

17851

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A-27141

THIS AGREEMENT, Made and entered into this 16th day of August, 1976, by and between MILBURN FARMS, INC., an Oregon corporation, and WILLIAM R. MILBURN and MARYBELLE R. MILBURN, husband and wife, herein-after called Vendors, and LAFF Z. SMITH and MARGARET C. SMITH, husband and wife, hereinafter called Vendees,

## WITNESSETH:

Vendors agree to sell to Vendees, and Vendees agree to buy from Vendors all of the following described property situate in Klamath County, State of Oregon, described as follows, to-wit:

That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 35, Township 38 South, Range 11 $\frac{1}{2}$  E.W.M., formerly known as Oreoil Townsite, now vacated, described as follows: Beginning at the Section corner common to Sections 26, 27, 34 and 35 in said township and range; thence N. 89°04' E. 30 feet to the East side of the County Road and initial point marked by a 2" by 36" iron pipe; thence N. 89°04' E. 2,610.3 feet to quarter section corner between said Sections 26 and 35; thence S. 0°08' E. 1,290.0 feet to the North side of the County Road; thence S. 89°04' W. 2,613.3 feet along the North side of County Road to an intersection with the East side of County Road first mentioned; thence North 1,290.0 feet to the point of beginning,

Together with Vendors' equity in following equipment:

1530 John Deere Tractor;  
1014 Heston Swather;  
78 Hayliner Baler  
1 Offset Disc and Tandem Disc;  
Pasture Harrow;  
2 Bottom Plow;  
Sprinkler Equipment consisting of:  
30 H.P. Sprinkler Pump, 1000 ft. 6" Main Line;  
1100 feet 5" Main Line; 1500 feet 3" Sprinkler  
Line; 1200 ft. 2" Sprinkler Line;

Said real Property Subject to:  
Taxes for fiscal year commencing July 1, 1976, which are now a lien but not yet pay able; any unpaid charges or assessments of Horsefly Irrigation District; Acreage and use limitations under provisions of United States Statutes and regulations issued thereunder; the assessment roll and tax roll disclose the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, an additional tax may be levied for the years since October 5, 1968, in which the land was subject to the special land use assessment; and further subject to rights of the public in and to any portion of said property lying within the limits of public roads and highway; easements and rights of way of record or apparent on the land; and to contract hereinafter mentioned; and to leasehold interest of John and Irma Tofell dated September 10, 1969 on the potato cellar on the SW corner of above property.  
Said equipment is subject to:

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Unpaid balance due on 1530 John Deere Tractor, payable to John Deere Financing Corp; and unpaid balance on 1014 Heston Swather, payable to Borg-Warner Acceptance Corp., which said balances vendees assume and agree to pay as the same become due and in addition to the purchase price of the real property and the equipment as hereinafter set forth,

at and for a price of \$100,000.00, payable as follows, to-wit: \$24,262.39 by assumption by Vendees of contract for sale of above-described real property dated November 1, 1967, recorded November 10, 1967 in M67, page 8735, between Lester Jones and Ethel K. Jones, as sellers, and William R. Milburn and Marybelle R. Milburn, were purchasers, sellers' interest in which said contract was by assignment of contract recorded May 17, 1976, in M76, page 7384, assigned by Ethel K. Jones, widow of Lester Jones to Ray Jones and Joanna Marchant, and purchasers' interest was by deed recorded December 5, 1973 in M73, page 15727, assigned to Milburn Farms, Inc., said deed excepting, however, the following described land:

Beginning at a point which is South 1322.32 feet and South 89°28'04" West 3150.74 feet from the section corner common to Sections 25, 26, 35 and 36 in Township 38 South, Range 11½ East of the Willamette Meridian; thence North 30 feet to the North boundary line of the Bonanza-Dairy Road; thence along the North boundary of said road South 88°42'34" West 275.72 feet; thence North 03°13'04" East 218.74 feet; thence South 89°42'40" East 258.63 feet; thence South 01°17'26" East 210.94 feet to point of beginning, in N½NW¼NW¼ of Section 35, Township 38 S.R. 11½ E.W.M., Klamath County, Oregon;

\$25,000.00 at the time of the execution of this agreement, receipt of which is hereby acknowledged; and \$50,737.61 with interest at the rate of 7½% per annum from August 15, 1976, is payable in installments of not less than \$5000.00 per annum, inclusive of accruing interest, first installment to be paid August 15, 1977 and a like installment on the 15th day of each August thereafter to and including the 15th day of August, 1985, with the total balance then remaining principal and interest to be paid in full on or before August 15, 1986.

