

MTC 3836

Vol. 77 Page 12351

32621

AGREEMENT

THIS AGREEMENT made and entered into this 15 day of July, 1977, by and between Mosley S. Davis and Phyllis J. Davis, herein-
after called VENDOR, and Richard B. Kirsch and Shiara L. Kirsch,
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:

A parcel of land situate in Government Lot 4, Section 3,
Township 40 South, Range 11 East of the Willamette Meri-
dian, and being more particularly described as follows:

Beginning at the intersection of the South line of South
Poe Valley Road and the East line of Schaupp Road; thence
South along the East line of Schaupp Road, a distance of
492 feet, more or less, to an existing fence; thence East
along existing fence line a distance of 840 feet; thence
in a Northwesterly direction following the centerline of
an existing irrigation ditch, 531 feet, more or less, to a
point on the South line of the South Poe Valley Road;
thence West along the South line of said road a distance
of 625 feet, more or less, to the point of beginning, in
Section 3, Township 40 South, Range 11 East of the Willamette
Meridian.

SUBJECT TO Contracts and/or liens for irrigation and/or
drainage, and reservations, easements, restrictions and
rights of way of record and those apparent on the land.

The purchase price of the property, which PURCHASER agrees to
pay, shall be the sum of THIRTY SEVEN THOUSAND AND NO/100 (\$37,000.)
DOLLARS as follows:

- a. The sum of \$1200. which is paid upon the execution hereof;
 - b. The sum of \$3800. to be paid on or before April 1, 1978
- except that PURCHASER shall not be entitled to make said payment
prior to January 1, 1978;
- d. The remaining balance of \$32,000. shall be paid in annual
installments of not less than \$3,000. per year with the first

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1 payment due thereon April 1, 1979 and like payments on the first
2 day of April of each year thereafter until the full sum together
3 with interest as hereafter stated has been fully paid. The afore-
4 mentioned payment of \$3,000. is inclusive of interest. Interest at
5 the rate of 7% on the unpaid balance of \$35,800. shall be effec-
6 tive the date of this Agreement.

7 1. PURCHASER shall have the privilege of increasing payment
8 or prepaying the whole consideration at any time, provided that no
9 additional payments shall be credited as regular future payments
10 nor excuse PURCHASER from making the regular payments provided for
11 in this Agreement, provided further that PURCHASER shall not be
12 entitled to prepay the sums due hereunder prior to January 1, 1979,
13 unless PURCHASER shall agree to pay and shall in fact pay any and
14 all additional income taxes, both state and federal, which VENDOR
15 shall be required to pay for the tax years 1977 or 1978 by virtue
16 of the prepayment of this Agreement.

17 2. PURCHASER agrees to pay when due all taxes which are here-
18 after levied against the property and all public, municipal and
19 statutory liens which may be hereafter lawfully imposed upon the
20 premises.

21 3. PURCHASER agrees to keep the buildings on said premises
22 insured against loss by fire or other casualty in an amount not
23 less than \$25,000 with loss payable to the parties hereto as their
24 interests appear at the time of loss. All uninsured losses shall
25 be borne by PURCHASER on or after the date PURCHASER becomes en-
26 titled to possession.

27 4. PURCHASER shall be entitled to possession of the premises
28 immediately upon the execution of this Agreement by the parties.

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1 5. 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
5 consent of VENDOR. PURCHASER shall not commit or suffer any waste
6 of the property or any improvements thereon or alterations thereof
7 and shall maintain the property and all improvements thereon and
8 all alterations thereof in good condition and repair.

9 6. VENDOR shall furnish at their expense a Purchaser's Title
10 Insurance Policy in the amount of \$37,000. 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, except-
13 ing matters contained in usual printed exceptions in such title
14 insurance policies, easements, conditions and restrictions of
15 record and encumbrances herein specified, if any. Said policy of
16 title insurance shall be deposited with The First National Bank of
17 Oregon, Main Street Branch, Klamath Falls, Oregon.

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

21 8. PURCHASER certifies that this Agreement of purchase is
22 accepted and executed on the basis of their own examination and
23 personal knowledge of the premises and opinion of the value thereof;
24 that no attempt has been made to influence their judgment; that
25 no representations as to the condition or repair of said premises
26 have been made by VENDOR or by any agent of VENDOR; that no agree-
27 ment or promise to alter, repair, or improve said premises has been
28 made by VENDOR or by any agent of VENDOR; and that PURCHASER takes

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1 said property and the improvements thereon in the condition exist-
2 ing at the time of this Agreement.

