

A-24116
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Vol. M Page 1301

1 THIS CONTRACT OF SALE OF REAL PROPERTY Made this 6th
2 day of February, 1974, between ALBERT C. ACKLIN and ESTHER L. ACKLIN,
3 husband and wife, hereinafter called "Vendor", and GERALD A. GARCELON
4 and PHYLLIS K. GARCELON, husband and wife, as tenants in common,
5 hereinafter called "Purchaser";

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

7 Vendor agrees to sell to Purchaser and Purchaser hereby agrees
8 to buy from Vendor, at the price and on the terms, covenants, condi-
9 tions and provisions hereinafter contained, all of the following
10 described real property situate in the County of Klamath, State of
11 Oregon, more particularly described as follows:

12 The real property described in Exhibit "A" attached hereto
13 and thereby made a part hereof as though fully set forth
14 hereat.

15 SUBJECT TO: The exceptions set forth in Exhibit "A".

16 SPECIAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

17 The purchase price of the property, which Purchaser agrees to
18 pay is the sum of \$169,000.00 payable as follows:

19 (a) \$49,000.00 down payment, receipt of which is hereby
20 acknowledged.

21 (b) \$72,200.00 by assumption of mortgage as hereinafter
22 set forth.

23 (c) \$47,800.00 deferred balance payable as follows: Annual
24 installments of not less than \$4,511.84, inclusive of interest,
25 the first such installment to be paid on the second day of
26 January, 1975, and a like installment to be paid on the
27 second day of each January thereafter until the full sum of
28 principal and interest due and owing on the deferred balance
29 due under the terms of this contract has been paid.

30 Interest on the deferred balance of the purchase price is fixed at
31 the rate of seven (7%) percent per annum simple interest on the
32 declining balances of the deferred balance. Interest commences
on the date this Contract is recorded.

All installments due Vendor from Purchaser under this agreement
shall be paid without demand to the Escrow Holder hereinafter named.
All such installments received shall be applied first to interest
Contract of Sale -1-

EB 6 4 3 11 1974
J. ANTHONY GILCOMB, ATTORNEY AT LAW, KLAMATH FALLS, OREGON

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1 accrued to the date of receipt and then applied to reduce principal.

2 From and after January 2, 1975, Purchaser may, at any time, pre-
3 pay interest for any one year, and may increase any installment or
4 prepay all or any part of the whole consideration at any time together
5 with interest thereon to the date of receipt of any such payment by
6 the Escrow Holder. Except for prepayment of interest, no partial pay-
7 ment, increased installment, nor payment for a partial conveyance by
8 reason of the eminent domain provisions of this agreement, shall be
9 credited in lieu of any regular future installment nor excuse Purchaser
10 from making the regular installments specified in this agreement.

11 The above described real property is subject to a mortgage lien
12 recorded in Vol. M-74, page , Mortgage Records of Klamath County,
13 Oregon, securing a debt in the original principal sum of \$76,000.00,
14 plus interest thereon, wherein Vendor is Mortgagor and The Federal
15 Land Bank of Spokane, a corporation, is Mortgagee. Purchaser hereby
16 expressly assumes and agrees to pay said mortgage obligation and to
17 fully perform the terms and provisions of the promissory note secured
18 by said mortgage and the terms and provisions of said mortgage lien
19 itself. The amount of credit for said assumption is \$72,200.00 repre-
20 senting a principal balance of \$76,000.00, less Federal Land Bank
21 stock of \$3,800.00. Vendor agrees to assign said stock to Purchaser.
22 Purchaser, therefore, covenants and agrees with Vendor with regard to
23 said obligation hereby assumed, to:

24 (a) Pay and perform the terms thereof as provided in said
25 mortgage and promissory note secured thereby.

26 (b) Not to increase the amount of the mortgage lien by incur-
27 ring any further indebtedness and to reduce the unpaid balance
28 of the mortgage obligation according to the terms and provisions
29 of the promissory note secured by said mortgage lien.

30 (c) To hold Vendor harmless from and to indemnify Vendor
31 against any and all liability, loss, or damage Vendor might
32 otherwise suffer by reason of said mortgage lien, including,
but not limited to, claims, costs, demands, attorney fees, or
judgments, and to defend Vendor from any claims brought or
suits or actions filed against Vendor by reason of the afore-
said mortgage to the extent that the same are based upon any
defalcation thereof by Purchaser. This indemnity and hold
harmless agreement shall not extend to any defalcations
occasioned by Vendor or Vendor's predecessor in interest.