Vendees agree to make said payments promptly on the dates above named to the order of Vendors, at First Federal Savings and Loan Association of Klamath Falls at Klamath Falls, Oregon, and to make the payments due on the contract which is held in escrow at same association wherein Ethel K. Jones, widow of Lester Jones assigned her interest as seller to Ray Jones and Joanna Marchant, above mentioned, it being hereby agreed that failure by vendees to make payments on said Jones contract shall constitute a breach of the within contract and vendors may then pursue any of the remedies hereinafter set forth in the event vendees shall fail to make the payments or fail to keep any of the other terms or conditions of the within contract of sale.

Vendees further agree to keep said property at all times in as good condition as the same now is; that no improvement now on or which may hereafter be placed on said property shall be removed or destroyed before the entire purchase price has been paid, and that said property will be kept insured in companies approved by vendors, against loss or damage by fire in a sum not less than insurable value, with loss payable to the parties as their respective interests may appear, said policy or policies



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of insurance to be held by vendees, with copies furnished to above vendors, and to said Ray Jones and Joanna Marchant; that Vendees shall pay regularly and seasonably and before the same shall become subject to interest charges, all taxes, assessments, liens and incumbrances of whatsoever nature and kind and agree not to suffer or permit any part of said property to become subject to any taxes, assessments, liens, charges or incumbrances whatsoever having precedence over the rights of the vendors in and to said property. Vendees shall be entitled to possession of said land on August 15, 1976, and to the dwelling house on said land on September 1, 1976.

Vendors will, on the execution hereof, make and execute in favor of Vendees good and sufficient warranty deed conveying a fee simple title to said real property, free and clear as of this date of all incumbrances whatsoever, except as above set forth, which vendees assume, and a good and sufficient Bill of Sale for said equipment, free and clear of all incumbrances as of this date, except the unpaid balance set forth above which are assumed by vendees, and personal property taxes which became a lien January 1, 1976 and which will be pro-rated as of this date, and will place said deed, Bill of Sale, title insurance policy covering said real property, an assignment of said original Jones Contract, Amendment to escrow instructions covering said original Jones contract, and an executed, recorded copy of this agreement in escrow at First Federal Savings and Loan Association of Klamath Falls at Klamath Falls, Oregon, and shall enter into written escrow instructions, in form satisfactory to said escrow holder instructing said escrow holder that when, and if, vendees shall have paid the balance of the purchase price due vendors as above set forth in accordance with the terms and conditions of this contract, said escrow holder shall place said deed, bill of sale, assignment of Jones contract, and the Amendment to Escrow Instructions covering said original Jones Contract, in said original Jones escrow to be held in that escrow until such time as the unpaid balance of that contract has been fully paid, at which time said escrow holder will deliver the instruments to which the original purchasers would have been entitled together with the papers above described, with the exception of the recorded contract which it will hold in its files, to vendees, thereby terminating both of said escrows, but in case of default by vendees in making payments on either of said contracts or in any of the terms or conditions of said contracts, said escrow holder shall, on demand of vendors, surrender said instruments to vendors.

Escrow fees shall be paid when said papers are deposited in escrow, and escrow agent's assignment fee of \$25.00 covering said original Jones contract shall also be paid at that time.

