

38-12328

THIS AGREEMENT dated April 18, 1977, by and between
JOHN E. HESS and BLOSSOM HESS, husband and wife, hereinafter
called "Seller" and FRED G. HESS and EDITH M. HESS, husband and
wife, hereinafter called "Buyer";

W I T N E S S E T H :

Seller hereby agrees to sell to Buyer and Buyer hereby agrees to
purchase from Seller the following described real property, to-wit:

PARCEL 1:

A tract of land situated in the SW 1/4 of Section 21, Township 40 South,
Range 10 E.W.M., Klamath County, Oregon more particularly described
as follows: Beginning at a point from which the East quarter corner
of said Section 21 bears N 72°53'24" E 4666.77 feet and the Southeast
corner of a potato cellar bears N 14°33'30" W 22.3 feet; thence S.
49°10'30" W 132.51 feet to a point from which the southwest corner of
said potato cellar bears S. 67°36' W 63.3 feet; thence South 189.73
feet to the north line of the John Hess property; thence East along
said line 100.00 feet; thence North 276.12 feet to the point of
beginning.

PARCEL 2: A tract of land situated in Sections 20, 21, 28 and 29 all
in Township 40 South, Range 10 E.W.M., Klamath County, Oregon, more
particularly described as follows: Beginning at the point of inter-
section of the northeasterly right of way line of State Highway No. 39
(Merrill Highway) and the section line common to said Sections 28 and 29;
thence northwesterly along said northeasterly right of way line to the
west line of the SE 1/4 SE 1/4 of said Section 20; thence northerly
along the west line of the SE 1/4 SE 1/4 of said Section 20 to the center-
line of the U.S.B.R. Drain; thence easterly along said drain to the
section line common to said Sections 20 and 21; thence East to the east
line of the SW 1/4 SW 1/4 of said Section 21; thence southerly along the
east line of the SW 1/4 SW 1/4 of said Section 21 and the east line of
the W 1/2 NW 1/4 of said Section 28 to the southwesterly right of way
line of the Southern Pacific Railroad; thence southeasterly along said
railroad right of way line to the south line of the NW 1/4 of said
Section 28; thence westerly along the south line of the said NW 1/4 to
the southwest corner of the NW 1/4 of said Section 28; thence Northerly
along the west line of the NW 1/4 of said Section 28 to the point of
beginning.

TOGETHER WITH all inventory, hay, grain, machinery and tools more
particularly described in Exhibit "A" attached hereto and by this
reference made a part hereof; and a 1975 Concord house trailer,
14' x 66', Serial Number S3228;

at and for a price of \$142,826.43 payable as follows, to-wit:

- (a) By assigning the Oregon State V. A. Mortgage of John E.
Hess and Blossom Hess, husband and wife to Fred G. Hess
and Edith M. Hess, husband and wife, the present balance
of which is \$109,077.49 with interest computed to April 18,
1977, which Buyers herein assume and agree to pay.
- (b) By assigning the Installment Collection #1-74,
wherein Jespersen is Seller and Hess is Buyer, to
Fred G. Hess and Edith M. Hess, husband and wife, the
present balance of which is \$5,248.94 with interest
computed to April 18, 1977.
- (2) Payment of \$5,000.00 which has previously been paid as
earnest money and the sum of \$13,500.00 which is paid
upon the execution hereof.
- (3) The remaining balance of \$10,000.00 shall be paid in
annual installments of not less than \$1,000.00 each,
plus interest at 6% per annum from April 18 1977.

on the unpaid balances, the first of such annual installments to be paid on or before the 18th day of April, 1978, and subsequent annual installments to be paid on or before the 18th day of April each year thereafter until the entire purchase price, including both principal and interest, is paid in full.

Interest on all unpaid balances shall commence on April 18, 1977. Each payment shall be applied first to interest to date of payment and the balance to principal.

Purchaser may at any time pay off the entire balance of the purchase price remaining due together with interest due thereon to the date of payment.

The Buyer warrants to and covenants with the Seller that the real property described in this contract is:

Primarily for Buyer's personal, family, household or agricultural purposes.

TAXES AND ASSESSMENTS: The Buyer assumes and agrees to pay before delinquency, taxes and assessments of any kind or character which may hereafter become a lien on said real estate.

PAYMENTS BY SELLER: In the event Buyer fails to make any tax or other payment as herein required, Seller may, but is not hereby required to, make such payment and any amount so paid by Seller, together with interest thereon at the same rate as provided in this contract for the unpaid balance, from the date of Seller's payment until repaid shall be reimbursed by Buyer on demand and secured by this contract, all without prejudice to any other right Seller may have by reason of such default.

