

22616

MTC # 1551

Vol. 76 Page 19654

SALE AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of November, 1976, by and between STEVE C. JOSSE and MARY A. JOSSE, husband and wife, hereinafter referred to as "Sellers," and WALTER F. SEALS and TERESE M. SEALS, husband and wife, hereinafter referred to as "Purchasers,"

W I T N E S S E T H :

In consideration of the agreements herein contained and the payments to be paid by Purchasers to Sellers, Sellers hereby agree to sell to Purchasers the following-described real and personal property which is to be conveyed free and clear of any and all encumbrances, liens, clouds on title, or other impediments to marketability of title, except as set forth herein, with the execution set forth hereafter, situate in the County of Klamath, State of Oregon, to-wit:

The SW $\frac{1}{4}$, Section 15 and the NW $\frac{1}{4}$, Section 22, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

SUBJECT, HOWEVER, TO THE FOLLOWING:

(1) The assessment roll and the tax roll disclose that the premises herein described have been specially assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for the last ten (10) or lesser number of years in which the farm use assessment was in effect for the land and in addition thereto a penalty may be levied if notice of disqualification is not timely given.

(2) Rights of the public in and to any portion of the herein described property lying within the limits of roads and highways.

(3) Reservations and easements as contained in Deed recorded February 21, 1958, in Volume 297, page 505, Deed Records of Klamath County, Oregon, to wit:

"All subsurface rights, except water, are hereby reserved, in trust, to the grantor, pursuant to the provisions of the Act of August 13, 1954, (68 Stat. 720)."

(4) Reservations and easements as contained in Deed recorded February 21, 1958, in Volume 297, page 507, Deed Records of Klamath County, Oregon, to wit:

"All subsurface rights, except water, are hereby reserved, in trust, for Delores George, unalloted Klamath, Gloria Ann George, unalloted Klamath and Lawrence Head, unalloted Klamath."

76 DEC 7 PM 3 32

together with the personal property set forth and described in the attached Exhibit "A", and by this reference made a part hereof.

IT IS HEREBY AGREED by and between the parties hereto that Sellers reserve the right to keep cattle on the above-described real property until December 15, 1976.

IT IS FURTHER AGREED by and between the parties hereto that Sellers are entitled to keep the balance of the hay crop on the ranch until March 1, 1977.

TERMS AND CONSIDERATIONS: The total purchase price of the above-described real property is TWO HUNDRED THREE THOUSAND AND NO/100 DOLLARS (\$203,000.00) payable as follows:

(1) FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) cash and consideration, the receipt and sufficiency whereof is hereby acknowledged by Sellers. It is understood that this down payment includes any money paid by Purchasers as earnest money for the purpose of binding this transaction.

(2) The balance of ONE HUNDRED TWENTY-THREE THOUSAND AND NO/100 DOLLARS (\$123,000.00) to be paid as follows:

(a) ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) including interest at the rate of 5% to Farmers Home Administration.

(b) TWENTY-THREE THOUSAND AND NO/100 DOLLARS (\$23,000.00) including interest at 8½% to Farmers Home Administration.

(c) The balance of THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$35,000.00) to be paid at the rate of THREE THOUSAND EIGHT HUNDRED NINETY-THREE AND 52/100 DOLLARS (\$3,893.52) annually, including interest at the rate of 7½% with the first payment to be due and payable on or before the first day of November, 1977, and subsequent payments due on or before the first day of November of each year thereafter until the full balance of principal and

19656

interest has been fully paid and satisfied. Purchasers may pay all or any part of the balance at any time without penalty after March 1, 1978.

(d) It is understood and agreed that from the ^{annual} ~~monthly~~ payments hereinabove provided for there shall first be deducted interest at the rate of $7\frac{1}{2}\%$ per annum then accrued on any of the unpaid balance of the principal indebtedness, and thereafter the remaining portion of said installment shall apply in reduction of the principal balance owing under the terms and conditions of the subject agreement. Interest on the unpaid balance shall be payable from and after the 30th day of November, 1976.

All payments due hereunder shall be made to the Sellers at the First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon 97601, herein designated Escrow Agent.

TAXES AND LIENS: Except as herein expressly provided to the contrary, all current taxes and other assessments on the properties shall be prorated between the parties as of the date of November 30, 1976. Purchasers agree to pay all such taxes and assessments thereafter levied before they become delinquent. Purchasers further agree to pay and discharge of record all other liens which may thereafter be claimed or imposed against said property, or any part thereof, within thirty (30) days after the filing thereof or shall supply assurances satisfactory to Sellers that said liens, or any judgments entered thereon, will be paid and discharged of record.

POSSESSION: Purchasers shall be entitled to possession of the above-described property as of December 15, 1976, and may retain such possession only so long as Purchasers are not in default herein.

