

04 DEC 6 PM 3:26

MTT-64740 KR

Vol M04 Page 83507

Seller Name and Address:

~~Geneva A. Smith, Trustee, Geneva A. Smith,
Revocable Trust
10166 E. Langell Valley Rd., Bonanza, OR 97623~~

**American Exchange Services, P.O. Box 652,
Salem, OR 97308**

Buyer Name and Address:

~~Henry C. G. and Cherie Jean Cheyne
9961 E. Langell Valley Rd., Bonanza, OR 97623~~

State of Oregon, County of Klamath
Recorded 12/06/04 3:26 p.m.
Vol M04 Pg 83507-15
Linda Smith, County Clerk
Fee \$ 61⁰⁰ # of Pgs 9

After Recording Return to:

~~AmeriTitle
300 Klamath Ave., Klamath Falls, OR 97601~~

Until A Change is Requested

Send Tax Statements to:

~~Buyers
9961 E. Langell Valley Rd., Bonanza, OR 97623~~

The true and actual consideration stated in this
instrument is: \$ 700,000.00.

LAND SALE CONTRACT

THIS CONTRACT is made and entered into this 24th day of
November, 2004, by and between **AMERICAN EXCHANGE SERVICES,
INC.**, an Oregon corporation, hereinafter called "Seller",

and **HENRY C. G. CHEYNE and CHERIE JEAN CHEYNE**, Husband and Wife,
hereinafter called "Buyer" (it being understood that the singular
shall include the plural if there are two or more sellers and/or
buyers).

W I T N E S S E T H:

Seller agrees to sell to Buyer and Buyer agrees to buy from
Seller for the price and on the terms and conditions set forth
hereafter all of the real property situate in the County of
Klamath, State of Oregon, and more particularly described on
EXHIBIT "A" LEGAL DESCRIPTION, attached hereto and incorporated
herein by reference as if fully set forth;

TOGETHER WITH an easement of approximately 60 feet in
width to allow for access to the hay sheds, such
easement being located generally on the South side of
those hay sheds located near the Southerly boundary line
of the property to be conveyed pursuant to this
agreement.

SUBJECT TO contracts and/or liens for irrigation and/or
drainage, restrictions, easements, restrictions and
rights-of-way of records, and those apparent on the
land.

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ALSO SUBJECT TO rights of the public in and to any portion of the herein described property lying within the boundaries of roads or highways.

SUBJECT TO an easement for ingress and egress (being consistent with the currently existing road) from Walker Road to the property which is the subject of a certain Land Sale Contract providing for sale of certain of Seller's adjacent property to John Sandall and Jeani Louise Bath. Seller and Purchaser each agree that such easement shall be created in conjunction with entry into the within Land Sale Contract.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

It is mutually agreed as follows:

1. **Possession:** Buyer shall be entitled to possession of the property pursuant to this agreement as of the date of closing. Buyer has, however, had possession of the property as a tenant.

2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment.

3. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of **SEVEN HUNDRED THOUSAND and no hundredths Dollars (\$700,000.00)** which such sum shall be payable as follows:

(a) At closing, Buyer shall be required to pay the sum of **SEVENTY THOUSAND and no Hundredths Dollars** (including the \$500.00 sum paid pursuant to the SALE AGREEMENT AND EARNEST MONEY RECEIPT); and

(b) The remainder of the purchase price in the sum of **SIX HUNDRED THIRTY THOUSAND and no Hundredths DOLLARS (\$630,000.00)** shall be payable in ANNUAL installments in the sum of **\$ 57,176.57** the first of such installments to be payable the 1st day of March, 2005, with a further and like instalment due the 1st day of March of each year thereafter

until the entire balance of principal and interest has been paid in full.

(c) Unpaid balances shall bear interest at the rate of **SIX and ONE HALF PERCENT (6.5%)** per annum.

(d) Buyer may make advance or excess payments without penalty, and if so made, such payments shall be applied toward account interest, and the remainder will be applied toward the principal balance. No partial prepayment shall excuse the payment of installments next coming due.

4. Late Payment Penalty: In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of TWO THOUSAND EIGHT HUNDRED FIFTY EIGHT and eighty two Hundredths Dollars (\$2,858.82), in addition to the regularly scheduled payments set forth in paragraph 3 hereinabove as and for a late payment penalty, should Buyer fail to make any payment required to be made hereunder within fifteen (15) days of the day due. Seller shall be required to notify both Buyer and the escrow agent named herein (or its successor) of the accrual of such late payment charge, which such charge shall be credited only as an additional charge to Buyer and not as a credit to either interest or principal.

