  
17 set forth.  
18 VENDOR  
19 described prope  
20 herein.  
21 PURCHASER

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1 PURCHASER agrees that all improvements now located or  
2 which shall hereafter be placed on the premises, shall remain a  
3 part of the real property and shall not be removed at any time  
4 prior to the expiration of this Agreement without the written consent  
5 of VENDOR. PURCHASER shall not commit or suffer any waste of the  
6 property, or any improvements thereon, or alterations thereof, and  
7 shall maintain the property, and all improvements thereon, and all  
8 alterations thereof, in good condition and repair.

9 VENDOR shall furnish at their expense a Purchaser's Title  
10 Insurance Policy in the amount of \$85,000.00 insuring PURCHASER  
11 against loss or damage sustained by them by reason of the unmarket-  
12 ability of VENDOR'S title or lien or encumbrances thereon, excepting  
13 matters contained in usual printed exceptions in such title  
14 insurance policies, easements, conditions and restrictions of record  
15 and encumbrances herein specified, if any. Said policy of title  
16 insurance shall be deposited with the escrow agent as hereinafter  
17 set forth.

18 VENDOR covenants that they are the owners of the above  
19 described property free of all encumbrances other than as stated  
20 herein.

21 PURCHASER certifies that this contract of purchase is  
22 accepted and executed on the basis of his own examination and  
23 personal knowledge of the premises and opinion of the value thereof;  
24 that no attempt has been made to influence his judgment; that no  
25 representations as to the condition or repair of said premises have  
26 been made by VENDOR or by any agent of VENDOR, that no agreement  
27 or promise to alter, repair, or improve said premises has been made  
28 by VENDOR or by any agent of VENDOR; and that PURCHASER takes said  
29 property and the improvements thereon in the condition existing at  
30 the time of this Agreement.

31 Failure by VENDOR at any time to require performance by  
32 PURCHASER of any of the provisions hereof shall in no way affect

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Page 3 - Agreement

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1 VENDOR'S rights hereunder to enforce the same, nor shall any waiver  
2 by VENDOR of any breach hereof be held to be a waiver of any  
3 succeeding breach, or a waiver of this non-waiver clause.

4 In case litigation is instituted arising directly or in-  
5 directly out of this contract, the losing party shall pay to the  
6 prevailing party his or her reasonable attorney fees and court costs  
7 together with any attorney fee incurred by the prevailing party on  
8 the appeal of any judgment or order of any trial court together  
9 with the prevailing party's costs of said appeal.

10 As soon as practicable following the execution of this  
11 Agreement VENDOR shall deliver in escrow to First Federal Savings  
12 and Loan Association of Klamath Falls, Klamath Falls, Oregon:

- 13 (a) A warranty deed to the property, free and clear  
14 of all encumbrances, except as expressly specified  
15 herein, said deed to be executed by VENDOR with  
16 PURCHASER as the grantee.  
17 (b) An executed copy of this Agreement.  
18 (c) Purchaser's Policy of title insurance in the  
19 amount of \$85,000.00.  
20 (d) Amendment to escrow instructions covering the  
21 Beyer contract heretofore described.  
22 (e) Assignment of the PURCHASER'S interest in the  
23 BEYER'S contract heretofore described.

24 The parties hereto hereby instruct said escrow agent to  
25 receive for VENDOR'S account the balance of the installment payments  
26 provided for herein. Upon full payment of the principal and interest  
27 provided for herein, the escrow agent shall deliver to itself as  
28 escrow agent the warranty deed, amendment to escrow instructions  
29 and assignment heretofore described and deliver to PURCHASER the  
30 purchaser's policy of title insurance heretofore described and  
31 close its escrow. If PURCHASER fails to pay any installment before  
32 the expiration of thirty (30) days, after the due date thereof, the  
escrow agent is authorized to surrender to VENDOR, upon demand and  
without notice to PURCHASER, all of the documents specified in the  
preceding paragraphs, thereby terminating the escrow.