Contract of Sale -2-

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1 If Purchaser neglects or fails to pay the sums due or to become
2 due under the note secured by said mortgage, or fails to perform
3 any of the terms, covenants, conditions of said mortgage or its
4 covenants contained in this portion of this contract, and said
5 failure is not occasioned by reason of any default on the part
6 of Vendor, Purchaser agrees to pay to Vendor all sums paid or
7 incurred by Vendor in protecting Vendor's security interest created
8 by this contract, including, but not limited to, costs, charges
9 and expenses, including costs of evidence of title, or validity
10 of Vendor's interest in said real property, and reasonable attorney
11 fees, with or without trial, and if trial, both at trial and on
12 appeal, incurred by Vendor; which sums shall bear interest at the
13 rate of ten (10%) percent per annum from date of written demand
14 therefor. Failure of Purchaser to perform this part of this con-
15 tract shall constitute a material breach.

16 Purchaser has made an independent investigation and inspection
17 of the real property herein described and has entered into this
18 contract without relying on any statement or representation or
19 covenant not specifically embodied in this contract, and accepts
20 the property described in this agreement as is, in its present
21 condition, and requires no work of any kind to be done on said
22 property by Vendor.

23 GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

24 The real property above described hereby sold to Purchaser
25 includes, all and singular, the tenements, hereditaments, rights,
26 easements, privileges and appurtenances thereunto belonging, or
27 in anywise appertaining, improvements thereon, including, but not
28 limited to, stationary pumps, pumping stations, pumping motors,
29 pumping engines, reservoirs, nonportable pipes and flumes or other
30 nonportable equipment now used for the production of water thereon
31 or for the irrigation or drainage thereof, and the reversions,
32 remainders, rents, issues and profits thereof, together with all
Contract of Sale -3-

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1 the rights to the use of water for irrigating said premises and
2 for domestic use thereon to which Vendor is now entitled, or which
3 are now used on said premises, however the same may be evidenced,
4 and together with all shares of stock or shares of water in any
5 ditch or irrigation company which, in any manner entitles the
6 Vendor water for irrigating or domestic purposes upon said real
7 property. The Vendor's lien created by this contract shall and
8 does hereby include the real property above described, together
9 with, all and singular, the tenements, hereditaments, rights,
10 easements, privileges and appurtenances thereunto belonging or
11 in anywise appertaining, and all improvements now or hereafter
12 thereon, including, but not limited to, stationary pumps, pumping
13 stations, pumping motors, pumping engines, reservoirs, nonportable
14 pipes and flumes or other nonportable equipment now or hereafter
15 used for the production of water thereon for the irrigation or
16 drainage thereof, and the reversions, remainders, rents, issues
17 and profits thereof, and together with all the rights to the use
18 of water for irrigating said premises and for domestic use thereon
19 to which said real property is now or may hereafter become entitled,
20 or which now are or may hereafter be used on said premises, however
21 the same may be evidenced, and together with all shares of stock
22 or shares of water in any ditch or irrigation company which in any
23 manner entitles the legal or equitable owner thereof to water for
24 irrigating or domestic purposes upon said real property. In
25 addition, Purchaser hereby agrees that the Vendor's lien is superior
26 to any and all rights of Purchaser under and by virtue of any
27 homestead, stay or exemption laws now in force, or which may
28 hereafter become laws and that no timber will be cut from any of
29 the real property subject to said lien.

30 Vendor hereby warrants that he has good and merchantable title
31 to the real property above described, subject to the exceptions
32 above set forth. Vendor will, upon execution hereof, make and
Contract of Sale -4-

J. ANTHONY GIACOMINI, ATTORNEY AT LAW, KLANATH FALLS, OREGON

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1 execute in favor of Purchaser, a good and sufficient warranty deed
2 conveying said premises free and clear as of this date of all
3 encumbrances, subject to the above set forth exceptions, and will
4 place said deed, together with the original of this agreement, and
5 any other conveyances of title or security instruments required
6 hereby in escrow at Klamath Falls Branch of First National Bank
7 of Oregon, P. O. Box 608, Klamath Falls, Oregon 97601, with instruc-
8 tions to said Escrow Holder that when and if the Purchaser shall
9 have paid the balance of the purchase money and interest as above
10 specified and shall have complied with all other terms and conditions
11 of this agreement, to deliver the same to Purchaser subject to the
12 usual printed conditions and provisions of the standard form of
13 escrow instructions provided by said Escrow Holder.

14 Vendor shall furnish, at his own expense, a Purchaser's Title
15 Insurance Policy issued by Klamath County Title Co. under Order No.
16 A-24116 insuring Purchaser's title in the above described real
17 property in the amount of \$169,000.00 subject to the above set
18 forth exceptions and printed conditions and exceptions contained
19 in the usual form of title policy issued by said title insurance
20 company.

