

11856

CONTRACT OF SALE

4356

THIS AGREEMENT, made and entered into this 26th day of March, 1976, by and between GUY BARTON AND MILDRED BARTON, husband and wife, as tenants by the entirety, hereinafter referred to as Sellers, and ARTHUR E. FARR and MARY G. FARR, husband and wife, hereinafter referred to as Purchasers.

W I T N E S S E T H :

PROPERTY: Sellers agree to sell, transfer and convey unto Purchasers, and Purchasers agree to buy, purchase and accept all that real property described as follows:

Lots 16, 17 and 18 of HIGHLAND PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPTING THEREFROM that portion conveyed to the State of Oregon in Volume M72, page 348, Microfilm Records of Klamath County, Oregon. Subject, however, to the following:

1. The premises herein described are within and subject to the statutory powers, including the power of assessment, of Enterprise Irrigation District.
2. A 20 foot building setback from 6th Street on Lots 16, 17 and 18, as shown on dedicated plat and a 20 foot building setback from Western Street along the rear of Lot 18, as shown on dedicated plat.
3. Reservations as contained in plat dedication, to-wit: "dedicate, donate and convey to the Public for Public Use forever the roads and the irrigation laterals shown (--) and drains shown (--) on "HIGHLAND PARK" as platted hereon. Subject to setback line shown on plat, and easements over all lots for future sewers."
4. An Agreement, including the terms and provisions thereof, recorded March 5, 1941, Deed Records of Klamath County, Oregon, given by John Hasy and Nettie A. Hasy to Enterprise Irrigation District concerning irrigation water.
5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission recorded January 11, 1972 in Volume M72, page 348, Microfilm Records of Klamath County, Oregon, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

TERMS AND CONSIDERATION: The total purchase price of the above described property is Sixty Thousand and No/100ths (\$60,000.00) Dollars payable as follows:

(a) Seventeen Thousand Four Hundred and No/100ths (\$17,400.00) cash consideration the receipt and sufficiency whereof is hereby acknowledged by Sellers.

(b) The balance of Forty-Two Thousand Six Hundred and No/100ths (\$42,600.00) to be paid at the rate of semi-annual payments as follows: January 2, 1977 the sum of \$4,260.00 plus interest at the rate of 8% and July 1, 1977 the sum of \$4,260.00 plus interest at the rate of 8% and subsequent payments due on or before the

2nd of January and the 1st of July thereafter until the full balance of principal and interest has been fully paid and satisfied.

(c) The balance of this Contract to be paid in full five (5) years from the date of this Contract.

(d) Interest shall commence ^{April 9, 1976} ~~March 1, 1976~~.

Failure to pay any installment of principal, or purchase price, after notice of default as provided in paragraph five (5) hereof, shall render the entire unpaid balance of the principal, or purchase price, due and payable at once, at the option of the Sellers.

All payments hereunder shall be made to First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon 97601.

SELLERS OBLIGATION: Sellers agree that they will furnish unto Purchasers a good and sufficient policy of title insurance in the principal amount of Sixty Thousand Dollars (\$60,000.00) insuring merchantable title in and to the subject property free and clear of any and all encumbrances, except as hereinabove set forth, in accordance with the warranties herein contained, concurrently herewith.

Sellers further agree to make and execute a good and sufficient warranty deed conveying the subject real property unto the Purchasers, which warranty deed shall warrant the title to the subject real property to be free and clear of any and all encumbrances except as hereinabove set forth as of the date of this Agreement, and thereafter as against any act or acts on the part of the Sellers.

PURCHASERS OBLIGATION: The Purchasers have examined the property which is the subject matter of this transaction, and they accept same "as is." Purchasers covenant and agree that they shall faithfully perform and fulfill the following obligations and conditions:

(a) That they will take good and proper care of the subject real property, preventing the value of same from deteriorating through neglect and lack of care. Purchasers further covenant and agree that they will commit no waste nor utilize the property in such a manner as to constitute a nuisance, wrongful or unlawful use. Purchasers reserve the right to improve the subject real property in any manner they shall see fit without obtaining prior consent from the Sellers; PROVIDED, HOWEVER, that the improvements so made shall be and become part of the real property and shall belong to the Sellers subject to this Contract.

(b) Purchasers shall not suffer nor permit any material nor labor liens to be placed upon or filed upon the subject real property, and shall save the Sellers harmless from any claim arising hereafter out of any such liens. The filing of a lien against the subject real property shall constitute a default hereunder as contemplated by the

parties, unless a bond is posted to insure removal of jeopardy to Sellers then interests.

(c) Purchasers will promptly pay all taxes, liens, public charges or assessments which may hereafter become due, accrue, be levied or otherwise assessed against the subject real property. All of said taxes shall hereafter be the responsibility of the Purchasers hereunder.

