

38-12233-K

FORM No. 159—ACKNOWLEDGMENT OF REAL ESTATE CONTRACT BY VENDOR-BUYER (Individual or Corporate).

STEVENS NEW LAW PUB. CO., PORTLAND, ORE.

28408

Escrow No. 3841

Vol 77 Page 6772

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, for the consideration hereinafter stated,

has sold and assigned and hereby does grant, bargain, sell, assign and set over unto

Paul A. Montgomery

his heirs, successors and assigns, all of the vendee's right, title and interest in and to that certain contract for the sale of real estate dated

July 10, 1974, between Ernest L. Groth and Marian J. Groth,

as seller and Dearborn Development Company, a partnership consisting of Harold W. Dearborn, Luther H. Dearborn and Grace E. Dearborn

as buyer, which contract is recorded in the Deed* Miscellaneous* Records of _____ County, Oregon, in book _____ at page _____ thereof (reference to said recorded contract hereby being expressly made), together with all of the right, title and interest of the undersigned in and to the real estate described therein; the undersigned hereby expressly covenants with and warrants to the assignee above named that the undersigned is the owner of the vendee's interest in the real estate described in said contract of sale and that the unpaid balance of the purchase price thereof is not more than \$26,404.99 with interest paid thereon to March 31, 1977, 1977; further, upon compliance by said assignee with the terms of said contract, the undersigned directs that conveyance of said real estate be made and delivered to the order of said assignee.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$155,000.00. However, the actual consideration consists of or includes other property or value given or promised which is part of the consideration (indicate which).

In construing this assignment, it is understood that if the context so requires, the singular shall be taken to mean and include the plural, the masculine shall include the feminine and the neuter and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to one or more individuals and/or corporations.

IN WITNESS WHEREOF, the undersigned assignor has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal to be affixed hereunto by its officers duly authorized thereunto by order of its board of directors.

DATED: April 1, 1977.

By Harold W. Dearborn
By Grace E. Dearborn
By Luther H. Dearborn
By Harold W. Dearborn

See back of this document for legal description of property.

(If executed by a corporation, affix corporate seal.)

STATE OF OREGON,

County of Klamath

April 1, 1977

Personally appeared the above named

Harold W. Dearborn andGrace E. Dearborn

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

(OFFICIAL SEAL) Kathy R. Mallams
Notary Public for Oregon

My commission expires: 6/13/80

STATE OF OREGON, County of _____ ss.
Personally appeared _____ and _____ who, being duly sworn, each for himself and not one for the other, did say that the former is the _____ president and that the latter is the _____ secretary of _____ a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon

My commission expires:

(OFFICIAL SEAL)

*Strike whichever word not applicable.

NOTE—The sentence between the symbols (1) and (2), if not applicable, should be deleted. See Chapter 462, Oregon Laws 1967, as amended by the 1967 Special Session. If the contract is not already of record, it should be recorded, preferably in the Deed Records.

FORM No. 159—ACKNOWLEDGMENT BY ATTORNEY-IN-FACT.

STATE OF OREGON,

County of Klamath

ss.

On this the 1st day of April, 1977, personally appeared Harold W. Dearbornwho, being duly sworn (or affirmed), did say that he is the attorney in fact for Luther H. Dearborn and Grace E. Dearborn and

that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be the act and deed of said principal.

Before me:

Kathy R. Mallams
(Signature)

Notary Public for Oregon

(Title of Officer)

My Commission Expires: 6/13/80

(Official Seal)

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Beginning at a point North $38^{\circ} 56'$ East 60 feet distant from the North-easterly corner of Block 82 in KLAMATH ADDITION TO THE CITY OF KLAMATH FALLS, OREGON; thence South $51^{\circ} 4'$ East 120 feet; thence North $38^{\circ} 56'$ East 60 feet; thence North $51^{\circ} 4'$ West 120 feet; thence South $38^{\circ} 56'$ West 60 feet to the point of beginning.

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1 THIS AGREEMENT, made and entered into this 10th day of July, 1974, by and
2 between ERNEST L. GROTH and MARIAN J. GROTH, husband and wife, hereinafter
3 called Vendors, and DEARBORN DEVELOPMENT CO., a partnership consisting of
4 Harold W. Dearborn, Luther H. Dearborn and Grace E. Dearborn, hereinafter
5 called Vendee,

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

7 Vendors agree to sell to Vendee, and Vendee agrees to buy from the Vendors
8 all of the following real and personal property situated in Klamath County,
9 State of Oregon, to-wit:

10 Beginning at a point North 38°56' East 60 feet distant from the North-
11 easterly corner of Block 82 in KLAMATH ADDITION TO THE CITY OF KLAMATH
12 FALLS, OREGON; thence South 51°4' East 120 feet; thence North 38°56'
13 East 60 feet; thence North 51°4' West 120 feet; thence South 38°56'
14 West 60 feet to the point of beginning.