21 Possession of all but the building shall be delivered to Pur-
22 chaser on the date this contract is recorded, but possession of
23 the building shall be delivered by no later than 45 days after the
24 date this contract is recorded. Purchaser shall remain in posses-
25 sion so long as Purchaser is not in default hereunder. Purchaser
26 shall and hereby agrees to keep said real property in clean,
27 sanitary, sightly, attractive condition/ to commit no waste or
28 otherwise damage or injure said premises; to maintain said premises
29 in accordance with the laws and the ordinances and regulations of
30 any constituted authority applying to said premises and to make up
31 no unlawful use thereof; to pay regularly and seasonably and before
32 the same shall become delinquent, all taxes, assessments, and charges

Contract of Sale -5-

1 of whatever nature (including additional charges by reason of change
 2 of use) levied and assessed against said real property and to pay
 3 and discharge all encumbrances thereafter placed thereon by Purchaser;
 4 to permit no lien or other encumbrances to be filed upon or placed
 5 against said premises without the written consent of Vendor; and it
 6 is further understood and agreed for the purposes of this provision
 7 that if Purchaser fails to pay or discharge any taxes, assessments,
 8 liens, encumbrances, or charges, Vendor, at his option and without
 9 waiver of default or breach of Purchaser, and without being obliged
 10 to do so, may pay or discharge all or any part thereof all of which
 11 said sums so paid by Vendor shall become repayable by Purchaser,
 12 together with interest at the rate of ten (10%) percent per annum,
 13 upon demand, payment of which is part of the performance of this
 14 agreement by Purchaser and a condition precedent to delivery of
 15 the warranty deed and other documents by the Escrow Holder.

16 Purchaser agrees to keep the buildings and improvements now on
 17 or hereafter placed upon the above described real property insured
 18 against loss by fire or other casualty in an amount not less than
 19 maximum insurable value as determined by the insurance carrier and
 20 shall obtain, at his own expense, said insurance in the name of Vendor
 21 as the primary insured with an endorsement thereon providing for loss
 22 payable to Vendor, Federal Land Bank of Spokane, and Purchaser as
 23 their respective interests may appear. A certificate of such insurance
 24 shall be provided by Purchaser and delivered to Vendor. If a loss
 25 should occur for which insurance proceeds shall become payable, the
 26 Purchaser may elect to either rebuild or repair the portion of the
 27 building so destroyed, or apply the proceeds to payment of the then
 28 unpaid balance of the purchase money. If the Purchaser elects to
 29 rebuild, he shall sign such documents as may be required by Vendor to
 30 guarantee the application of the insurance proceeds to the cost of such
 31 rebuilding or repair. Such election is subject to the concurrence
 32 of the Federal Land Bank of Spokane.

Contract of Sale -6-

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1 In the event any governmental agency or entity having the power
2 of eminent domain acquires by eminent domain, or by negotiated sale
3 in lieu of eminent domain, all, or any portion, of the real property
4 described in this contract, Vendor may require Purchaser to apply
5 all proceeds received by Purchaser from such acquisition (remaining
6 after payment by Purchaser of attorney fees, appraiser fees, and
7 related necessary and reasonable costs in connection with securing
8 said proceeds) which proceeds are hereinafter called "net proceeds"
9 toward the payment of the sums secured by this contract. Upon
10 receipt of said net proceeds, Purchaser shall notify Vendor of the
11 amount of said net proceeds and Vendor shall, within ten (10) days
12 after such notification, notify Purchaser in writing if Vendor elects
13 to have said net proceeds applied toward payment of the sums secured
14 by this contract. If Vendor fails to so notify Purchaser of such
15 election, Vendor shall conclusively be deemed to have elected not
16 to require Purchaser to apply said net proceeds toward the sums
17 secured by this contract. If Vendor elects to have said net pro-
18 ceeds applied toward payment toward the sums secured by this contract,
19 the amount to be received by Vendor shall not exceed the total of
20 the principal plus accrued interest to the date of receipt thereof
21 by Vendor, and all such sums shall be paid to the Escrow Holder
22 named herein. Regardless of whether Vendor elects to have said
23 net proceeds applied to the sums secured by this contract, Vendor
24 will join in any conveyance required by the governmental agency
25 or entity acquiring a portion or all of the real property described
26 herein by eminent domain, but Vendor shall not be required to
27 partially convey more property than that which is acquired by such
28 governmental agency or entity. Vendor shall not be obligated to
29 participate in any negotiations with such governmental agency or
30 entity. Any notice or notices required to be given by Purchaser
31 to Vendor pursuant hereto shall be in writing, and shall be deemed
32 given when the same is deposited in the United States mail as
Contract of Sale -7-

J. ANTHONY GIACOMINI, ATTORNEY AT LAW, KLANATH FALLS, OREGON

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1 registered mail, postage prepaid, addressed to Vendor at the last
 2 address of Vendor shown on the records of the Escrow Holder. This
 3 provision is subject to the right of The Federal Land Bank of Spokane
 4 to demand and receive all or a part of said proceeds.

