

31373

MTC 1427-3565
CONTRACT OF SALEvol. 77 page 10822

THIS CONTRACT is made as of this 17 day of June, 1977, by and between LLOYD S. CARR and BETTY M. CARR, husband and wife, hereinafter referred to as SELLERS, and GERALD F. GARCIA and JACQUELINE GARCIA, husband and wife, hereinafter referred to as PURCHASERS;

W I T N E S S E T H :

Sellers agree to sell to Purchasers and Purchasers agree to purchase from Sellers for the price and on the terms and conditions set forth below that certain real property, and all improvements thereon, situated in Klamath County, State of Oregon, described as follows:

The NW $\frac{1}{4}$ of Section 22, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Subject, however, to the following:

1. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.
2. Reservations as contained in Land Status Report, including the terms and provisions thereof, recorded February 3, 1959 in Volume 309, page 362 Deed Records of Klamath County, Oregon.
3. Real Estate Contract, including the terms and provisions thereof, dated August 19, 1968, recorded September 10, 1968 in Volume M68, page 8190, and re-recorded September 16, 1968 in Volume M-68, page 8362, all Microfilm Records of Klamath County, Oregon, between Anthony D'Andrea and Rose D'Andrea, husband and wife, Vendor and George Machinsky and Margaret Machinsky, husband and wife, Vendee.

The Vendees' interest in said Real Estate Contract was assigned by Instrument dated August 23, 1972, recorded September 1, 1972 in Volume M-72, page 9892, Microfilm Records of Klamath County, Oregon to Lloyd S. Carr and Betty M. Carr, husband and wife, and Sellers further covenant to and with Buyers that the said prior mortgage shall be paid in full prior to, or at the time this contract is fully paid and that said above described real property will be released from the lien of said mortgage upon payment of this contract.

4. Mortgage, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein.

Dated: July 19, 1968

Recorded: July 31, 1968 in Volume M-68, page 6940, Microfilm Records of Klamath County, Oregon

Amount: \$13,040.33

Mortgagor: Anthony D'Andrea and Rose D'Andrea, husband and wife

Mortgagee: Ernest Graves and Clara V. Graves, husband and wife, which Buyers do not assume and agree to pay and Sellers further covenant to and with Buyers that the said prior mortgage shall be paid in full prior to, or at the time this contract is fully paid and that said above described real property will be released from the lien of said mortgage upon payment of this contract.

5. The assessment roll and the tax roll disclose that the premises herein described have been specially assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an

additional tax may be levied for the last ten (10) or lesser number of years in which the farm use assessment was in effect for the land and in addition thereto a penalty may be levied if notice of disqualification is not timely given.

PURCHASE PRICE AND PAYMENT: Purchasers promise to pay as the total purchase price for the property the sum of Ninety Thousand and no/100th Dollars (\$90,000.00). Such amount shall be paid as follows:

(1) Purchasers shall pay to Sellers as a down payment on said total purchase price the sum of \$22,500.00, and the execution hereof shall be deemed an acknowledgment of the receipt of said down payment by Sellers. It is understood that this down payment includes any money paid by Purchasers as earnest money for the purpose of binding this transaction.

(2) The balance of the purchase price, being the sum of \$67,500.00, shall be paid as follows, to-wit:

December 31, 1977--Accumulated interest only of 8% per annum from July 1, 1977 to December 31, 1977.

December 31, 1978--Accumulated interest only of 8% per annum from December 31, 1977 to December 31, 1978.

Commencing December 31, 1979, Purchasers shall pay annual installments of not less than \$6,875.00, including interest at 8%, said annual installments to be first applied against any interest due upon this contract, and the balance applied in reduction of the principal balance. Said annual installments commencing December 31, 1979, shall be paid on the same day of each successive year thereafter until the total purchase price, both principal and interest, shall have been paid in full. Purchasers may prepay the unpaid purchase price or any part thereof at any time without penalty or charge after December 31, 1977.

Purchasers shall pay interest on all deferred balances at the rate of 8% per annum until paid; interest to commence on July 1st, 1977.

Of the \$90,000.00 purchase price \$4,500.00 is allocable to personal property and \$85,500.00 is allocable to real property.