15 Subject to: Easements and rights of way of record or apparent on the
16 land; and to real property taxes for fiscal year commencing July 1,
17 1974, which are now a lien but not yet payable.

18 TOGETHER WITH personal property more particularly described in Exhibit
19 A attached hereto and by this reference made a part hereof.

20 Subject to: Personal property taxes which became a lien on January
21 1, 1974;

22 at and for a price of \$132,295.40, payable as follows, to-wit:

23 (a) By assigning a contract of sale, dated October 24, 1973, wherein
24 Vendee agreed to sell to Edward L. Snook and Katherine K. Snook,
25 his wife, the following described real property situated in
26 Klamath County, Oregon, to-wit:

27 Tract 142 of PLEASANT HOME TRACTS NO. 2.

28 The equity in said contract is \$3,181.57; the payments on said
29 contract are \$135.00 per month. The property is subject to a
30 Trust Deed from James R. Zumwalt and Shirley R. Zumwalt, his
31 wife, to Transamerica Title Insurance Co., trustee for bene-
32 ficiary, United States National Bank of Oregon, recorded at M-71,
page 4308, which Vendors assume and agree to pay.

(2) Payment of \$12,000.00 cash; the receipt of which is hereby acknowledged.

(3) \$26,701.72 with interest at the rate of 8% per annum from July 1, 1974, payable in installments of not less than \$200.00 per month, inclusive of interest, the first installment to be paid on the 10th day of August, 1974, and a further installment on the 10th day of each month thereafter until the full balance of principal and interest are paid.

It is understood between the parties the within described real and personal property, situated in Klamath Addition to the City of Klamath Falls, Oregon,

GANDON, GANDON
& SISEMORE
ATTORNEYS AT LAW
838 MAIN STREET
KLAMATH FALLS, ORE.
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Agreement - Page 1.

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1 is subject to a contract of sale, dated June 26, 1973, wherein Fred R. Krauel
 2 is seller and Vendors are buyers, which said contract Vendee hereby assumes
 3 and agrees to pay.

4 The purchase price of the property is allocated as follows: Real property,
 5 \$127,295.40 and personal property, \$5,000.00.

6 Vendee agrees to make said payments promptly on the dates above named to
 7 the order of Vendors, or the survivor of them, at First Federal Savings and
 8 Loan Association of Klamath Falls, at Klamath Falls, Oregon; to keep said
 9 property at all times in as good condition as the same now are, that no improve-
 10 ment, now on or which may hereafter be placed on said property shall be removed
 11 or destroyed before the entire purchase price has been paid and that said prop-
 12 erty will be kept insured in companies approved by Vendors against loss or dam-
 13 age by fire in a sum not less than the full insurable value, with loss payable
 14 to the parties as their respective interests may appear, said policy or policies
 15 of insurance to be held by Vendors; that Vendee shall pay regularly and season-
 16 ably and before the same shall become subject to interest charges, all taxes,
 17 assessments, liens and incumbrances of whatsoever nature and kind and shall pay
 18 the installment due on the Krauel-Groth contract as the same shall become due.
 19 If the Vendee should fail to make the payment on the Krauel-Groth contract, such
 20 failure shall be considered a breach of this agreement. If Vendee should fail
 21 to make the payments on the Krauel-Groth contract, Vendors shall have the right
 22 but not the obligation to make the said payments for the purpose of protecting
 23 their security, and any payments made by the Vendors on the said Krauel-Groth
 24 contract shall be added to the balance due on this agreement. Vendee agrees not
 25 to suffer or permit any part of said property to become subject to any taxes,
 26 assessments, liens, charges or incumbrances whatsoever having precedence over
 27 rights of Vendors in and to said property. Vendee shall be entitled to the
 28 possession of said property July 1, 1974.

29 Vendors will on the execution hereof make and execute in favor of Vendee
 30 good and sufficient assignment of Krauel-Groth contract, warranty deed from
 31 Vendors to Vendee, Bill of Sale, and two termination of financing statements,
 32 free and clear as of this date of all encumbrances, except as set forth above,

Agreement - Page 2.

