

53885

## AGREEMENT OF SALE

Vol. <sup>171</sup> 78 Page 18347

1 THIS AGREEMENT, made and entered into this 22 day of  
2 August, 1978, by and between JOHNIE C. WESTON and ZENA M. WESTON,  
3 husband and wife, hereinafter referred to as "SELLERS", and,  
4 KLAMATH POTATO DISTRIBUTORS, INC., an Oregon Corporation, herein-  
5 after referred to as "BUYER",  
6

## W I T N E S S E T H:

7 SELLERS agree to sell to BUYER and BUYER agrees to buy from  
8 SELLERS for the price and on the terms and conditions set forth  
9 below all of the following described real and personal property  
10 and improvements situate in Klamath County, State of Oregon,  
11 to-wit:  
12

REAL PROPERTY:

13 That portion of the E 1/2 SE 1/4 SE 1/4 lying Southwesterly  
14 of the Northeasterly line of the C 7 Lateral and the West  
15 half of the Southeast quarter of the Southeast quarter and  
16 the Southwest quarter of the Southeast quarter of Section  
17 7 and the North half of the Northeast quarter of Section  
18 18, in Township 40 South, Range 10 E.W.M., Klamath County,  
19 Oregon.

20 SUBJECT TO: 1978-79 real property taxes which are now a  
21 lien, but not yet payable, and all future real property  
22 taxes and assessments; rights of the public in and to any  
23 portion of the herein described premises lying within the  
24 limits of streets, roads or highways; statutory powers,  
25 including the power of assessments, of Klamath Irrigation  
26 District; reservations, restrictions, easements and rights  
of way of record, and those apparent on the land; MORTGAGE,  
including the terms and provisions thereon and such future ad-  
vances as may be provided therein dated 11/1/58, recorded  
11/12/58 in Volume 186, page 279, Deed Records of Klamath  
County, Oregon, executed by Sellers herein to The Federal  
Land Bank of Spokane; MORTGAGE, including the terms and  
provisions thereof, dated April 6, 1967, recorded April 6,  
1967, in Volume M-67, page 2425, Microfilm Records of  
Klamath County, Oregon, executed by Sellers herein to

PROXESS & POCKET P.C.  
EXERCISE FULL AUTHORITY

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1 United States of America, acting through the Farmers Home  
2 Administration, which said mortgages the Sellers herein  
3 agree to pay according to the terms thereof and hold Buyers  
4 harmless therefrom.

5 PERSONAL PROPERTY:

- 6 (1) 50 hp pump and motor;  
7 (1) 1933 Ford Truck

8 PURCHASE PRICE

9 I.

10 The purchase price thereof shall be the sum of Three Hundred  
11 Thousand Dollars, (\$300,000.00), which sum shall be payable as  
12 follows: \$10,000.00 has been paid prior to the date hereof, the  
13 receipt of which SELLERS herewith acknowledge, the further sum of  
14 \$75,000.00 shall be paid upon the execution of this agreement, and,  
15 the balance of \$215,000.00 shall be paid in annual installments  
16 of \$21,899.90 including interest at the rate of 8% per annum on  
17 the unpaid balance, the first such installment to be paid on the  
18 28th day of February, 1980, and a further and like installment  
19 to be paid on or before the 28th day of every February thereafter  
20 until the purchase price, including both principal and interest,  
21 is paid in full.

22 IT IS MUTUALLY AGREED AS FOLLOWS:

23 INTEREST

24 1.

25 Interest as aforesaid shall commence on September 1, 1978.

26 POSSESSION

1.

BUYER shall be entitled to possession of said real property

1 and improvements thereon, and, said personal property on September  
2 1, 1978, EXCEPTING, HOWEVER, that SELLERS shall have the right to  
3 the possession of the two residential dwellings, corrals and farm  
4 buildings and sheds until March 1, 1979, and, SELLER shall further  
5 remove all personal property from the potato cellar on the sub-  
6 ject property within 15 days from September 1, 1978, after which  
7 time BUYER shall be entitled to possession of same, and, SELLERS  
8 shall have the further right to all present and growing crops,  
9 including the right to harvest and remove same, and upon removal,  
10 BUYER shall be entitled to possession of such farm land, includ-  
11 ing the pasture land.