TAXES AND LIENS: Except as herein expressly provided to the contrary, all current taxes and other assessments on the properties shall be prorated between the parties as of the date of July 1, 1977. Purchasers agree to pay all such taxes and assessments thereafter levied before they become delinquent. Purchasers further agree to pay and discharge of record all other liens which may thereafter be claimed or imposed against said properties, or any part thereof, within thirty (30) days after the filing thereof or shall supply assurances satisfactory to Sellers that said liens, or any judgments or decrees entered thereon, will be paid and discharged of record.

POSSESSION: The Purchasers shall be entitled to possession of the premises on July 1st, 1977, and may retain such possession so long as they are not in default under the terms of this contract.

MAINTENANCE AND INSURANCE: Commencing with the possession date and thereafter at all times during the term of

CONTRACT OF SALE

Page -2

Return: US 1180

this contract, Purchasers shall with respect to the property do the following:

Purchasers shall 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.

Promptly comply with all laws, ordinances, regulations, directions, rules and requirements of all governmental authorities applicable to the use or occupancy of the property, and in this connection promptly make all required repairs, alterations and additions.

Keep all improvements now existing or which shall hereafter be placed on the property insured against fire and other casualties covered by a standard policy of fire insurance with extended coverage endorsements. The policy shall be written to the full replacement value with loss payable to Sellers and Purchasers as their respective interests may appear, and certificates evidencing the policies shall be delivered to Sellers and shall contain a stipulation providing that coverage will not be cancelled or diminished without a minimum of 10 days' written notice to Sellers. In the event of loss, Purchasers shall give immediate notice to Sellers. Sellers may make proof of loss if Purchasers fail to do so within 15 days of the casualty.

REPRESENTATION: Purchasers certify that this sale agreement is accepted on the basis of Purchasers' own examination and personal knowledge of the properties and opinion as to the value thereof; that the only material representations and warranties inducing this transaction are those expressly set forth herein; that no agreement or promise to alter, repair or improve said properties has been made by Sellers or any agent of Sellers; and Purchasers hereby agree to take said properties and the improvements thereon in the condition they are in at the time of execution of this agreement. Purchasers agree to keep said properties and the improvements in a good condition of repair and maintenance, and Purchasers will commit no waste thereof.

SELLERS' WARRANTIES: Sellers covenant with Purchasers as follows: Except as expressly provided herein to the contrary, Sellers are the sole owners of said properties and seized in fee simple of the above described real property; that Sellers' title to the same is marketable; that Sellers have a right to transfer title to the same and possession thereof; that the properties are presently free from all matured and inchoate liens, charges, and encumbrances whatsoever, except as the same may be noted in this agreement; that Purchasers shall have the quiet enjoyment of the properties and that Sellers will warrant and defend the same against all lawful claims and demands whatsoever, except as stated herein.

TITLE INSURANCE: Sellers shall furnish at Sellers' expense a Purchasers' title insurance policy in the amount of

Return: USNBO

\$85,500.00 within 10 days from the date of closing, insuring Purchasers against loss or damage sustained by Purchasers by reason of the unmarketability of Sellers' title, or liens or encumbrances thereon, excepting matters contained in the usual printed exceptions in such title insurance policies.

DEED: Upon payment of the total purchase price for the property as provided herein, and performance by Purchasers of all other terms, conditions and provisions hereof, Sellers shall forthwith deliver to Purchasers a good and sufficient warranty deed conveying the property free and clear of all liens and encumbrances, excepting those placed upon the property or suffered by Purchasers subsequent to the date of this contract.

DEFAULT: It is understood and agreed between the parties that time is of the essence of this contract and in case the Purchasers fail to make the payments above required, or any of them, punctually within thirty (30) days of the time limited therefor, or fail to keep any agreement herein contained, then the Sellers at their option shall have the following rights:

- A. To declare this contract null and void;
- 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 foreclose this contract by suit in equity; and in any of such cases, all rights and interest created or then existing in favor of the Purchasers as against the Sellers hereunder shall utterly cease and determine and the right of possession of the premises above described and all other rights acquired by the Purchasers hereunder shall revert to and revest in the Sellers without any act of re-entry, or any other act of Sellers to be performed and without any right of the Purchasers of return, reclamation or compensation for monies paid on account of the purchase price 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 the Sellers as the agreed and reasonable rent of said property up to the time of such default. The Sellers in case of such default shall have the right immediately or at any time thereafter, to enter upon the land aforesaid and take immediate possession thereof, together with all of the improvements and appurtenances thereon or thereto belonging.