GANDON, GORDON
 & SISEMORE
 ATTORNEYS AT LAW
 530 MAIN STREET
 KLAMATH FALLS, ORE.
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1 and will place said assignment of contract, warranty deed, bill of sale and
2 termination of financing statements, together with one of these agreements in
3 escrow at First Federal Savings and Loan Association of Klamath Falls, at
4 Klamath Falls, Oregon, and shall enter into written escrow instructions in form
5 satisfactory to said escrow holder, instructing said holder that when, and if
6 Vendee shall have paid the balance of the purchase price in accordance with the
7 terms and conditions of this contract, said escrow holder shall deposit said
8 instruments in the escrow file of the Krauel-Groth contract to be delivered to
9 Vendee when the balance of the purchase price of that contract has been paid in
10 full. But that in case of default by Vendee, said escrow holder shall on demand
11 surrender the instruments to Vendors. The escrow instructions to said escrow
12 holder shall provide that if the Vendee shall be current in all payments due
13 on this agreement on July 1, 1979, that it shall deliver to the Vendee the two
14 termination of financing statements (UCC-3).

15 Vendors covenant and agree as follows: That said real and personal prop-
16 erty is free and clear of all liens and encumbrances, except as set forth above,
17 and that they have good right to sell said real and personal property to Vendee.
18 Vendors covenant and agree to indemnify and hold Vendee harmless with respect
19 to any and all indebtedness of Vendors, right of redemption or com-

20 It is expressly understood and agreed that this is a conditional sales
21 agreement and that full title to all of said real property shall remain in
22 Vendors until said balance and interest are paid in full. It is further under-
23 stood and agreed that Vendee grants to Vendors a security interest in all of
24 the equipment, furnishings and fixtures which are this date sold to Vendee,
25 together with any and all equipment, furnishings and fixtures which may at any
26 time hereafter be placed upon said premises by the Vendee as further security
27 to the Vendors for the payment and performance of this agreement, and that
28 any replacements to present equipment when the same are replaced, will also
29 be secured hereby.

30 It is further understood and agreed that Vendee may repair and remodel
31 the premises.

32 The real and personal property taxes and the insurance currently in force

DONALD G. SISEMORE
ATTORNEY AT LAW
100 MAIN STREET
KLAMATH FALLS, ORE.
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1 and effect on the premises will be prorated by and between Vendors and Vendee
 2 as of July 1, 1974. Personal property taxes will be prorated based on the 1973
 3 rate and Vendee will assume the 1974 taxes when payable. When the 1974 personal
 4 property tax statements are received, Vendors and Vendee shall adjust the pro-
 5 ration of the personal property taxes between themselves.

6 In case Vendee shall fail to make the payments aforesaid, or any of them,
 7 punctually and upon the strict terms and at the times above specified, or fail
 8 to keep any of the other terms or conditions of this Agreement, time of payment
 9 and strict performance being declared to be the essence of this agreement,
 10 then Vendors shall have the following rights: (1) To foreclose this contract by
 11 strict foreclosure in equity; (2) To declare the full unpaid balance immedi-
 12 ately due and payable; (3) To specifically enforce the terms of this agreement
 13 by suit in equity; (4) To declare this contract null and void, and in any of
 14 such cases, except exercise of the right to specifically enforce this agreement
 15 by suit in equity, all of the right and interest hereby created or then existing
 16 in favor of Vendee derived under this agreement shall utterly cease and deter-
 17 mine, and the premises aforesaid shall revert and revest in Vendors without any
 18 declaration of forfeiture or act of re-entry, and without any other act by
 19 Vendors to be performed and without any right of Vendee of reclamation or com-
 20 pensation for money paid or for improvements made, as absolutely, fully and
 21 perfectly as if this agreement had never been made.

22 Should Vendee, while in default, permit the premises to become vacant,
 23 Vendors may take possession of the same for the purpose of protecting and pre-
 24 serving the property and their security interest therein, and in the event
 25 possession is so taken by Vendors they shall not be deemed to have waived their
 26 right to exercise any of the foregoing rights.

27 In case suit or action is instituted to foreclose this contract or to en-
 28 force any of the provisions hereof, the parties agree to pay reasonable cost of
 29 title report and title search and such sum as the trial court may adjudge reason-
 30 able as attorneys' fees to be allowed the prevailing party in said suit or action.
 31 the parties further promise to pay such sum as the appellate court shall adjudge
 32 reasonable as attorneys' fees to the prevailing party on such appeal.