REPRESENTATIONS: Buyer agrees that full inspection of said property has been made, and that neither Seller, Seller's assigns, nor Seller's representatives have made any representations concerning the condition of the property or the improvements thereon nor has any agreement for alteration, improvement or repair been made unless the same is set forth in this agreement.

USE AND MAINTENANCE: Buyer covenants to keep the buildings and other improvements, if any, now or hereafter located on said real estate in good repair and not to permit waste nor use nor permit the use of said property for any illegal purpose. Buyer covenants to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utilities furnished to said real estate after Buyer is entitled to possession.

FULFILLMENT DEED: Seller agrees, upon receipt of full payment of the purchase price and interest in the manner above specified and when all other terms, conditions and covenants of this contract have been met, to convey the above described real property to Buyer by statutory warranty deed, free and clear of encumbrances except those which Buyer assumes and agrees to pay, and except those which may attach after the date hereof through any person other than the Seller or Seller's successors and assigns, and except such encumbrances as Buyer has assumed or to which Buyer has purchased subject as stated above.

POSSESSION: Buyer shall be entitled to possession of the above described properties closing plus ten (10) days and may retain possession only so long as Buyer is not in default herein.

ASSIGNMENT: Buyer shall not assign this contract nor any interest herein nor sell any interest herein without the written consent of Seller, which consent Seller agrees not to unreasonably withhold.

SELLER'S REMEDIES: Time is of the essence of this contract. In the event Buyer shall fail to comply with or perform any condition or agreement hereof promptly at the time and in the manner herein specified and shall fail to correct said default within a period of 30 days after personal service or date of mailing of notice thereof as herein provided, the same shall constitute a material breach of this agreement, and thereupon Seller may exercise any of the following optional, cumulative remedies:

- a. Seller may elect to declare this contract null and void and all of Buyer's rights hereunder terminated and upon so doing, all payments made by Buyer hereunder may be declared forfeited to Seller as liquidated damages, and Seller shall have the right to re-enter and take possession of the real estate and Buyer in such event agrees to immediately surrender possession of said

- b. Seller may elect to bring action or actions on any intermediate overdue installment or on any payment or payments made by Seller and repayable by Buyer, it being stipulated that the covenants to pay intermediate installments or to pay items repayable by Buyer are independent of the covenant to make a deed, and that every such action is an action arising on contract for the recovery of money only, as if the promise to pay had been expressed in a different instrument. Buyer agrees that no such action shall constitute an election not to proceed otherwise as to any subsequent default, and no waiver by Seller or any default of Buyer shall be construed as a waiver of any subsequent default.
- c. Seller may accelerate and declare the entire unpaid balance immediately due and payable and may commence an action against Buyer for said unpaid balance, together with any other sums due Seller or herein required to be paid by Buyer by virtue of this contract, including but not limited to interest and delinquent taxes or assessments, and to commence an action for the entire principal balance of the purchase price plus such other sums. The failure of Seller to bring an action against Buyer at any time upon the violation of any of the terms of this contract by Buyer shall not be construed to be a waiver of any of the rights of Seller specified herein.
- d. Seller may foreclose this contract by suit in equity, and in any of such cases, all the right and interest hereby created or then existing in favor of the Buyer derived under this agreement, shall utterly cease and determine, and the premises aforesaid shall revert and re-vest in the Seller without any declaration of forfeiture or act of re-entry, or without any other act by Seller to be performed and without any right of the Buyer of reclamation or compensation for money paid or for improvements made as absolutely fully and perfectly as if this agreement had never been made.

COSTS AND ATTORNEY'S FEES: In the event Seller elects to exercise Seller's rights under any of the options above set forth, through court action or otherwise, and the Seller incurs any costs, expenses or attorney's fees by reason of such exercise, Buyer agrees to pay Seller all such reasonable costs, expenses and a reasonable attorney's fee in connection with the enforcement of Seller's rights.

NOTICES: All demands, notices and notices of forfeiture may be personally served upon the parties or service thereof may be made by certified mail, addressed to the respective parties at the following addresses: That Seller's address is 7529 1/2 Hilyard Street, Klamath Falls, Oregon 97601. That Buyer's address is Route 1 Box 631-C, Klamath Falls, Oregon 97601.