REPRESENTATION: Purchasers certify that this Sale Agreement

is accepted on the basis of Purchasers' own examination and personal knowledge of the properties and opinion as to the value thereof; that the only material representations and warranties inducing this transaction are those expressly set forth herein; that no agreement or promise to alter, repair, or improve said properties has been made by Sellers or any agent of Sellers; and Purchasers hereby agree to take said properties and the improvements thereon in the condition they are in at the time of execution of this Agreement. Purchasers agree to keep said properties and the improvements in a good condition of repair and maintenance, and Purchasers will commit no waste thereof.

SELLERS' WARRANTIES: Sellers covenant with Purchasers as follows: Except as expressly provided herein to the contrary, Sellers are the sole owners of said properties and seized in fee simple of the above-described real property; that Sellers' title to the same is marketable; that Sellers have a right to transfer title to the same and possession thereof; that the properties are presently free from all matured and inchoate liens, charges, and encumbrances whatsoever, except as the same may be noted in this Agreement; that Purchasers shall have the quiet enjoyment of the properties and that Sellers will warrant and defend the same against all lawful claims and demands whatsoever, except as stated herein.

TITLE INSURANCE: The Sellers agree that at their expense they will furnish unto Purchasers a title insurance policy insuring in an amount equal to said purchase price marketable title in and to said premises as of the date of this Sale Agreement.

INSURANCE: At Purchasers' expense they will insure and

keep insured all buildings now or hereafter erected on said premises against loss or damage by fire, with extended coverage, in an amount not less than \$, in a company or companies satisfactory to the Sellers, with loss payable first to the Sellers, then to the Purchasers, as their respective interest may appear and all policies of insurance to be delivered to the Sellers as soon as insured.

ASSIGNMENT: Purchasers shall not sell, transfer, or assign this Agreement or any right or interest therein without first obtaining the written consent of the Sellers, and no sale, transfer, or assignment of this Agreement shall be valid or recognized by any person for any purpose unless Sellers' consent be obtained in writing; any such consent given pursuant hereto shall not be construed as any representation or agreement by Sellers concerning the condition or degree of the right or interest reported to be sold, transferred, or assigned by any such sale, transfer, or assignment, consented to by Sellers, and any breach of the terms or provisions of this paragraph by Purchasers may be deemed by Sellers to be a default in the terms thereof, and Sellers shall have the right to declare all sums then remaining unpaid on this Agreement immediately due and payable, and if not so paid, shall have the right to foreclose this Sale Agreement. Consent of Sellers to transfer shall not be unreasonably withheld.

DEFAULT: If Purchasers fail to make any of the payments herein stated within thirty (30) days of the specified payment date, or if the Purchasers fail to perform any of the other terms, covenants, or conditions of this Sale Agreement, and if any such default in payment or performance shall remain uncorrected by Purchasers for thirty (30) days after written notice of such default has been given by certified mail by Sellers to Purchasers

at Purchasers' last known post office address, (provided always, that NO NOTICE WHATSOEVER SHALL BE REQUIRED OF SELLERS FOR ANY DEFAULT IN PAYMENT OF ANY DEFERRED INSTALLMENTS OF PURCHASE PRICE), time of payment and strict performance in all things being of the essence of this Agreement, Sellers shall have the following rights:

(1) To declare the entire unpaid balance of the purchase price, both principal and interest, immediately due and payable and to exercise any of the following options;

- (a) To sue for the unpaid balance then due on this Agreement;
- (b) To foreclose this Agreement by strict foreclosure in equity; and to the appointment of a receiver during the pendency of the suit;
- (c) To sue for specific enforcement of this Agreement;

(2) or to declare this Agreement null and void and to retain as liquidated damages the payments theretofore made under this Agreement by Purchasers, and any repair and improvements made upon said properties. If Sellers shall so elect to declare this Agreement null and void as hereinabove provided, all of the right, title, and interest of Purchasers shall immediately revert to and revest in Sellers without any other act by Sellers to be performed and without any right of Purchasers of reclamation or compensation for money paid or repairs or improvements added, as absolutely, fully, and perfectly as if no Agreement had ever been made, and Purchasers agree to surrender peaceably said properties and the possession thereof to Sellers, or in default thereof, Purchasers may, at the option of the Sellers, be treated as a tenant holding over unlawfully after expiration of a lease and may be ousted and removed as such. Provided always that the recitation of remedies herein shall not be deemed exclusive and

shall not bar the parties from any other or additional or supplemental remedy or remedies afforded at law, in equity, or otherwise.