DANONG, GORDON
 & SISEMORE
 ATTORNEYS AT LAW
 539 MAIN STREET
 KLAMATH FALLS, ORE.
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1 Vendee further agrees that failure by Vendors at any time to require per-
 2 formance by Vendee of any provision hereof shall in no way affect Vendors'
 3 right hereunder to enforce the same, nor shall any waiver by Vendors of any
 4 breach of any provision hereof be held to be a waiver of any succeeding breach
 5 of any such provision, or as a waiver of the provision itself.

6 PROVIDED FURTHER, that the personal property herein sold is subject to
 7 terms and provisions of Uniform Commercial Code of the State of Oregon, and
 8 that all of the terms herein, the rights, duties and remedies of the parties
 9 shall be governed by the laws of Oregon. That Vendors' address is 5323
 10 Hilldale, Klamath Falls, Oregon 97601; that Vendee's address is 39 High Street,
 11 Klamath Falls, Oregon 97601. That each demand, notice or other communication
 12 shall be served or given by mail or telegram addressed to the parties at the
 13 mailing addresses set forth herein, or by personal service upon the parties.
 14 Reasonable notice, when notice is required, shall be five days. Vendee agrees
 15 to join with Vendors in executing and filing a financial statement as required
 16 by said Uniform Commercial Code as above mentioned to protect and continue
 17 Vendors' security interest.

18 Vendee acknowledges that it has personally inspected the property and
 19 accepts it in its present condition. Vendee further acknowledges that Vendors
 20 have made no representation as to the amount of income that can be realized
 21 from the operation of this business.

22 Vendee agrees to keep said property at all times in as good condition as
 23 the same now is, that no improvement, now on or which may hereinafter be placed
 24 on said property, shall be removed or destroyed before the entire purchase
 25 price has been paid.

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

29 WITNESS the hands of the parties the day and year first herein written.

30 Ernest L. Groth
 Ernest L. Groth

31 Marian J. Groth
 Marian J. Groth

Dearborn Development Co.

By Harold W. Dearborn by
 By Harold W. Dearborn by
 By Harold W. Dearborn by
 Partners

Grace Dearborn

GA GANDONG, GOSBORN
 & BISEMORE
 ATTORNEYS AT LAW
 538 MAIN STREET
 KLAMATH FALLS, ORE.
 97601

Agreement - Page 5.

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1 STATE OF OREGON)
 2 County of Klamath) ss

3 Personally appeared the above named Ernest L. Groth and Marian J. Groth,
 4 husband and wife, and acknowledged the foregoing instrument to be their volun-
 5 tary act and deed. Before me:

(SEAL)

6 My Commission Expires: 3-21-77

Marlene T. Addington
 Notary Public for Oregon

7 STATE OF OREGON)
 8 County of Klamath) ss

9 On this 10 day of July, 1974, before me, the undersigned officer, person-
 10 ally appeared Harold W. Dearborn, Luther H. Dearborn and Grace E. Dearborn, who
 11 acknowledged themselves to be members of Dearborn Development Co., a partner-
 12 ship, and that they, as such partners, being authorized so to do, executed the
 13 foregoing instrument for the purposes therein contained by signing the name of
 the partnership by themselves as copartners.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

My Commission Expires:

Charles E. Young
 Notary Public

FORM No. 159—ACKNOWLEDGMENT BY ATTORNEY-IN-FACT.

STATE OF OREGON,

County of Klamath

ss.

On this the 26th day of July, 1974 personally appeared

HAROLD W. DEARBORN

who, being duly sworn (or affirmed), did say that he is the attorney in fact for

LUTHER H. DEARBORN

that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowl-
 edged said instrument to be the act and deed of said principal.

Before me:

Marlene T. Addington
 (Signature)

Notary Public

(Title of Officer)

Marlene T. Addington
 Notary Public for Oregon
 My commission expires 3-21-77

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Return To Kathy

G. JOSEPH
 SEMORE
 EYE AT LAW
 414 STREET
 FALLS, ORE.
 97111

Agreement - Page 6.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 20th day of
 April A.D., 1977 at 3:24 o'clock P.M., and duly recorded in Vol. M 77
 of Deeds on Page 6772.

FEE \$24.00

WM. D. MILNE, County Clerk

By *Hazel Magaz* Deputy

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