Sellers shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the property exceeds the amount of the balance due hereunder, and any receiver appointed may serve without bond. Employment by Sellers shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the property the receiver may:

- A. Use, operate, manage, control and conduct business on the property and make expenditures for all maintenance and improvements as in its judgment are proper;
- B. Collect all rents, revenues, income, issues and profits from the property and apply such sums to the expenses of use, operation and management;
- C. At Sellers' option, complete any construction in

Return: US NBO

progress on the property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Sellers deem appropriate.

If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow, from Sellers or otherwise, such sums as it deems necessary for the purposes stated in this paragraph, and repayment of such sums shall be secured by this contract. The amounts borrowed or advanced shall bear interest at the same rate as the balance of the purchase price hereunder from the date of expenditure until repaid and shall be payable by Purchasers on demand.

Purchasers accept the land, buildings, improvements and all other aspects of the property in their present condition, AS IS, including latent defects, without any representations or warranties, expressed or implied, unless they are in writing signed by Sellers. Purchasers agree that they have ascertained, from sources other than Sellers, the applicable zoning, building, housing and other regulatory ordinances and laws and that they accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property, and Sellers have made no representations with respect thereto.

NOTICE: Any notice under this contract shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to the parties at the addresses stated in this contract or such other addresses as either party may designate by written notice to the other.

WAIVER: Failure of Sellers at any time to require performance of any provision of this contract shall not limit the right of Sellers to enforce the provision, nor shall any waiver by Sellers of any breach of any provision be a waiver of any succeeding breach of that provision or a waiver of that provision itself or any other provisions.

COSTS AND ATTORNEY'S 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.

SUCCESSOR INTERESTS: This contract shall be binding upon and inure to the benefit of the parties, their successors and assigns.

PRIOR AGREEMENTS: This document is the entire, final and complete agreement of the parties pertaining to the sale and purchase of the property, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the property is concerned.

ESCROW ARRANGEMENTS: As soon as practicable following the execution of this contract, Mountain Title Company shall deliver in escrow to their escrow department, 4535 South Sixth Street, Klamath Falls, Oregon, the following:

(a) An original recorded and executed Contract of Sale.

(b) An unrecorded Warranty Deed to the property free and clear of any and all encumbrances, except as hereinabove set forth.

(c) Such escrow instructions as shall meet with the approval of the above named escrow agent.

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 time as all sums called for herein, including interest, have been fully and completely paid by Purchasers.

PARAGRAPH HEADINGS: Paragraph headings in this contract are inserted for convenience only and are not to be construed as restricting the meaning of the paragraphs to which they refer.

If Purchasers fail to pay any installment before the expiration of thirty (30) days after the due date thereof, the Escrow Agent is authorized to surrender to Sellers, upon demand, after proof of written notice to Purchasers, all of the documents specified in the preceding paragraphs, thereby terminating the escrow.

IN WITNESS WHEREOF, the parties have caused this contract to be executed in duplicate as of the day and year first above written.

Lloyd S. Carr
Lloyd S. Carr

Betty M. Carr
Betty M. Carr
SELLERS

Gerald F. Garcia
Gerald F. Garcia

Jacqueline Garcia
Jacqueline Garcia
PURCHASERS

STATE OF OREGON)
) ss.
County of Klamath)

June 17, 1977

Personally appeared the above named LLOYD S. CARR and BETTY M. CARR, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Barbara J. Addington
Notary Public for Oregon
My Commission Expires: 3-22-81

10828

STATE OF ~~CALIFORNIA~~ ^{OREGON})
County of Klamath) ss.

June 17, 1977

Personally appeared the above named GERALD F. GARCIA and JACQUELINE GARCIA, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Marlene P. Addington
Notary Public for California Oregon
My Commission Expires: 3-22-81

Return To: MTC
Attn: Collection Dept.

Send Tax Stmt's To:
Mr. & Mrs. Gerald F. Garcia
Star Route 2
Sprague River, OR

STATE OF OREGON; COUNTY OF KLAMATH; ~~CL~~

Filed for record at request of MOUNTAIN TITLE CO

this 20th day of JUNE A. D. 1977 at 3:24 o'clock P. M., and

duly recorded in Vol. M77, of DEEDS on Page 10822

FEE \$ 21.00

Wm D. MILNE, County Clerk

By Hazel Brazel

CONTRACT OF SALE
Page -7

Return: USNR