

79757

04-26-94P01:09 RCVD

Vol. m94 Page 12497

AGRICULTURAL LEASE

Date: April 26, 1994

Return

Between: JOHN MILLS AND
LILLIAN MILLS ("Landlord")
P. O. Box 212
Beatty, OR 97621

And: WILLIAM GALLAGHER III AND
LORI GALLAGHER DBA ("Tenant")
GALLAGHER LIVESTOCK, CO.

Section 1. Description of Leased Property

Landlord leases to Tenant the following described property
(the "Property"):

See Exhibit "A" attached hereto and by this reference
incorporated herein.

Section 2. Term of Lease

The term of this Lease shall commence on the 15 day of
May, 1994, and shall continue through and include the 5
day of January, 2004.

Section 3. Condition of Property at Termination

At the termination of this Lease, the Property shall be
returned to Landlord in the same condition as at the commencement
of this Lease, all repairs being completed as required in this
Lease, reasonable wear to the fixtures being excepted (except for
repair obligations).

AGRICULTURAL LEASE - Page 1

*100-
a*

Section 4. Consideration

4.1 Annual Rent

The annual rent shall be paid as follows:

	<u>YEAR</u>	<u>TOTAL PAYMENT</u>	<u>AMOUNT</u>	<u>DUE AND PAYABLE</u>
a.	1994	\$16,000.00	\$8,000.00 \$8,000.00	May 15, 1994 November 15, 1994
b.	1995	\$16,000.00	\$8,000.00 \$8,000.00	May 15, 1995 November 15, 1995
c.	1996	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 1996 November 15, 1996
d.	1997	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 1997 November 15, 1997
e.	1998	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 1998 November 15, 1998
f.	1999	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 1999 November 15, 1999
g.	2000	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 2000 November 15, 2000
h.	2001	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 2001 November 15, 2001
i.	2002	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 2002 November 15, 2002
j.	2003	\$20,000.00	\$10,000.00 \$10,000.00	May 15, 2003 November 15, 2003
TOTAL:		----- \$192,000.00	----- \$192,000.00	

4.2 Additional Rent

Tenant shall be responsible for and pay all real property taxes due and owing on said real property for the tax years 1996-97; 1997-98; 1998-99; 1999-2000; 2000-01; 2001-02; and 2002-03.

Section 5. Costs of Farming

5.1 Tenant shall be responsible for and pay all the costs of materials, labor, equipment, utilities, and other expenses necessary to farm the Property and raise crops from the Property during the lease term, except as set forth below.

5.2 Landlord shall pay real property taxes on the property for the tax years 1993-94; 1994-95 and 1995-96.

5.3 Landlord shall pay all power bills for the years 1994, 1995 and 1996. Tenant shall be responsible and pay for all power bills incurred during possession of the premises for the balance of the lease term.

5.4 Tenant shall pay for the materials necessary to maintain and replace fencing on the Property.

Section 6. Manner of Farming and Conservation Laws

Tenant shall farm, cultivate, maintain, and operate the Property consistent with the best agricultural practices employed by the farming industry in the area where the Property is located. Tenant shall refrain from practices that will cause unusual erosion to the Property. Tenant shall maintain the Property in compliance with all federal, state, and other governmental laws, regulations, and directives.

Section 7. Compliance with Law and Hazardous Materials

7.1 Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and

AGRICULTURAL LEASE - Page 3

requirements of federal, state, county, and municipal authorities pertaining to Tenant's use of the Property, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Property because of Tenant's specific use, and all applicable federal, state, local laws, regulations, or ordinances pertaining to air and water quality, Hazardous Materials as defined in Section 7.4 below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.

7.2 Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Tenant, Tenant's agents, employees, contractors, or invitees without the prior written consent of Landlord, which shall not be unreasonably withheld as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary [or useful] to Tenant's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Materials brought upon or used or kept in or about the Property.