5 If Purchaser shall sell said real property described herein and
 6 securing the unpaid balance of this contract, Vendor may elect to
 7 permit the subsequent Purchaser to assume the balance of Purchaser's
 8 obligation secured hereby, or to demand payment from Purchaser, or
 9 the transferee of said Purchaser, or both (at the option of the Vendor)
 10 of such portion of the deferred balance as Vendor may consider satis-
 11 factory, or declare the entire balance of the deferred balance due and
 12 payable. This clause cannot be waived, unless Purchaser gives Vendor
 13 notice of such sale in writing and Vendor, after receipt of such
 14 written notice, accepts a payment from the subsequent Purchaser. The
 15 written notice provided for herein shall be deemed given when the same
 16 is deposited in the United States mail as registered mail, addressed
 17 to the last address of Vendor shown on the records of the Escrow Holder.

18 Vendor may appear in or defend any action or proceeding at law,
 19 in equity, or in bankruptcy, affecting in any way the security hereof,
 20 and in such event, Vendor shall be allowed and paid, and Purchaser
 21 hereby agrees to pay, all costs, charges and expenses, including
 22 costs of evidence of title or validity and priority of the security
 23 and attorney fees in a reasonable sum, incurred in any such action or
 24 proceeding in which Vendor may appear, which shall bear interest at
 25 ten (10%) percent from date of demand therefor. Failure of Purchaser
 26 to pay Vendor for such costs, charges and expenses within ninety (90)
 27 days from date of demand therefor shall constitute a breach of this
 28 contract.

29 If Purchaser shall fail to perform any of the terms of this agree-
 30 ment, time of payment and performance being of the essence, Vendor
 31 shall, at his option, subject to the requirements of notice as herein
 32 provided, have the following cumulative rights:

(a) To foreclose this contract by strict foreclosure in equity;

Contract of Sale -8-

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J. ANTHONY GIACOMINI, ATTORNEY AT LAW, KLANATH FALLS, OREGON

1 (b) To declare the full unpaid balance of the purchase
2 price immediately due and payable; and

3 (c) To specifically enforce the terms of this agreement
4 by suit in equity.

5 Purchaser shall not be deemed in default for failure to per-
6 form any covenant or condition of this contract, other than the
7 failure to make payments as provided for herein, until notice of
8 said default has been given by Vendor to Purchaser and Purchaser
9 shall have failed to remedy said default within thirty (30) days
10 after the giving of the notice.

11 If Purchaser shall fail to make payments as herein provided,
12 Purchaser shall be deemed in default upon notice of said default
13 being given by Vendor to Purchaser and Purchaser having failed to
14 remedy said default within thirty (30) days after said notice.

15 Where notice in writing is required by Vendor to Purchaser,
16 such notice shall be deemed given when the same is deposited in
17 the United States mail as registered mail, addressed to the last
18 address of Purchaser shown on the records of the Escrow Holder.

19 No waiver by Vendor of any breach of any covenant of this
20 agreement shall be construed as a continuing waiver of any sub-
21 sequent breach of such covenant nor as a waiver of any breach
22 of any other covenant nor as a waiver of the covenant itself.

23 In the event any suit or action is commenced to foreclose
24 this contract, the court having jurisdiction of the case may,
25 upon motion by Vendor, appoint a receiver to collect the rents
26 and profits arising out of the above described real property and
27 to take possession, management and control of the same during
28 pendency of such foreclosure proceeding or until payment of the
29 obligations hereby secured, and apply said rents and profits to
30 the payment of the amount due hereunder, first deducting all
31 proper charges and expenses attending the execution of said
32 receivership.

Upon the commencement of any suit or action to collect the
Contract of Sale -9-

1 indebtedness or disbursements secured hereby, or any part thereof,
 2 or to enforce any provision of this contract by specific performance,
 3 foreclosure, or otherwise, there shall become due, and Purchaser
 4 agrees to pay to Vendor, in addition to all statutory costs and
 5 disbursements, any amount Vendor may incur or pay for any title
 6 report, title search, insurance of title, or other evidence of
 7 title subsequent to the date of this contract on any of the real
 8 property above described and this contract shall be security for
 9 the payment thereof.