2.

12  
13 SELLERS do by these presents assign, sell and transfer unto  
14 BUYER the above pump and motor.

3.

15  
16 SELLERS shall transfer the title to said 1933 Ford Truck  
17 above described to BUYER upon the execution of this agreement.

## PREPAYMENT

1.

18  
19  
20 After January 1, 1981, BUYER shall have the privilege of  
21 increasing any payment or prepaying the entire balance with inter-  
22 est due thereon to the date of payment, it being the essence of  
23 this agreement that BUYER shall make no additional payments until  
24 said date.

## LIENS

1.

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1 BUYER shall pay promptly all indebtedness incurred by  
2 its acts which may become a lien or purported lien, upon said  
3 property, and shall regularly and before the same shall become  
4 delinquent, pay all taxes, including adjustment of same for any  
5 reason, assessments, liens, purported liens, and encumbrances of  
6 whatsoever kind affecting said property after this date, provided,  
7 all such taxes, assessments and charges for the current year shall  
8 be pro-rated as of September 1, 1978, and in the event BUYER shall  
9 fail to so pay, when due, any such matters or amounts required by  
10 BUYER to be paid hereunder, SELLER may pay any or all such amounts  
11 and any such payment shall be added to the purchase price of said  
12 property on the date such payments are made by SELLER and such  
13 amount shall bear interest at the same rate as provided above,  
14 without waiver, however, of any right arising to SELLER from  
15 BUYER'S breach of contract, and, in such event or events, the  
16 escrow holder is hereby directed and authorized to so add such  
17 amounts to the contract balance upon being tendered a proper re-  
18 ceipt therefor.

#### IMPROVEMENTS

1.

21 BUYER agrees that all improvements now located or which shall  
22 hereafter be placed on the property, shall remain a part of the  
23 real property and shall not be removed at any time prior to the  
24 expiration of this agreement without the written consent of Seller.  
25 BUYER shall not commit or suffer any waste of the property, or  
26 any improvements thereon, and shall maintain the property, im-

PRENTISS K. PECKEY, P.C.  
ATTORNEY AT LAW  
100 SOUTH GARDEN STREET  
KLAMATH FALLS, OREGON 97603  
PHONE 325-1111  
FAX 325-1112

18651

1 provements and alterations thereof, in good condition and repair.  
2  
3 ESCROW

4 1.

5 SELLER shall upon the execution hereof make and execute in  
6 favor of BUYER a good and sufficient deed conveying said property  
7 free and clear of all liens and encumbrances, except as herein  
8 provided, and which BUYER assumes, unless otherwise therein pro-  
9 vided, and will place said deed, together with one of these agree-  
10 ments in escrow at Western Bank, Klamath Falls Branch, Klamath  
11 Falls, Oregon, and shall enter into written escrow instructions  
12 in form satisfactory to said escrow holder and the parties hereto,  
13 instructing said escrow holder that when, and if, BUYER shall have  
14 paid the balance of the purchase price in accordance with the  
15 terms and conditions of this contract, said escrow holder shall  
16 deliver said deed to BUYER, but in case of default by BUYER said  
17 escrow holder shall, on demand, surrender said instruments to  
18 SELLER.

19 TAX STATEMENTS

20 1.

21 Until a change is requested, all tax statements shall be  
22 sent to the following address:

23 Klamath Potato Distributors, Inc.  
24 P.O. Drawer K  
25 Merrill, Oregon 97633

26 EXISTING MORTGAGES

1.