5. Payment of Liens and Taxes: a) Buyer shall pay promptly all indebtedness incurred by Buyer's acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date; provided, all such taxes, assessments and charges for the current year shall be prorated as of the date of closing, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered a proper receipt therefor.

b) If the property will have a farm, forest or historic deferred property tax status after closing, and if the deferred status terminates for any reason, Purchaser shall be solely responsible for all deferred taxes and interest and hold Seller harmless therefrom. Seller agrees to cooperate with Purchaser in maintaining deferred status.

6. **Insurance:** It is agreed that Buyer will keep any building or improvements on said property insured against loss or damage by fire or other casualty in an amount of not less than the full insurable value thereof with loss payable to the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession. In addition, Buyer shall be required to maintain liability insurance on the premises with limits of not less than \$1,000,000.00. Buyer shall furnish Seller proof of such insurance coverage.

7. **Waste Prohibited:** Buyer agrees that all improvements now located or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair.

8. **Transfer of Title:** Seller shall, upon the execution hereof, make and execute in favor of Buyer a good and sufficient deed in statutory Special Warranty form conveying said property free and clear of all liens and encumbrances, except as provided hereinabove and shall deliver said document to Buyer when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract; but in case of default by Buyer, Seller shall retain said document.

9. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of Buyer's own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability, that no attempt has been made to influence Buyer's judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement, with no express, implied, or other warranties by Seller. There further are certain agreements contained in that certain Owner's Sale Agreement And Earnest Money Receipt which survive the transfer of title.

10. **Consent to Assignment:** Buyer shall not assign this agreement, Buyer's rights thereunder, or in the property covered thereby without the written consent of Seller. In the event the within described property, any part thereof, any interest therein (whether legal or equitable) is sold, agreed to be sold, conveyed, assigned or alienated by the Buyer without having first obtained

the written consent of the Seller, then, at the Seller's option, all obligations secured by this instrument, irrespective of the maturity date expressed herein, shall become immediately due and payable.

11. Time of Essence: It is understood and agreed between the parties that time is of the essence of this contract.

12. Default: In case Buyer shall fail to make the payments aforesaid, or make them punctually and upon the strict terms and at the times above specified or fail to keep any of the terms or conditions of this agreement, then Seller, shall, at his option, have the following rights, in addition to other remedies provided under Oregon law:

- a. To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or
- b. To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or
- c. To withdraw said deed and other documents from the escrow; and/or
- d. To foreclose this contract by suit or by strict foreclosure in equity.

In any of such cases, all rights and interest created or then existing in favor of Buyer as against Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above described and all other rights acquired by Buyer hereunder shall revert to and revest in Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of Buyer of return, reclamation or compensation for moneys paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default, all payments theretofore made on this contract are to be retained by and belong to said Seller as the agreed and reasonable rent of said premises up to the time of such default. Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right, and nothing in this contract shall preclude appointment of the Seller as such receiver.

13. Abandonment: Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and Seller's security interest herein, and in the event possession is so taken by

Seller, Seller shall not be deemed to have waived Seller's right to exercise any of the foregoing rights.

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

15. No Waiver: Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision thereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by Seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

16. Binding on Successors: This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing.

17. Inclusion of Personal Property: It is agreed between Buyer and Seller that certain personal property is to be conveyed pursuant to this agreement. Such personal property includes the following: pivot, mobile home, grain bin, auger, hay shed, house with attached mobile home and calf shed.. Such personal property is sold "**AS IS WITH ALL FAULTS.**"

18. Crop Failure: It is agreed that drought, or the termination of water deliveries, may impair the ability of Buyer to harvest crops on the subject premises. In the event of such termination of water delivery, or drought, the following provisions shall apply;

a. Should a reduced crop be harvested as a result of either of such occurrences, then in such an event, one third of the net proceeds received from such harvest shall be applied by Purchaser to the payment next falling due and otherwise required to be paid pursuant to the provisions of the within agreement; and

b. Should NO crop be harvested as a result of such occurrences, then, in such event, the payment next falling due shall be deferred;

c. PROVIDED HOWEVER, that only two of such partial or deferred payments shall be provided for during the twenty year term of the within Land Sale Contract.

19. Representation By Attorney: The parties hereto acknowledge that this contract was prepared by NEAL G. BUCHANAN, Attorney at Law, 435 Oak Avenue, Klamath Falls, Oregon 97601, solely on behalf of the Seller / Vendor and that said attorney in no way represents the Buyer / Vendee who have been advised to seek the advice of their independent counsel and tax advisor.

IN WITNESS WHEREOF the parties have caused this agreement to be executed as of the day and year first above written.