RICHARD J. SMITH  
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210 NORTH 4TH STREET  
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Page 4 - Agreement

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1 In the event that PURCHASER shall fail to perform any of  
2 the terms of this Agreement, time of payment and performance being  
3 of the essence, VENDOR shall, at their option, subject to the  
4 requirements of notice as herein provided, have the following rights:

- 5 (a) To foreclose this contract by strict foreclosure  
6 in equity.  
7 (b) To declare the full unpaid balance of the purchase  
8 price immediately due and payable.  
9 (c) To specifically enforce the terms of this Agreement  
10 by suit in equity.  
11 (d) To declare this agreement null and void as of the  
12 date of the breach and to retain as liquidated  
13 damages the amount of the payment theretofore made  
14 upon said premises. Under this option all of the  
15 right, title and interest of PURCHASER shall revert  
16 and revert in VENDOR without any act of re-entry or  
17 without any other act by VENDOR to be performed, and  
18 PURCHASER agrees to peaceably surrender the premises  
19 to VENDOR, or in default thereof PURCHASER may, at  
20 the option of VENDOR, be treated as a tenant holding  
21 over unlawfully after the expiration of a lease and  
22 may be ousted and removed as such.

23 PURCHASER shall not be deemed in default for failure to perform any  
24 covenant or condition of this contract, other than the failure to  
25 make payments as provided for herein, until notice of said default  
26 has been given by VENDOR to PURCHASER and PURCHASER shall have  
27 failed to remedy said default within fifteen (15) days after the  
28 giving of the notice. Notice for this purpose shall be deemed to  
29 have been given by the deposit in the mails of a certified letter  
30 containing said notice and addressed to PURCHASER at 210 North 4th  
31 Street, Klamath Falls, Oregon. If PURCHASER fails to make payment  
32 as herein provided and such failure shall continue for more than  
thirty (30) days after the payment becomes due, PURCHASER shall be  
deemed in default and VENDOR shall not be obligated to give notice  
to PURCHASER of a declaration of said default.

22

29 The covenants, conditions and terms of this Agreement shall  
30 extend to and be binding upon and inure to the benefit of the heirs  
31 administrators, executors and assigns of the parties hereto,  
32 provided, however, that nothing contained in this paragraph shall

RICHARD J. SMITH  
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1 alter the restrictions hereinabove contained relating to assignment.  
2 IN WITNESS WHEREOF, the parties have caused this Agreement  
3 to be executed this 19th day of May, 1971.

4 VENDOR:

PURCHASER:

5 *Alex W. Chernabaeff*  
6

*[Signature]*

7 *Ann Chernabaeff*  
8

9 STATE OF OREGON )  
10 County of Klamath ) ss.

May 19, 1971

11 Personally appeared the above named Alex W. Chernabaeff and  
12 Ann Chernabaeff, husband and wife, and acknowledged the foregoing  
13 instrument to be their voluntary act and deed.

14 Before me:

15  
16 SHERMAN E. HOLT  
17 NOTARY PUBLIC — OREGON  
My Commission Expires

*[Signature]*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 4-14-74

18 STATE OF OREGON )  
19 County of Klamath ) ss.

May 19, 1971

20 Personally appeared the above named Richard J. Smith, and  
21 acknowledged the foregoing instrument to be his voluntary act and  
22 deed.

23 Before me:

24 *[Signature]*  
25 NOTARY PUBLIC FOR OREGON  
26 My Commission Expires: 1-22-73  
27  
28

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Transamerica Title Co.

Filed for record at request of  
this 20th day of July, A. D., 1971, at 3:45 o'clock P. M., and duly recorded in  
Vol. M 71, of Deeds on Page 7598.

Fee \$9.00

WM. D. MILNE, County Clerk

By *Alice C. Regan*

210 NORTH 4TH STREET  
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Page 6 - Agreement

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