

A-24121

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Vol. 114 Page 3157

CONTRACT OF SALE

THIS AGREEMENT, Made this 16th day of March, 1974, between KOJI FUKUTAKI, also known as KOJO FUKUTAKI, and IRIS E. FUKUTAKI, husband and wife, hereinafter called "Vendor", and LAWRENCE E. PLEMONS and MARGARET I. PLEMONS, husband and wife, hereinafter called "Purchaser";

W I T N E S S E T H:

Vendor agrees to sell to Purchaser and Purchaser hereby agrees to buy from Vendor, at the price and on the terms, covenants, conditions and provisions hereinafter contained, all of the following described property situate in the County of Klamath, State of Oregon, more particularly described as follows:

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

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

The purchase price for said real property which Purchaser agrees to pay to the order of Vendor is \$20,000.00 payable as follows:

(a) \$2,400.00 earnest money, of which \$800.00 shall be applied to the purchase price hereunder, \$1,536.00 shall be advanced payment of interest to December 29, 1974, and \$64.00 has been applied to the closing costs herein;

(b) \$19,200.00 deferred balance to be paid in annual installments of \$1,400.00 plus interest for the ensuing year, the first such installment to be paid on the 29th day of December, 1974, and a like installment on the 29th day of each December thereafter, until the full sum of principal and interest is paid. Interest shall be at the rate of eight (8%) percent per annum beginning December 29, 1973. The aforesaid interest payment, so long as payments are current, shall be interest upon the deferred balance for the ensuing year after deducting the principal paid therewith.

Purchaser shall have the privilege of paying off in full the entire deferred balance of the purchase price together with interest thereon to the date of payment.

In executing, delivering and accepting this contract, it is mutually agreed by the parties hereto that, so long as no default by Purchaser shall occur in any of the terms, conditions, provisions and covenants of this contract to be performed by Purchaser, and after the principal balance of the deferred balance is \$15,000.00

Contract of Sale
Page -1-

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J. ANTHONY GIACONINI, ATTORNEY AT LAW, KLAMATH FALLS, OREGON

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1 or less, Purchaser shall be entitled to demand and receive, and
2 Vendor shall, within a reasonable time after demand, furnish partial
3 conveyance of the real property described herein as follows:

(a) The first release shall be of an area of 20 acres and shall be situated on either the extreme East boundary of the property or the extreme West boundary of the property.

(b) Subsequent conveyances shall be of an area of 20 acres and shall be adjacent to the parcel previously conveyed and shall not result in conveying the perimeter of the property so that the interior of the property is landlocked.

(c) The request for partial conveyance to Purchaser shall be in writing and shall include a legal description and shall be given in the same manner as notice provided herein. Purchaser shall pay all expenses related to such partial conveyance including but not limited to title company charges, escrow fees, and preparation of any documents. Vendor shall, execute the requested partial conveyance within twenty (20) days from receipt of the documents unless said request is contrary to the provisions of this contract, in which event Vendor shall so notify Purchaser within twenty (20) days after receipt of such documents.

(d) As used in paragraph (b) above the term adjacent shall mean that the border of the property to be released shares as all of one of its borders all of one of the borders of a parcel previously released and conveyed.

(e) The amount paid for a partial conveyance shall be \$200.00 per acre and shall be applied as a reduction of the principal unpaid balance under this contract, but shall not excuse the Purchaser from making the regular annual payments provided for in this contract.

19 in this contract.
20 The provisions of the immediately preceding paragraph of this agreement
21 shall not be construed as subdividing any of the real property described
22 herein into parcels or lots. Neither shall the same be construed as re-
23 quiring either party to subdivide any of the real property described herein
24 into parcels or lots, nor as requiring either party to construct on the
25 real property described herein any improvements of any kind. It is express-
26 ly understood and agreed that the undertaking of any subdivision of any of
27 the real property described herein into parcels or lots, or the making of
28 any improvements thereon, shall be at the full risk and the expense of
29 Purchaser. Purchaser acknowledges that he has entered into this
30 contract subject to state and federal laws and regulations relating
31 to the subdivision and sale of real property by parcels or lots and
32 assumes and agrees to be bound by such state and federal laws and
33 regulations relating to such activity. Purchaser agrees to assume

Contract of Sale
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1 and pay, and hold Vendor harmless from, any expenses or obligations
 2 incurred as a consequence of, or connected with, any subdivision
 3 activity, including, but not limited to, any additional sums due
 4 to Klamath County for deferred real property taxes by reason of a
 5 change from farm use to nonfarm use.