SELLER:

AMERICAN EXCHANGE SERVICES, INC.

by _____

BUYER:

Henry C. G. Cheyne
HENRY C. G. CHEYNE

Cherie Jean Cheyne
CHERIE JEAN CHEYNE

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named _____ as _____ for American Exchange Services, Inc. and acknowledged the foregoing instrument to be its voluntary act and deed.

Before me this _____ day of _____, 2004.

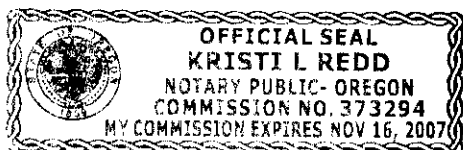
NOTARY PUBLIC FOR OREGON

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named HENRY C. G. CHEYNE and CHERIE JEAN CHEYNE and acknowledged the foregoing instrument to be his / her voluntary act and deed.

Before me this 29th day of November, 2004.

Kristi L. Redd
NOTARY PUBLIC FOR OREGON



19. Representation By Attorney: The parties hereto acknowledge that this contract was prepared by NEAL G. BUCHANAN, Attorney at Law, 435 Oak Avenue, Klamath Falls, Oregon 97601, solely on behalf of the Seller / Vendor and that said attorney in no way represents the Buyer / Vendee who have been advised to seek the advice of their independent counsel and tax advisor.

IN WITNESS WHEREOF the parties have caused this agreement to be executed as of the day and year first above written.

SELLER:

BUYER:

AMERICAN EXCHANGE SERVICES, INC.

by

Paula M. Frey, Asst. Secretary

HENRY C. G. CHEYNE

CHERIE JEAN CHEYNE

STATE OF OREGON, County of ~~Marion~~) ss.

PERSONALLY APPEARED the above-named Paula M. Frey as Asst. Secretary for American Exchange Services, Inc. and acknowledged the foregoing instrument to be its voluntary act and deed.

Before me this 24th day of November, 2004.



Teri Due
NOTARY PUBLIC FOR OREGON

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named HENRY C. G. CHEYNE and CHERIE JEAN CHEYNE and acknowledged the foregoing instrument to be his / her voluntary act and deed.

Before me this _____ day of _____, 2004.

NOTARY PUBLIC FOR OREGON

EXHIBIT "A"
LEGAL DESCRIPTION

83515

Township 40 South, Range 13 East of the Willamette Meridian, Klamath County, Oregon.

Section 1: The W1/2 NW1/4 and Parcel 2 of Land Partition 17-04, said Land Partition being a replat of a portion of Parcel 1 of Minor Partition 18-86, situated in the N1/2 of Section 1, Township 40 South, Range 13 East, of the Willamette Meridian, Klamath County, Oregon

EXCEPTING THEREFROM those portions thereof conveyed to The United States of America for the Bussy Lateral, the Lorella Drain and the Campbell Drain by deed recorded July 8, 1924 in Volume 64, page 299, Deed Records of Klamath County, Oregon and by deed recorded June 13, 1927 in Volume 75, page 552, Deed Records of Klamath County, Oregon

AND EXCEPTING THEREFROM that portion of the N1/2 NW1/4 lying within the boundaries of East Langell Valley Road 1211.

Section 2: The NE1/4

EXCEPTING THEREFROM those portions thereof conveyed to The United States of America for the L-2 Lateral and the L-2-A Lateral by deed recorded February 16, 1926 in Volume 69, page 292, Deed Records of Klamath County, Oregon

AND EXCEPTING THEREFROM those portions thereof conveyed to The United States of America for the Lorella Drain by deed recorded May 15, 1926 in Volume 69, page 556, Deed Records of Klamath County, Oregon.

AND FURTHER EXCEPTING THEREFROM those portions thereof lying within the boundaries of East Langell Valley County Road 1211 and Walker Road No. 1225.

ALSO EXCEPTING THEREFROM parcel no. 1 of Land Partition 17-04.

ALSO EXCEPTING THEREFROM that certain well, casing, pump, pipes and related equipment located along the East Langell Valley Road in the NE NE of Section 2, which such well and waters are the subject of a certain Agreement For Exchange entered into with the Langell Valley Irrigation District; and further excepting any rights and responsibilities inuring to Seller pursuant to such agreement. It is provided, however, that in the event that exchange of waters pursuant to such agreement is not possible, then in such an event, Purchaser shall be granted the first option to the use of such waters; provided, however, that in such event, Purchaser shall be responsible to pay for Purchaser's proportionate share of all maintenance, repair and electricity regarding such use (such proportionate share to be determined based upon the respective hours of use as between Purchaser and Seller).