Affecting the subject property are two mortgage liens with

PHENIX & PICKETT P.C.  
NOTARIES PUBLIC  
KLAMATH FALLS, OREGON 97633

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1 the following approximate unpaid balances and annual payments,  
2 namely:

	Amount	Annual Payment	Due date
3 The Federal Land Bank 4 of Spokane	\$14,000.00	\$2,277.99	5/1
5 Farmers Home Admin- 6 istration	\$13,000.00	\$1,166.00	1/1

7 With respect to said liens, SELLER covenants and agrees to  
8 pay the same when due and shall at all times hold BUYER harmless  
9 therefrom. In the event SELLER should fail to so pay said liens,  
10 BUYER may pay said annual payments and any such payment so made  
11 by BUYER shall be credited to the purchase price on the date such  
12 payment is made, and, in such event, the escrow holder is hereby  
13 directed and authorized to so deduct such amount from the contract  
14 balance upon being tendered a proper receipt therefor.  
15 2.

16 After February 28, 1980, the escrow holder is authorized and  
17 directed to pay the above two liens from the annual payment re-  
18 ceived and remit the balance to SELLER; upon said liens being  
19 fully paid, all net proceeds shall be paid to SELLER, and, SELLER  
20 shall forthwith secure the appropriate satisfactions and record  
21 the same in the Klamath County, Oregon, deed records.  
22

# INSURANCE

23 1.  
24 BUYER shall keep the buildings and sheds situated upon the  
25 subject property insured against loss or damage by fire or other  
26 casualty in an amount not less than 90% of the respective cash

PROSTESS K. PICKETT P.A.  
1000 1/2 1ST ST. S.W.  
KAMATH FALLS, OREGON 97604  
503-325-1111  
FAX 503-325-1112

18653

1 value thereof with loss payable to the parties hereto and their  
2 interests herein reflected, if any, all, as their interests appear  
3 at the time of loss, all uninsured losses shall be borne by BUYER  
4 on and after September 1, 1978. *Any such payments shall be applied to*  
*the sums due hereunder, but not excuse any previous payment.*

MISCELLANEOUS

1.

5  
6  
7 SELLERS and BUYER shall each pay one-half of the initial  
8 escrow charge.

2.

9  
10 Notwithstanding anything hereinafter provided to the contrary,  
11 BUYER shall have a grace period of thirty days within which to  
12 make said annual payments.

3.

13  
14 BUYER accepts the subject real and personal property, build-  
15 ings, improvements and all other aspects of the property in their  
16 present condition, AS IS, including latent defects, without any  
17 representations or warranties, expressed or implied, unless they  
18 are in writing signed by SELLERS.

4.

19  
20 The subject premises herein described have been specifically  
21 assessed as Farm Use Land. If the land becomes disqualified for  
22 the special assessment under the statute, an additional tax may  
23 be levied for the last ten or lesser number of years in which the  
24 farm use assessment was in effect for the land and in addition  
25 thereto a penalty may be levied if notice of disqualification is  
26 not timely given.

1 PROVIDED, FURTHER, that in case Buyer shall fail to make the  
 2 payments aforesaid, or any of them, punctually and upon the strict  
 3 terms and at the times above specified, or fail to keep any of the  
 4 other terms or conditions of this agreement, time of payment and  
 5 strict performance being declared to be the essence of this agree-  
 6 ment, then SELLER shall have the following rights: (1) To fore-  
 7 close this contract by strict foreclosure in equity; (2) To  
 8 specifically enforce the terms of this agreement by suit in equity;  
 9 (3) To declare the full unpaid balance immediately due and payable;  
 10 (4) ~~To declare this contract null and void~~, and in any of such  
 11 cases, except exercise of the right to specifically enforce this  
 12 agreement by suit in equity, all the right and interest hereby  
 13 created or then existing in favor of BUYER derived under this  
 14 agreement shall utterly cease and determine, and the premises  
 15 aforesaid shall revert and revest in SELLER without any declara-  
 16 tion of forfeiture or act of re-entry, and without any other act  
 17 by SELLER to be performed and without any right of BUYER to re-  
 18 clamation or compensation for money paid or for improvements made,  
 19 as absolutely, fully and perfectly as if this agreement had never  
 20 been made.