TITLE INSURANCE: Seller has delivered, or agrees to deliver within 30 days of the date hereof, a purchasers' policy of title insurance in standard form, or a commitment therefor, issued by a title insurance company entitled to do business in the state where the above described property shall be located, in the amount of the purchase price, insuring marketable title in and to said premises in the Seller on or subsequent to the date of this agreement, save and except the usual printed exceptions and the building and other restrictions and easements now of record, if any, and Seller also agrees that when said purchase price is fully paid and upon request and upon surrender of this agreement, he will deliver a good and sufficient deed conveying said premises in fee simple unto the Buyer, his heirs and assigns, free and clear of encumbrances since said date placed, permitted or arising by, through or under Seller, excepting, however, the said easements and restrictions and the taxes, municipal liens, water rents and public charges so assumed by Buyer and further excepting all liens encumbrances created by the Buyer or his assigns.

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 agreement shall benefit and bind the heirs, executors, administrators, successors and assigns of the parties.

ESCROW: As soon as practicable after the execution of this agreement, the parties shall deliver to Western Bank, 2885 South Sixth Street, Klamath Falls, Oregon, in escrow the following documents:

- a. A full warranty deed covering the above described real property.
- b. A recorded Contract of Sale.

Such escrow instructions as shall meet with the approval of the above named escrow agent.

The parties instruct the above named escrow agent to receive for collection the installments provided for herein and to remit the same to Seller as Seller may from time to time direct. Seller retains a lien on said properties to secure Buyer's payment and performance hereof; but upon full and faithful payment and performance hereby by Buyer, title shall pass, and the escrow agent shall then deliver to Buyer all instruments deposited in escrow.

SURVIVORSHIP: It is agreed by the parties hereto that the rights of Seller herein are the property and for the benefit of Seller jointly while they are both living, and the property and for the benefit of the survivor of them upon the death of either; that it is the intention of Seller that the proceeds of all payments upon this contract will be the property of Seller jointly while they are both living and the property of the survivor of them upon the death of either, said rights of survivorship being in the nature of tenants by the entirety and with right of survivorship. It is further agreed that this contract is executed in favor of Buyer as tenants by the entirety and with right of survivorship.

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

John E. Hess
JOHN E. HESS

By *Blossom Hess*
Her Attorney-in-fact
"SELLER"

Fred G. Hess
FRED G. HESS

Edith M. Hess
EDITH M. HESS

STATE OF OREGON)
County of Klamath) ss

"BUYER"

April 19, 1977

Personally appeared, before me, the above named John E. Hess, Fred G. Hess and Edith M. Hess, and acknowledged the foregoing instrument to be their voluntary act and deed.

Susan Ray Way
NOTARY PUBLIC FOR OREGON
My Commission Expires 6/4/1977

STATE OF OREGON, }
County of Klamath } ss.

On this the _____ day of April 19, 1977 personally appeared John E. Hess who, being duly sworn (or affirmed), did say that he is the attorney in fact for Blossom Hess 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.

(Official Seal)

Before me:
Susan Ray Way
My Commission Expires: 6/4/1977
Notary Public for Oregon
My commission expires 6/4/1977

6916

EXHIBIT "A"

1. Allis Chalmers Cat Crawler Model M S#6406	\$ 3,000.
2. J.D. Wheel Tractor S#7302939	3,500.
3. Ford Diesel 5000 Tractor #1EADKN7007F	3,500.
4. Massey Harris Combine	2,000.
5. International Swather Model 275 S#2471	6,500.
6. New Holland Baler S#225595	3,500.
7. New Holland Harrow Bed	11,000.
8. Miscellaneous tools	1,000.
9. IH 856 Wheel Tractor Model P#56DCU S#24853S-4	8,000.
10. Model 12 Struthmore Harrow	800.
11. Miscellaneous Equipment, Miscellaneous machinery, irrigating equipment, and sprinklers.	3,000.
TOTAL	\$45,800.

PERSONAL PROPERTY

Unless a change is requested all future tax statements shall be sent to:
Department of Veteran's Affairs, 1225 Ferry Street, S. E., Salem, Oregon 97310

AFTER RECORDING RETURN TO: Mr. and Mrs. Fred G. Hess, Rt. 1 Box 631-C, Klamath
Falls, Oregon 97601

STATE OF OREGON; COUNTY OF KLAMATH; ss.
Filed for record at request of TRANSAMERICA TITLE INS. CO
this 22nd day of APRIL A.D. 1977 at 11:09 o'clock AM, and
duly recorded in Vol. M 77, of DEEDS on Page 6912
FEE \$ 15.00 Wm D. MILNE County Cl.
By *[Signature]*