7.3 Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Property, damages for the loss or restriction on use or rent of the Property, damages arising from any adverse impact on marketing of the Property, and sums paid in

settlement of claims, attorney fees, consultant fees, and expert fees) that arise during or after the lease term due to contamination by Hazardous Materials as a result of Tenant's use or activities or of Tenant's agents or contractors. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by Tenant or Tenant's agents or contractor results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the release of any such Hazardous Material onto the Property, provided that Landlord's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long-term or short-term effect on the Property. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

7.4 As used in this Lease, the term Hazardous Material means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous

AGRICULTURAL LEASE - Page 5

Materials Table (49 CFR §172.101), or by the United States

Materials Table (49 CFR §172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302) and amendments thereto, petroleum products, or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

Section 8. Chemicals and Fertilizers

It is understood that chemicals and fertilizers may be necessary to produce the highest financial returns from the Property. It is also understood that chemicals and fertilizers can damage the Property if applied incorrectly or on crops that are excluded on the product label. Subject to the limitations in Section 7 above, chemicals and fertilizers shall be used by Tenant, if necessary, to produce the highest financial returns from the Property, subject to the condition that Tenant shall not, without Landlord's prior written consent, use any of the fertilizers or chemicals that would adversely affect crops grown after termination of this lease.

Section 9. Use of Property by Landlord and Tenant

9.1 Tenant shall maintain the Property in good condition and shall not commit, permit, or suffer waste to the Property.

9.2 Tenant shall maintain all of the buildings and fences on the Property in as good a condition and repair as the same were at the commencement of this Lease, reasonable wear and tear excepted, and always subject to the repair covenants of this Lease.

9.3 Landlord shall have the right to live in and occupy the residence located on the premises during the entire 10-year term of this lease.

Section 10. Agricultural Programs

10.1 Crops to be raised on the Property may be the subject of USDA or other federal or state government programs. Tenant shall enter and comply with all mandatory government programs for crops raised on the property. The parties shall attempt to agree on all voluntary government programs to be entered. In the event of a disagreement between the parties relating to voluntary government programs, Landlord shall have the right to determine which voluntary government program affecting the Property shall be entered into by the Tenant.

10.2 If payments are made under any government programs in which the Property is enrolled, the payments applicable to the term of this Lease shall be distributed between Landlord and Tenant in the proportion the crops are divided between the parties.

Section 11. Irrigation

Much of the leased premises is irrigated property. Tenant shall be responsible for all water costs, except as set forth in Section 5 herein. Landlord assumes no responsibility to Tenant for any water shortage, nor does Landlord warrant the quality or quantity of the water available to the property.

Section 12. Taxes

Real property taxes shall be paid as set forth in Sections 4 and 5 herein. Tenant shall pay all personal property taxes on the property.

Section 13. Liens

Tenant shall pay when due all claims for work done on the Property, and for services rendered or material furnished to Tenant to grow Tenant's crops on the Property or incurred for Tenant's repair responsibilities for the Property and improvements; and Tenant shall keep the Property and the crops free of any liens arising out of the failure to pay such claims or arising out of any other activity of Tenant. If the Property, improvements, or crops are subjected to any lien because of the activities of Tenant, and a lien is not discharged within 10 days, Landlord may discharge the lien, and recover the cost from Tenant on demand, plus interest at the rate of 18% per annum from the date of expenditure. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default. If the Tenant in good faith elects to contest the lien, then Tenant shall, upon Landlord's written request, deposit with Landlord cash or sufficient corporate surety bond or other security satisfactory to Landlord, to discharge the lien plus costs and interest.

Section 14. Indemnity; Liability Insurance

14.1 Tenant shall indemnify and defend Landlord from any

claim, loss, or liability arising out of or relating to any activity of Tenant on the Property.