10 In the event any suit or action is instituted to collect the
 11 indebtedness or disbursements secured hereby, or any part thereof,
 12 or to enforce any provision of this contract by specific performance,
 13 or foreclosure, or otherwise, the prevailing party, at trial, or on
 14 appeal, shall be entitled to such reasonable attorney's fees as shall
 15 be fixed by the court having jurisdiction of the case, in addition
 16 to statutory costs and disbursements.

17 If Purchaser should default in any of the items, covenants
 18 and provisions of this contract to be performed by Purchaser, and
 19 the unpaid principal balance of the deferred balance shall (as of
 20 the date of the institution of any suit or action by reason of
 21 such default) be \$11,950.00, or less, the provisions of O.R.S.
 22 88.070 and 88.080 relating to the foreclosure and redemption of
 23 a mortgage shall apply to the extent that any decree granted Vendor
 24 shall not entitle Vendor to a deficiency judgment, and Purchaser
 25 shall have one year in which to redeem.

26 This agreement contains the full understanding of the parties
 27 with respect to the subject hereof and no modification hereof shall
 28 be given effect unless the same be in writing subscribed by the
 29 parties hereto or their successors in interest.

30 This agreement shall bind and inure to the benefit of, as the
 31 circumstances may require, the parties hereto, and their respective
 32 successors, heirs, executors, administrators and assigns.

Contract of Sale -10-

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On the above and acknowledged deed.

STATE of Oregon
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 (SEAL)
 J. ANTHONY GIACOMINI, ATTORNEY AT LAW, KLAHATH FALLS, OREGON

1 In construing this agreement, the singular shall include both
 2 the singular and the plural and the masculine both the masculine and
 3 the feminine.

4 IN WITNESS WHEREOF, we have hereunto set our hands and seals
 5 the day and year first above written.

6
 7 Albert C. Acklin (SEAL) Esther L. Acklin (SEAL)
 8 Albert C. Acklin Esther L. Acklin
 9 Vendor
 10 Gerald A. Garcelon (SEAL) Phyllis K. Garcelon (SEAL)
 11 Gerald A. Garcelon Phyllis K. Garcelon
 12 Purchaser

13 STATE OF OREGON)
 14) ss.
 15 County of Klamath)

16 On the 6th day of February, 1974, personally appeared
 17 the above named Albert C. Acklin and Esther L. Acklin, husband and wife,
 18 and acknowledged the foregoing instrument to be their voluntary act and
 19 deed.

Before me:

20 (SEAL)

Shirley J. Jone
 Notary Public for Oregon
 My commission expires: 8-5-75

21 STATE OF Oregon)
 22) ss.
 23 County of Klamath)

24 On the 6th day of February, 1974, personally appeared
 25 the above named Gerald A. Garcelon and Phyllis K. Garcelon, husband and
 26 wife, and acknowledged the foregoing instrument to be their voluntary
 27 act and deed.

Before me:

28 (SEAL)

Shirley J. Jone
 Notary Public for Oregon
 My Commission expires: 8-5-75

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DESCRIPTION OF PROPERTY

The following described real property situate in Klamath County, Oregon:

Lot 7 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6; and Lots 1, 2, 3, & 4 and the W $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7; all in Township 39 South, Range 11 East of the Willamette Meridian.

EXCEPTING THEREFROM that portion of Lot 4 in Section 7, lying South of Burgdorf Road.

ALSO EXCEPTING THEREFROM that portion conveyed to Klamath County by deed recorded April 12, 1937, in Vol. 108 page 415, Deed records of Klamath County, Oregon.

SUBJECT TO: Terms and conditions of special assessment as farm use and the right of Klamath County to additional taxes in the event said use should be changed; assessments, irrigation, water rights, and rights of way of Horsefly Irrigation District and Klamath Project; acreage and use limitations under provisions of United States Statutes and regulations issued thereunder; and easements and rights of way of record and apparent thereon.

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of:
KLAMATH COUNTY TITLE CO
on this 6th day of FEBRUARY A. D., 19 74
at 1:38 o'clock P. M. and duly
recorded in Vol. M 74 of DEEDS
Page 1201

WM. D. MILNE, County Clerk

By *[Signature]* Deputy.
Fee \$ 24.00

Until a change is requested; tax statements
shall be mailed to Route 1 Box 314
Bonanza, Oregon 97623

Exhibit "A"

Ret: Klamath Co. Title
P.O. Box 151 - City

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