21 Should BUYER, while in default, permit the premises to become  
 22 vacant, SELLER may take possession of same for the purpose of pro-  
 23 tecting and preserving the property and his security interest  
 24 therein, and in the event possession is so taken by SELLER he  
 25 shall not be deemed to have waived his right to exercise any of  
 26 the foregoing rights.



18655

1 In the event suit or action is instituted to enforce any of  
2 the terms of this contract, the prevailing party shall be entitled  
3 to recover from the other party such sum as the court may adjudge  
4 reasonable as attorney's fees at trial or on appeal of such suit  
5 or action, in addition to all other sums provided by law.

6 BUYER further agrees that failure by SELLER at any time to  
7 require performance by BUYER of any provision hereof shall in no  
8 way affect SELLER'S right hereunder to enforce the same, nor shall  
9 any waiver by SELLER of any breach of any provision hereof be held  
10 to be a waiver of any succeeding breach of any such provision, or  
11 as a waiver of the provision itself.

12 The parties allocate, with respect to the dwelling and con-  
13 tiguous acre adjoining same, the sum of \$30,000.00 of the purchase  
14 price.

15 This agreement shall bind and inure to the benefit of, as  
16 the circumstances may require, the parties hereto and their re-  
17 spective heirs, executors, administrators, successors and assigns,  
18 subject to the foregoing.

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

21 SELLER: Johnie C. Weston  
22 Johnie C. Weston

23 Bena M. Weston  
24 Bena M. Weston

25 BUYER: KLAMATH POTATO DISTRIBUTORS, INC.

26 By: [Signature] President

By: [Signature] Vice-President

PRENTISS & PICKETT, P.C.  
ATTORNEYS AT LAW  
100 N. 10TH STREET  
KLAMATH FALLS, OREGON 97603  
PHONE 766-1111  
FAX 766-1112

18856

By: Diane Cheyne  
Ass't Secretary

August 22, 1978

1  
2 STATE OF OREGON )  
3 County of Klamath ) ss.

4 Personally appeared the within named JOHNIE C. WESTON and  
5 ZENA M. WESTON, husband and wife, and acknowledged the foregoing  
6 instrument to be their voluntary act and deed.

BEFORE ME:

Diane Cheyne  
Notary Public for Oregon  
My Commission expires: 10-20-81

7  
8 STATE OF OREGON )  
9 County of Klamath ) ss.

August 22, 1978

10 Personally appeared VINCENT O. CHEYNE, JAMES C. CHEYNE and  
11 DIANE CHEYNE, who, being duly sworn, each for himself and her-  
12 self and not one for the other, did say that he, Vincent O. Cheyne,  
13 is the President; James C. Cheyne is the Vice-President, and,  
14 Diane Cheyne is the Secretary of Klamath potato Distributors,  
15 Inc., an Oregon Corporation, and that the seal affixed to the  
16 foregoing instrument is the corporate seal of said corporation  
17 and that said instrument was signed and sealed in behalf of said  
18 corporation by authority of its board of directors; and each of  
19 them acknowledged said instrument to be its voluntary act and  
20 deed.

BEFORE ME:

Diane Cheyne  
Notary Public for Oregon  
My Commission expires: 10-20-81

21  
22 STATE OF OREGON; COUNTY OF KLAMATH; ss.

led for record at request of Prentiss K. Puckett

23 the 22nd day of August A. D. 19 78 at 8:15 o'clock PM, one

24 fully recorded in Vol. 178 of Books on Page 1067

25 ) Wm D. MILNE, County Clerk

26 By: Diane Cheyne

Fee \$30.00

PRENTISS K. PUCKETT, P.C.  
NOTARY PUBLIC  
10 NORTH 10TH STREET  
KLAMATH FALLS, OREGON 97603  
PHONE 765-1111

Page (10) Agreement of Sale  
Weston to Klamath Potato Distributors, Inc.