(d) Purchasers agree to keep the improvements now situated on the subject real property insured against loss by fire or similar catastrophe by and through a suitable insurance company during the course and term of this subject Contract. In the event of loss by such fire or catastrophe, Purchasers agree that the interest of the Sellers shall first be satisfied to the extent of their then remaining interest, and any sums, thereafter remaining by way of benefits under the policy shall thereafter be paid to Purchasers. There shall be carried fire and extended coverage insurance on the subject real property in an amount no less than the interest of which Sellers have herein at any time during the course and terms of the subject Contract, or to the full insurable value of the improvements situated on the subject real property, whichever is less.

POSSESSION: Possession of the above described property in favor of the Purchasers is acknowledged to have been effective March 26, 1976.

DEFAULT PROVISIONS: In the event that Purchasers shall fail to perform any of the terms of this Agreement, time of payment and performance being of the essence, Sellers shall at their option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this Contract by strict foreclosure in equity.
- (b) To declare the full unpaid balance of the purchase price immediately due and payable.
- (c) To specifically enforce the terms of this Agreement by suit in equity.
- (d) To declare this Agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payment theretofore made upon said premises. Under this option all of the right, title and interest of Purchasers shall revert and revest in Sellers without any act of re-entry or without any other act by Sellers to be performed, and Purchasers agree to peaceably surrender the premises to Sellers, or in default thereof Purchasers may, at the option of the Sellers, be treated as a tenant holding over unlawfully after the expiration of a lease, and they may be ousted and removed as such.

Purchasers shall not be deemed in default for failure to perform

any covenant or condition of this Contract until notice of said default has been given by Sellers to Purchasers and Purchasers shall have failed to remedy said default within thirty (30) days after the giving of the notice. Notice of this purpose shall be deemed to have been given by the deposit in the regular United States mails of a letter containing said notice and addressed to 615 Hillside Avenue, Klamath Falls, Oregon 97601. In the alternative, said notice may be personally delivered. If the Purchasers shall fail to remedy their default, and if said failure shall continue for more than ten (10) days, Purchasers shall be deemed in default and subject to the remedies provided hereinabove.

ATTORNEY'S FEES: In the event of legal or equitable action to enforce any of the rights, conditions or covenants contained herein, it is understood and agreed that the prevailing party therein shall be entitled to: (1) Reasonable attorney's fees to be fixed by the trial court; and (2) If any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court as reasonable attorney's fees in said appellate court.

ESCROW ARRANGEMENTS: As soon as practicable following the execution of this Agreement, O. W. GOAKEY, Attorney at Law, shall deliver in escrow to First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, the following:

- (a) An unrecorded Warranty Deed to the property free and clear of any and all encumbrances, except as herein above set forth.
- (b) The recorded and executed original Contract of Sale.
- (c) Purchasers' title insurance policy insuring Purchasers' title to the property.

The parties hereby instruct said escrow agent to receive for Sellers' account the balance of the installment payments provided

herein. Said escrow agent is further authorized and instructed that it is to close the escrow and deliver the documents to the parties entitled thereto at such times as all sums called for hereunder, including interest, have been fully paid and completely paid by Purchasers.

This Contract shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assigns and personal representatives. HOWEVER, Purchasers shall not assign this agreement, the rights thereunder, or the property covered thereby without the written consent of the Sellers being first obtained. The Sellers agree not to withhold their consent unreasonably.

The Purchasers warrant to and covenant with the Sellers that the real property described in this Contract is primarily for Buyers' personal, family, household or agricultural purposes.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$60,000.00.

EXECUTED IN TRIPLICATE, each of the parties hereto retaining a copy hereof, and the original being placed with First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, as Collection Escrow Agent.

Guy Barton
GUY BARTON
Mildred Barton
MILDRED BARTON

SELLERS

Arthur E. Farr
ARTHUR E. FARR
Mary G. Farr
MARY G. FARR

PURCHASERS

STATE OF OREGON }
County of Klamath } ss

On this 26 day of March, 1976, before me, the undersigned Notary Public in and for said State, personally appeared Guy Barton,

Mildred Barton, Arthur E. Farr and Mary G. Farr, known to me to be the person whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on the date last above written.

Margaret C. Leakey
 NOTARY PUBLIC FOR OREGON
 My Commission Expires: 3-19-77

*Not
 Don Key & Associates
 431 Main
 St. Paul, Ore*

Topic to:

*(Arthur E. Farr
 & Mary G.)*

*2003 - Gene Shanks - Not,
 St. Paul, Ore*

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the _____ day of _____ A.D., 19 *76* at *11:10* o'clock *A* M., and duly recorded in Vol. _____ of _____ on Page _____.

FEE *3.10*

WM. D. MILNE, County Clerk

By *[Signature]* Deputy