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Vol M04 Page 87016

State of Oregon, County of Klamath
Recorded 12/20/04 3:36 p m
Vol M04 Pg 87016-24
Linda Smith, County Clerk
Fee \$ 6100 # of Pgs 9

Seller Name and Address:
Geneva A. Smith, Trustee, Geneva A. Smith
Revocable Trust
10166 E. Langell Valley Rd. Bonanza, OR 97623

Buyer Name and Address:
John Randall & Jeani Louise Bath
13798 E. Langell Valley Rd. Bonanza, OR 97623

After Recording Return to:
AmeriTitle

300 Klamath Ave., Klamath Falls, OR 97601

Until A Change is Requested
Send Tax Statements to:
Buyers
13798 E. Langell Valley Rd., Bonanza, OR 97623

The true and actual consideration stated in this instrument is: \$ 775,000.00

LAND SALE CONTRACT

THIS CONTRACT is made and entered into this 24th day of November, 2004, by and between GENEVA A. SMITH, Trustee of the Geneva A. Smith Revocable Living Trust dated December 21, 1999 (as subsequently amended June 27, 2003), hereinafter called "Seller",

and JOHN RANDALL BATH and JEANI LOUISE BATH, 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;

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.

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.

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TOGETHER WITH an easement for ingress and egress (being consistent with the currently existing road) to the property which is the subject of the said agreement from Walker Road. Seller and Purchaser each agree that such easement shall be created in conjunction with entry into the within Land Sale Contract.

SUBJECT TO 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 Northerly boundary line of the property to be conveyed pursuant to this agreement.

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.

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 SEVENTY FIVE THOUSAND and no hundredths Dollars (\$775,000.00)** which such sum shall be payable as follows:

(a) Buyer shall pay certain sums as regards obligations previously owed to Seller, which such sums do not reduce the unpaid balance owing pursuant to the within Land Sale Contract; and

(b) The purchase price shall be payable in **two** installments each year in the sum of **\$ 34,896.71** the first of such installments to be payable the 1st day of March, 2005, with a further and like installment due the 1st day of September, 2005; it being further provided that Buyer shall be required to pay further and like installments the 1st day of March and the 1st day of September of each year thereafter until the entire balance of principal and interest has been paid in full. Unpaid balances shall bear interest at the rate of **SIX and ONE HALF PERCENT (6.5%)** per annum. 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 ONE THOUSAND SEVEN HUNDRED FORTY FOUR and eighty three Hundredths Dollars (\$1,744.83), 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: two irrigation pivots, mainline, wheel lines, hand lines, guns and pumps. 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:

Geneva A. Smith Revocable Living Trust date December 21, 1999 (as subsequently amended June 27, 2003)

+ by Geneva A. Smith, Trustee
GENEVA A. SMITH, Trustee

BUYER:

John Randall Bath
JOHN RANDALL BATH

Jeani Louise Bath
JEANI LOUISE BATH

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named GENEVA A. SMITH Trustee of the Geneva A. Smith Revocable Living Trust dated December 21, 1999 (as subsequently amended June 27, 2003) and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 24th day of November, 2004.



Kristi L. Redd
NOTARY PUBLIC FOR OREGON

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named JOHN RANDALL BATH and JEANI LOUISE BATH and acknowledged the foregoing instrument to be his / her voluntary act and deed.

Before me this 17th day of December, 2004.



Kristi L. Redd
NOTARY PUBLIC FOR OREGON

EXHIBIT "A"
LEGAL DESCRIPTION

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

Section 11: NE1/4

EXCEPTING THEREFROM those portions thereof conveyed to The United States of America for the Lorella Lateral and the Lorella Drain by deeds recorded May 29, 1926 in Volume 69, page 605 and 606, Deed Records of Klamath County, Oregon.

Section 12: NW1/4

EXCEPTING THEREFROM that portion thereof conveyed to The United States of America for the E-1 Lateral by deed recorded July 8, 1924 in Volume 64, page 298, Deed Records of Klamath County, Oregon.

AND EXCEPTING THEREFROM that portion thereof lying within the boundaries of the USBR Lorella Drain.

Section 1: The W1/2 of the SW1/4

EXCEPTING THEREFROM those portions thereof conveyed to The United States of America for the Bussey 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.

Section 2: The SE1/4

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 EXCEPTING THEREFROM a portion of the W1/2 SE1/4 conveyed to Walter Smith and Dorothy Smith, husband and wife, by deed recorded January 13, 1995 in Volume M95, page 961, Microfilm Records of Klamath County, Oregon, being more particularly described as follows:

(Legal description continued)

Commencing at the Northwest corner of the SE1/4, said Section 2; thence South along the quarter section line 1450 feet to a point; thence East, parallel to the East – West quarter section line, to a point which is 30 feet West of the centerline of the existing road; thence Northerly, parallel with the centerline of said road; to a point on the quarter section line common to the NW1/4 SE1/4, Section 2, and the SW1/4 NE1/4, said Section 2; thence West along said quarter section line to the point of beginning.

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

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