14.2 Before going into possession of the Property, Tenant shall procure, and during the term of this Lease shall continue to carry, public liability and property damage insurance, naming Landlord as an additional insured, with liability limits of not less than \$1,000,000 for injury to persons or property in one occurrence. Such insurance should be provided by an insurance carrier reasonably acceptable to Landlord. Tenant shall deliver to Landlord certificates evidencing such insurance with an endorsement requiring 10 days' notice to Landlord prior to the cancellation of such insurance coverage.

Section 15. Default; Remedies

15.1 Events of Defaults. The following shall be events of default:

(a) Failure to pay the rent when due.

(b) Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business (except for labor disputes), appointment of a receiver of any of the Property, assignment for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against Tenant.

(c) Failure of Tenant to comply with any other term or condition, or fulfill any other obligation of the lease within 30 days after written notice by Landlord specifying the nature of the

AGRICULTURAL LEASE - Page 9

default with reasonable particularity. If the default is of such

default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if Tenant begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

(d) Abandonment by the Tenant of the Property.

15.2 Default. In the event of default, Landlord shall have the right to re-enter, take possession of the Property, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Such right shall be cumulative and in addition to all other remedies available to Landlord under applicable law.

15.3 Termination. In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.4 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified

in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.5 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

(2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

(3) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet, and continuing through the end of the term. The present value of

AGRICULTURAL LEASE - Page 11

future amounts will be computed using a discount rate equal to the

future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

15.6 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.7 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 16. Landlord's Right of Entry

Landlord may go on the Property at any time to inspect or show the Property, provided Landlord does so in a reasonable manner that does not harm the growing crops or interfere with the farming activities of Tenant.

Section 17. Covenants of Title

Landlord covenants that Landlord has full right and authority to lease the Property and will protect Tenant from all other claimants.

Section 18. Assignment and Sublease

Tenant may not assign this lease and may not sublease all or any part of the Property without Landlord's prior written consent.

Section 19. Successor Interests

Subject to the limitation on assignment by Tenant, this lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

Section 20. Nonwaiver

Failure by either party at any time to require performance by the other of this Lease shall in no way affect such party's right to enforce any Lease provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

Section 21. Notices

Any notice under this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the address stated in this Lease or to such other address as either party may specify by notice to the other party. Payments to Landlord shall be made to the same address.

Section 22. Quitting Property at End of Lease

Tenant shall peaceably surrender, quit, and give up the Property at the termination or earlier expiration of this Lease.

Section 23. Attorney Fees

If litigation is instituted arising directly or indirectly out

of this Lease, the losing party shall pay to the prevailing party the prevailing party's reasonable attorney fees and court costs as determined by the court, at trial, or any appeal therefrom.

Section 24. Representations and Warranties

Tenant accepts the Property, improvements, and the personal property, if any, included in this Lease in their present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Lease. It is understood and agreed that Landlord makes no guarantee or representation as to the production or carrying capacity of the Property, that Tenant has inspected the Property, and that Tenant has made his or her own determination of the value of the Property.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written

LANDLORD:

John Mills
JOHN MILLS

Lillian Mills
LILLIAN MILLS

TENANT:

William Gallagher III
WILLIAM GALLAGHER III DBA
GALLAGHER LIVESTOCK, CO.

Lori Gallagher
LORI GALLAGHER DBA GALLAGHER
LIVESTOCK, CO.



706, 012522 - 14/10/96 3/25/96

EXHIBIT "A"

PARCEL 1:

Government Lots 3 and 4, Section 14, Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2:

The following described property situated in Township 36 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

Section 11: Government Lots 3, 4, 5, 6, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

Tax Account No.: 3612 00000 03900
3612 00000 04000
3612 00000 04100
3612 00000 04200
3612 00000 04300

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of John Mills the 26th day
of April A.D., 19 94 at 1:09 o'clock P.M., and duly recorded in Vol. M94
of Deeds on Page 12497.

FEE \$100.00

Evelyn Biehn - County Clerk

By Lauren M. Henderson