DELINQUENT CHARGES: If Purchasers shall fail to pay any assessments, liens, insurance premiums, or any other expense necessary to preserve Sellers' lien hereby retained, and the value and priority thereof, Sellers, without obligation to do so, and without waiver of Purchasers' default, have the right to pay the same, and treat the amount so paid as a debt due and owing from Purchasers to Sellers, secured by the lien of this Agreement, and to bear interest at contract rate per annum until paid.

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 term, covenant, or condition, or as a waiver of the term, covenant, or condition itself; nor shall such waiver require any notice of any kind to be given to reinstate the defaulted term, covenant, or condition, or to make time and strict performance again of the essence.

PARTIES: The obligations of the undersigned are joint and several, and wherever the context hereof so admits or requires, the singular shall include the plural. This Sale Agreement contains the entire agreement of the parties and cannot be modified except upon written agreement. This Agreement shall benefit and bind the heirs, executors, administrators, successors, and assigns of the parties.

ATTORNEY'S FEES: Should suit, action, or other legal proceeding be instituted to declare or enforce any right created by this instrument, the prevailing party therein shall be entitled to the costs and disbursements provided by statute, and such other sum as the Court may adjudge reasonable for attorney's fees.

19661

PRIOR AGREEMENTS: This document is the entire, final, and complete Agreement of the parties pertaining to the sale and purchase of the real property, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the property is concerned.

GENERAL PROVISIONS:

(1) All of the terms herein, the rights, duties, and remedies of the parties shall be governed by the laws of Oregon.

(2) Each demand, notice, or other communication shall be served or given by mail or telegraph addressed to the party at their mailing address set forth herein. For purposes of Notice, Sellers' address shall be P. O. Box 264, Beatty, Oregon 97621, and Purchasers' address shall be Beatty, Oregon 97621. Reasonable notice when Notice is required, shall be ten (10) days.

ESCROW ARRANGEMENTS: As soon as practicable following the execution of this Sale Agreement, Sellers shall deliver in escrow to Mountain Title Company, 4535 South Sixth Street, Klamath Falls, Oregon 97601, the following:

(1) An unrecorded Warranty Deed to the property free and clear of any and all encumbrances, except as hereinabove set forth.

(2) A recorded Sale Agreement.

(3) Bill of Sale covering the personal property described in the attached Exhibit "A" and by this reference incorporated herein.

(4) Form UCC-3, executed by Sellers terminating financing statement filed November ____, 1976, with the Secretary of State, Salem, Oregon. Form UCC-3 executed by Sellers terminating financing statement filed November ____, 1976, in the Klamath County Clerk's

13662

office.

MISCELLANEOUS: The parties hereby instruct said Escrow Agent to receive for Sellers' account the balance of the installment payments provided herein. Said Escrow Agent is further authorized and instructed that it is to close the escrow and deliver the documents to the parties entitled thereto at such time as all sums called for hereunder, including interest, have been fully and completely paid by Purchasers.

Said Escrow Agent is further directed and instructed to deduct from the payments the escrow collection fee and to deposit the balance to Sellers' savings account, number 2047041 with your bank.

If Purchasers fail to pay any installment before the expiration of thirty (30) days after the due date thereof, the Escrow Agent is authorized to surrender to Sellers, upon demand, after proof of written Notice to Purchasers, all of the documents specified in the preceding paragraphs, thereby terminating the escrow.

EXECUTED IN QUADRUPLICATE the 10th day of November, 1976.

Steve C. Josse
Steve C. Josse

Walter F. Seals
Walter F. Seals

Mary A. Josse
Mary A. Josse

SELLERS

Terese M. Seals
Terese M. Seals

PURCHASERS

STATE OF OREGON)
) ss.
County of Klamath)

19663

Personally appeared the above-named STEVE C. JOSSE, MARY
A. JOSSE, WALTER F. SEALS and TERESE M. SEALS and acknowledged
the foregoing instrument to be their voluntary act and deed.

Before me:

Marlene V. Adalington
Notary Public for Oregon
My Commission Expires: 3-21-77

Return To: MTC
Attn: Marlene

Send Tax Statements To:
Mr. & Mrs. Walter F. Seals
General Delivery
Beatty, Oregon

19664

E X H I B I T " A "

PERSONAL PROPERTY: The existing sprinkler system itemized as follows:

Four 1/4 mile wheel lines with movers

Two 1/4 mile pack line laterals 3"x40'

1200 feet m/l 10" mainline

1200 feet m/l 8" mainline

4500 feet m/l 6" mainline

One 40 horse pump One 50 horse pump

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 7th day of
DECEMBER A.D., 1976 at 3:32 o'clock P M., and duly recorded in Vol. M 76
of DEEDS on Page 19654.

FEE \$ 33.00

WM. D. MILNE, County Clerk

By *[Signature]* Deputy