3 9. Failure by VENDOR at any time to require performance by
4 PURCHASER of any of the provisions hereof shall in no way affect
5 VENDOR'S rights hereunder to enforce the same, nor shall any waiver
6 by VENDOR of any breach hereof be held to be a waiver of any suc-
7 ceeding breach, or a waiver of this non-waiver clause.

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

14 11. As soon as practicable following the execution of this
15 Agreement VENDOR shall deliver in escrow to The First National Bank
16 of Oregon, Main Street Branch, Klamath Falls, Oregon:

- 17 a. A warranty deed to the property, free and clear
18 of all encumbrances, except as expressly speci-
19 fied herein, said deed to be executed by VENDOR
20 with PURCHASER as the grantee.
21 b. An executed copy of this Agreement.
22 c. Purchaser's Policy of title insurance in the a-
23 mount of \$37,000.

24 12. 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 PURCHASER
28 the instruments specified above. If PURCHASER fails to pay any in-
29 stallment ten (10) days after the due date thereof, the escrow agent

is authorized to surrender to VENDOR, upon demand and without notice

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Page 4 - Agreement

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1 to PURCHASER, all of the documents specified in the preceding para-
 2 graphs, thereby terminating the escrow.

3 13. In the event that PURCHASER shall fail to perform any of
 4 the terms of this Agreement, time of payment and performance being
 5 of the essence, VENDOR shall, at their option, subject to the require-
 6 ments of notice as herein provided, have the following rights:

- 7 a. To foreclose this Agreement by strict foreclo-
 8 sure in equity.
- 9 b. To declare the full unpaid balance of the purchase
 10 price immediately due and payable.
- 11 c. To specifically enforce the terms of this Agree-
 12 ment by suit in equity.
- 13 d. To declare this Agreement null and void as of the
 14 date of the breach and to retain as liquidated
 15 damaged the amount of the payment theretofore made
 16 upon said premises. Under this option all of the
 17 right, title and interest of PURCHASER shall re-
 18 vert and revert in VENDOR without any act of re-
 19 entry or without any other act by VENDOR to be per-
 20 formed, and PURCHASER agrees to peaceably surrender
 21 the premises to VENDOR, or in default thereof PUR-
 22 CHASER may, at the option of VENDOR, be treated as
 23 a tenant holding over unlawfully after the expira-
 24 tion of a lease and may be ousted and removed as
 25 such.

18 14. PURCHASER shall not be deemed in default for failure to
 19 perform any covenant or condition of this Agreement other than the
 20 failure to make payments as provided for herein, until notice of
 21 said default has been given by VENDOR to PURCHASER and PURCHASER
 22 shall have failed to remedy said default within ten (10) days after
 23 the giving of the notice. Notice for his purpose shall be deemed to
 24 have been given by the deposit in the mails of a certified letter
 25 containing said notice and addressed to PURCHASER at Route 2, Box
 26 747, Klamath Falls, Oregon. If PURCHASER shall fail to make payment
 27 as herein provided and such failure shall continue for more than
 28

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1 ten (10) days after the payment becomes due, PURCHASER shall be
2 deemed in default and VENDOR shall not be obligated to give notice
3 to PURCHASER of a declaration of said default.

4 15. The covenants, conditions and terms of this Agreement
5 shall extend to and be binding upon and inure to the benefit of
6 the heirs, administrators, executors and assigns of the parties
7 hereto, provided, however, that nothing contained in this paragraph
8 shall alter the restrictions hereinabove contained relating to
9 assignment.

10 IN WITNESS WHEREOF, the parties have caused this Agreement to
11 be executed this 15th day of July, 1977.

12 VENDORS:

PURCHASERS:

13 Mosley S. Davis
14 Phyllis J. Davis

Richard B. Kirsch
Shiara L. Kirsch

17 Personally appeared the above named Mosley S. Davis, Phyllis
18 J. Davis, Richard B. Kirsch and Shiara L. Kirsch and acknowledged
19 the foregoing instrument to be their voluntary act and deed.

20 Before me this 15 day of July, 1977.

21 Return to:
22 Richard Smith
23 810 N. 4th
24 City

25 [Signature]
26 NOTARY PUBLIC FOR OREGON
27 My Commission Expires: 12/13/79
28 Tax statements to
Mosley S. Davis
Rt 2 Box 754-F
City

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Page 6 - Agreement

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 18th day of
JULY 1977 at 11:44 o'clock A.M., and duly recorded in Vol M 77
of DEEDS on Page 12651.

FEE \$ 18.00

WM. D. MILNE, County Clerk

By Pat Mc Cullough Deputy