6 Purchaser has made an independent investigation and inspection
 7 of the real property herein described and has entered into this con-
 8 tract without relying on any statement or representation or covenant
 9 not specifically embodied in this contract, and accepts the property
 10 described in this agreement as is, in its present condition, and
 11 requires no work of any kind to be done on said property by Vendor.

12 GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

13 The real property above described hereby sold to Purchaser includes,
 14 all and singular, the tenements, hereditaments, rights, easements, pri-
 15 vileges and appurtenances thereunto belonging, or in anywise apper-
 16 taining, improvements thereon, including, but not limited to, pumps,
 17 sprinkler systems, pumping stations, motors, engines, reservoirs,
 18 pipes and flumes or other equipment now used for the production of
 19 water thereon or for the irrigation or drainage thereof, and
 20 the reversions, remainders, rents, issues and profits thereof,
 21 together with all the rights to the use of water for irrigating said
 22 premises and for domestic use thereon to which Vendor is now entitled,
 23 or which are now used on said premises, however the same may be evidenced.
 24 and together with all shares of stock or shares of water in any ditch
 25 or irrigation company which, in any manner, entitles the Vendor water
 26 for irrigating or domestic purposes upon said real property. The
 27 Vendor's lien created by this contract shall and does hereby include
 28 the real property above described, together with, all and singular,
 29 the tenements, hereditaments, rights, easements, privileges and
 30 appurtenances thereunto belonging or in anywise appertaining, and
 31 all improvements now or hereafter thereon, including but not limited
 32 to, pumps, sprinkler systems, pumping stations, motors, engines,

Contract of Sale
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1 reservoirs, pipes and flumes or other equipment now or hereafter used
 2 for the production of water thereon for the irrigation or drainage
 3 thereof, and the reversions, remainders, rents, issues and profits
 4 thereof, and together with all rights to the use of water for irrigating
 5 said premises and for domestic use thereon to which said real property
 6 is now or may hereafter become entitled, or which now are or may
 7 hereafter be used on said premises, however the same may be evidenced,
 8 and together with all shares of stock or shares of water in any ditch
 9 or irrigation company which in any manner entitles the legal or equit-
 10 able owner thereof to water for irrigating or domestic purposes upon
 11 said real property. In addition, Purchaser hereby agrees that the
 12 Vendor's lien is superior to any and all rights of Purchaser under
 13 and by virtue of any homestead, stay or exemption laws now in force, or
 14 which may hereafter become laws and that no timber will be cut from
 15 any of the real property subject to said lien.

16 Vendor hereby warrants that he has good and merchantable title
 17 to the real property above described, subject to the exceptions above
 18 set forth. Vendor will, upon full performance by Purchaser of all
 19 the terms, conditions and provisions of this said contract make and
 20 execute in favor of Purchaser a good and sufficient warranty deed
 21 conveying said premises free and clear as of this date of all encum-
 22 brances subject to the above set forth exceptions and subject to
 23 encumbrances created by Purchaser or created due to Purchaser's
 24 possession of the property.

25 Vendor shall furnish, at his own expense, a purchaser's title
 26 insurance policy issued by Klamath County Title Co. under Order No.
 27 A-24121 insuring Purchaser's title in the above described real
 28 property in the amount of \$20,000.00 subject to the above set forth
 29 exceptions and the printed conditions and exceptions contained in
 30 the usual form of title policy issued by said title insurance company
 31 and shall deliver said policy to Purchaser.

32 Purchaser shall be entitled to possession of the above described

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1 real property on date hereof. Purchaser shall remain in possession
 2 so long as Purchaser is not in default hereunder. Purchaser
 3 shall and hereby agrees to keep said real property in clean, sanitary,
 4 sightly, attractive condition; to commit no waste or otherwise
 5 damage or injure said premises; to maintain said premises in accor-
 6 dance with the laws and the ordinances and regulations of any con-
 7 stituted authority applying to said premises and to make no unlawful
 8 use thereof; to pay regularly and seasonably, and before the same
 9 shall become delinquent, all taxes, assessments, and charges levied
 10 and assessed against said real property, and to pay and discharge
 11 all encumbrances thereafter placed thereon by Purchaser; to permit
 12 no lien or other encumbrance to be filed upon or placed against
 13 said premises without the written consent of Vendor; and it is
 14 further understood and agreed for the purposes of this provision
 15 that if Purchaser fails to pay or discharge any taxes, assessments,
 16 liens, encumbrances, or charges, Vendor, at his option and without
 17 waiver of default or breach of Purchaser, and without being obliged
 18 to do so, may pay or discharge all or any part thereof all of which
 19 said sums so paid by Vendor shall become repayable by Purchaser,
 20 together with interest at the rate of ten (10%) percent per annum
 21 upon demand, payment of which is part of the performance of this
 22 agreement by Purchaser and a condition precedent to delivery of the
 23 warranty deed by Vendor.