In the event Vendees shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and at the times above specified, or fail to keep any of the other terms or conditions of this agreement, time of payment and strict performance being declared to be the essence of this agreement, vendors shall have the following rights: (1) To foreclose this contract by strict foreclosure in equity; (2) to declare the full unpaid balance immediately due and payable; (3) to specifically enforce the terms of this agreement by suit in equity; (4) to declare this contract null and void, and in any of such cases, except exercise of the right to specifically enforce this agreement by suit in equity, all the right and interest hereby created or then existing in favor of vendees derived under this agreement shall utterly cease and determine, and the premises aforesaid shall revert and revest in vendors without any declaration of forfeiture or act of reentry, and without any other act by vendors to be performed and without any right of vendees of reclamation or compensation for money paid or for improvements made, as absolutely, fully and perfectly as if this agreement had never been made.

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Should vendees, while in default, permit the premises to become vacant, Vendors may take possession of same for the purpose of protecting and preserving the property, and its and their security interest therein, and in the event possession is so taken by vendors they shall not be deemed to have waived their right to exercise any of the foregoing rights.

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

Vendees further agree that failure by vendors at any time to require performance by vendees of any provisions hereof shall in no way effect vendors' right hereunder to enforce the same, nor shall any waiver by vendors of such breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators and assigns.

WITNESS the hands of the parties the day and year first herein written.

MILBURN FARMS, INC.  
by William R. Milburn Sr.  
President

by Marybelle R. Milburn  
Vice-President

William R. Milburn  
William R. Milburn

Marybelle R. Milburn  
Marybelle R. Milburn

VENDORS  
Lafe Z. Smith  
Lafe Z. Smith  
By Margaret C. Smith  
Margaret C. Smith

STATE OF OREGON }  
County of Klamath } SS August 18, 1976

Personally appeared William R. Milburn, Sr., and Marybelle R. Milburn, 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 Vice-President of Milburn Farms, Inc., 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. Before me:

[Signature]  
Notary Public for Oregon  
My Commission expires: 8-5-79

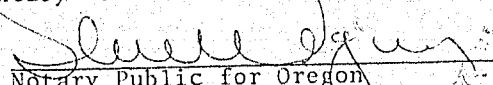


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STATE OF OREGON  
County of Klamath

} SS August 18, 1976

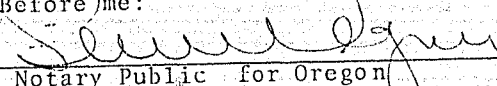
Personally appeared the within named William R. Milburn and Marybelle R. Milburn, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

  
Notary Public for Oregon  
My Commission expires: 8-5-79

STATE OF OREGON  
County of Klamath

} SS August 18, 1976

Personally appeared the within named Lafe Z. Smith and Margaret C. Smith, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

  
Notary Public for Oregon  
My Commission expires: 8-5-79

FORM No. 159—ACKNOWLEDGMENT BY ATTORNEY-IN-FACT.

STATE OF OREGON,

County of Klamath

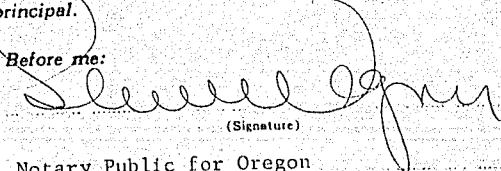
ss.

On this the 18th day of August, 1976 personally appeared  
Lafe Z. Smith

who, being duly sworn (or affirmed), did say that he is the attorney in fact for  
Margaret C. Smith and  
that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be the act and deed of said principal.

Before me:

(Official Seal)

  
(Signature)

Notary Public for Oregon  
(Title of Officer)  
My commission expires 8-5-79

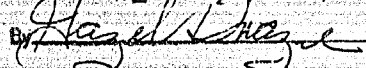
After recording return to Klamath County Title  
P.O. Box 151 K. Falls

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of KLAMATH COUNTY TITLE CO  
this 19th day of August A.D. 1976 at 11:25 o'clock A M and  
duly recorded in Vol. MI 76, of DEEDS on Page 12878

FEE \$ 15.00

Wm D. MILNE, County Clerk



5 - CONTRACT OF SALE