24 In the event any governmental agency or entity having the
 25 power of eminent domain acquires by eminent domain, or by negotiated
 26 sale in lieu of eminent domain, all, or any portion of the real pro-
 27 perty described in this contract, Vendor may require Purchaser to
 28 apply all proceeds received by Purchaser from such acquisition
 29 (remaining after payment by Purchaser of attorney fees, appraiser's
 30 fees, and related costs in connection with such acquisition) to be
 31 applied by Purchaser toward the payment of the sums secured by this
 32 contract. Upon receipt of funds, Purchaser shall notify Vendor of

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1 the net amount of proceeds so received, and, within ten (10) days
 2 after such notification, Vendor shall notify Purchaser in writing
 3 of Vendor's election to have such proceeds applied to the sums
 4 secured by this contract or shall be conclusively deemed to have
 5 elected not to require Purchaser to apply such proceeds toward
 6 the sums secured by this contract. Such application shall be applied
 7 first to payment of accrued interest to the date of application
 8 and second to payment of principal. It is further understood and
 9 agreed that regardless of whether such sums are applied to the
 10 sums secured by this contract, Vendor will join in any conveyance
 11 required by the governmental agency or entity acquiring a portion
 12 or all of the real property described herein by eminent domain,
 13 but shall not be required to convey more property than that which
 14 is acquired by such governmental agency or entity. Any notice or
 15 notices required to be given by Purchaser to Vendor pursuant hereto
 16 shall be in writing, and shall be deemed given when the same is
 17 deposited in the United States mail, as ^{REGISTERED K.P.}certified mail, postage
 18 prepaid, addressed to Vendor at the last address of Vendor as pro-
 19 vided for herein.

20 If Purchaser shall sell said real property described herein
 21 and securing the unpaid balance of this contract, Vendor may elect
 22 to permit the subsequent Purchaser to assume the balance of Purchaser's
 23 obligation secured hereby, or to demand the then unpaid balance of
 24 principal and interest from Purchaser, or the transferee of said
 25 Purchaser, or both, at the option of Vendor. This clause cannot
 26 be waived, unless Purchaser gives Vendor notice of such sale in writing
 27 and Vendor, after receipt of such written notice, accepts a payment
 28 from the subsequent Purchaser. The written notice provided for
 29 herein shall be deemed given when the same is deposited in the
 30 United States mail as ^{REGISTERED K.P.}certified mail, addressed to the last address
 31 of Vendor shown on the records of the Escrow Holder.

32 Vendor may appear in or defend an action or proceeding at

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1 law, in equity, or in bankruptcy, affecting in any way the security
 2 hereof, and in such event, Vendor shall be allowed and paid, and
 3 Purchaser hereby agrees to pay, all costs, charges and expenses,
 4 including costs of evidence of title or validity and priority of
 5 the security and attorney's fees in a reasonable sum, incurred in
 6 any such action or proceeding in which Vendor may appear, which
 7 shall bear interest at ten (10%) percent from date of demand therefor.
 8 Failure of Purchaser to pay Vendor for such costs, charges, and expenses
 9 within ninety (90) days from date of demand therefor shall constitute
 10 a breach of this contract.

11 If Purchaser shall fail to perform any of the terms of this
 12 agreement, time of payment and performance being of the essence,
 13 Vendor shall, at his option, subject to the requirements of notice
 14 as herein provided, have the following rights:

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

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

19 (c) To specifically enforce the terms of this agreement
 20 by suit in equity; and

21 (d) To declare this agreement null and void as of the
 22 date of the breach and to retain as liquidated damages
 23 the amount of the payments heretofore made upon said
 24 premises. Under option (d) all of the right, title and
 25 interest of Purchaser shall revert and revest in Vendor
 26 without any act of re-entry or without any other act by
 27 Vendor to be performed, and Purchaser agrees to peaceably
 28 surrender the premises to Vendor, or in default thereof,
 29 Purchaser may, at the option of Vendor, be treated as a
 30 tenant holding over unlawfully after the expiration of
 31 a lease and may be ousted and removed as such.

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

If Purchaser shall fail to make payments as herein provided

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1 and said failure shall continue for more than thirty (30) days after
 2 the payment becomes due, Purchaser shall be deemed to be in default
 3 and Vendor shall not be obligated to give notice to Purchaser of a
 4 declaration of said default.

5 Where notice in writing is required by Vendor to the Purchaser,
 6 such notice shall be deemed given when the same is deposited in the
 7 United States mail as registered mail, addressed to the address of
 8 the Purchaser as shown below and where notice in writing is required
 9 by Purchaser to the Vendor, such notice shall be deemed given when
 10 the same is deposited in the United States mail as registered mail,
 11 addressed to the address of the Vendor as shown below.

12 Address of Vendor: Mr. and Mrs. Koji Fukutaki
 13 4136 Monterey Road
 14 Los Angeles, California 90032

15 Address of Purchaser: Mr. and Mrs. Lawrence E. Plemons
 16 Box 154
 17 Beatty, Oregon 97021

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

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

31 Upon the commencement of any suit or action to collect the
 32 indebtedness or disbursements, secured hereby, or any part thereof,

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

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

16 Upon delivery of any partial conveyance from Vendor to Purchaser,
 17 as provided herein, and the payment of the full consideration there-
 18 for, the terms, covenants, conditions and provisions of this contract
 19 shall not extend to, nor be binding upon, the real property conveyed
 20 by such partial conveyance.

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

25 This agreement shall bind and inure to the benefit of,
 26 as the circumstances may require, the parties hereto, and
 27 their respective successors, heirs, executors, administrators
 28 and assigns.

29 In construing this agreement, the singular shall include
 30 both the singular and the plural and the masculine both the
 31 masculine and feminine.

32 WITNESS the hands and seals of the parties hereto the day

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1 and year first above written.

2 Koji Fukutaki (SEAL)
3 Koji Fukutaki

4 Iris E. Fukutaki (SEAL)
5 Iris E. Fukutaki Vendor

6 Lawrence E. Plemons (SEAL)
7 Lawrence E. Plemons

8 Margaret I. Plemons (SEAL)
9 Margaret I. Plemons Purchaser

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13 STATE OF CALIFORNIA)
14 County of Los Angeles) ss.

15 On the 25th day of February, 1974, personally
16 appeared the above named Koji Fukutaki and Iris E. Fukutaki, husband
17 and wife, and acknowledged the foregoing instrument to be their
18 voluntary act and deed.

Before me:

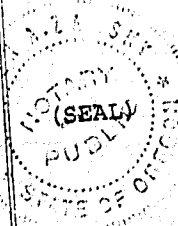


1123 S. San Gabriel Blvd., San Gabriel, Calif. 91776

STATE OF OREGON)
County of Klamath) ss.

On the 6th day of March, 1974, personally
appeared the above named Lawrence E. Plemons and Margaret I.
Plemons, husband and wife, and acknowledged the foregoing instrument
to be their voluntary act and deed.

Before me:



Anthony A. Giacovini
Notary Public for Oregon
My commission expires: 9-18-75

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EXHIBIT "A"

All those portions of Government Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 16 and 17, Section 11, Twp. 36 S. R. 11 E.W.M. lying Southerly of the boundaries of the Second Addition to Nimrod River Park, as shown on plot on file, and lying North of the Sprague River, official 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; reservations contained in Vol. 310, page 386, Vol. 312, page 436, Deed Records of Klamath County, Oregon; 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 MARCH A. D. 19 74
at 4:28 o'clock P. M. and duly
recorded in Vol. M 74 of DEEDS
Page 3157

WM. D. MILNE, County Clerk

By *Hazel Drazel*
Fee \$ 22.00 Deputy.

After Recording return to:
Mr. and Mrs. Koji Fukutaki
4136 Monterey Road
Los Angeles, California 90032

Until a change is requested mail all
Tax Statements to:
Mr. and Mrs. Laurence Plemons
P.O. Box 154
Beatty, Oregon 97021

EXHIBIT "A"