

33443

CONTRACT—REAL ESTATE

Vol. 77 Page 13886

THIS CONTRACT, Made this 2nd day of August, 1977, between HOMER A. BARNES and HAZEL J. BARNES, as tenants by the entirety, and LUTHER H. DEARBORN, a single man, hereinafter called the seller,

and [redacted], hereinafter called the buyer, WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in Klamath County, State of Oregon, to-wit:

See attached Exhibit "A" for legal description correction: Lot 4 and the Northerly 70.40 feet of Lot 5 in Block 12 of FOURTH ADDITION TO WINEMA GARDENS, according to the official plat thereof on file in the office of the County Clerk 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. The premises herein described are within and subject to the statutory powers, including the power of assessment, of South Suburban Sanitary District. 3. Restrictions as contained in plat dedication, to wit: "Subject to: (1) Public utility and drain easements along the back lot lines and centered on the common lot lines as shown on the annexed map; (2) Building set back lines as shown on the annexed map; (3) All easements and reservations of record and additional restrictions as provided in any recorded protective covenants." 4. Mortgage, including the terms and provisions thereof, given to secure

(Continued on reverse) for the sum of THIRTY-THREE THOUSAND FIVE HUNDRED Dollars (\$ 33,500.00) hereinafter called the purchase price), on account of which THREE THOUSAND FIVE HUNDRED Dollars (\$ 3,500.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller); the buyer agrees to pay the remainder of said purchase price (to-wit: \$ 30,000.00) to the order of the seller in monthly payments of not less than TWO HUNDRED FIFTY-SIX and 92/100ths Dollars (\$ 256.92) each,

payable on the 1st day of each month hereafter beginning with the month of August, 1977, and continuing until said purchase price is fully paid. All of said purchase price may be paid at any time; all deferred balances of said purchase price shall bear interest at the rate of 9 1/2 per cent per annum from August 1, 1977 until paid, interest to be paid monthly and \* (in addition to the minimum monthly payments above required. Taxes on said premises for the current tax year shall be prorated between the parties hereto as of the date of this contract.

The buyer warrants to and covenants with the seller that the real property described in this contract is (A) primarily for buyer's personal, family, household or agricultural purposes; (B) for an organization or (even if buyer is a natural person) is for business or commercial purposes that are not agricultural purposes. The buyer shall be entitled to possession of said lands on closing plus thirty (30) days and may retain such possession so long as he is not in default under the terms of this contract. The buyer agrees that at all times he will keep the buildings on said premises, now or hereafter erected, in good condition and repair and will not suffer or permit any waste or strip therefrom; that he will keep said premises free from mechanic's and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney's fees incurred by him in defending against any such liens; that he will pay all taxes hereafter levied against said property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon said premises, all promptly before the same or any part thereof become past due; that at buyer's expense, he will insure and keep insured all buildings now or hereafter erected on said premises against loss or damage by fire (with extended coverage) in an amount not less than \$ [redacted] value in a company or companies satisfactory to the seller, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller as soon as insured. Now if the buyer shall fail to pay any to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's breach of contract. 30 The seller agrees that at his expense and within [redacted] days from the date hereof, he will furnish unto buyer a title insurance policy insuring (in an amount equal to said purchase price) marketable title in and to said premises in the seller on or subsequent to the date of this agreement, save and except the usual printed exceptions and the building and other restrictions and easements now of record, if any. Seller also agrees that when said purchase price is fully paid and upon request and upon surrender of this agreement, he will deliver a good and sufficient deed conveying said premises in fee simple unto the buyer, his heirs and assigns, free and clear of encumbrances as of the date hereof and free and clear of all encumbrances since said date placed, permitted or arising by, through or under seller, excepting, however, the said easements and restrictions and the taxes, municipal liens, water rents and public charges so assumed by the buyer and further excepting all liens and encumbrances created by the buyer or his assigns.

(Continued on reverse) \*IMPORTANT NOTICE: Delete, by lining out, whichever phrase and whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation Z by making required disclosures; for this purpose, use Stevens-Neess Form No. 1308 or similar unless the contract will become a first lien to finance the purchase of a dwelling in which event use Stevens-Neess Form No. 1307 or similar.

Seller's Name and Address: Homer A. and Hazel J. Barnes, 1744 Kimberly, Klamath Falls, Oregon 97601. Buyer's Name and Address: Luther H. Dearborn, 4509 S. Sixth, Klamath Falls, Oregon 97601. After recording, return to: MTC Branch Office, attn: Millie. Luther H. Dearborn, 4509 S. Sixth, Klamath Falls, Oregon 97601.

STATE OF OREGON, County of [redacted]. I certify that the within instrument was received for record on the [redacted] day of [redacted], 19 [redacted] at [redacted] o'clock [redacted] M., and recorded in book [redacted] on page [redacted] or as file/reel number [redacted]. Record of said county. Witness my hand and seal of County affixed. Recording Officer [redacted] Deputy [redacted]

Handwritten initials and notes on the left margin.

Handwritten initials and notes on the right margin.

Handwritten number 13886 at the bottom right.

Sellers agree to fully pay and satisfy the herein-referred to mortgage to First Federal Savings & Loan Association of Klamath Falls and hold

And it is understood and agreed between said parties that time is of the essence of this contract, and in case the buyer shall fail to make the payments above required, or any of them, punctually within ten days of the time limited therefor, or fail to keep any agreement herein contained, then the seller at his option shall have the following rights: (1) to declare this contract null and void, (2) to declare the whole unpaid principal balance of said purchase price with the interest thereon as once due and payable and/or (3) 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 buyer as against the seller hereunder shall utterly cease and determine and the right to the possession of the premises above described and all other rights acquired by the buyer hereunder shall revert to and rest in said seller without any act of re-entry, or any other act of said seller to be performed and without any right of the buyer of return, reclamation or compensation for moneys paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default of payments hereunder made on this contract are to be retained by and belong to said seller as the agreed and reasonable rent of said premises up to the time of such default. And the seller, in case of such default, shall have the right immediately, or at any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all the improvements and appurtenances thereon or thereto belonging.

The buyer further agrees that failure by the seller at any time to require performance by the buyer of any provision hereof shall in no way affect his right hereunder to enforce the same, nor shall any waiver by said seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision or as a waiver of the provision itself.

Buyer harmless from any liability thereon. All of said purchase price may be paid at any time; however, if the outstanding balance of principal and interest then due and owing on this contract is fully paid prior to January 15, 1978, buyers agree to and shall pay a prepayment penalty equal to 10% of the then outstanding principal balance in addition to all sums of principal and interest due and owing.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 33,500.00

In case suit or action is instituted to foreclose this contract or to enforce any of the provisions hereof, the buyer agrees to pay such sum as the court may adjudge reasonable as attorney's fees to be allowed plaintiff in said suit or action and if an appeal is taken from any judgment or decree of the trial court, the buyer further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal.

In construing this contract, it is understood that the seller or the buyer may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, 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 corporations and to individuals.

IN WITNESS WHEREOF, said parties have executed this instrument in duplicate; if either of the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal affixed hereto by its officers duly authorized thereunto by order of its board of directors.

Homer A. Barnes  
Hazel J. Barnes

Luther H. Dearborn

NOTE-The sentence between the symbols ( ), if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON,  
County of Klamath } ss.  
this 2nd day of Aug., 19 77

STATE OF OREGON, County of \_\_\_\_\_ ) ss.  
Personally appeared \_\_\_\_\_ and \_\_\_\_\_ who, being duly sworn,

Personally appeared the above named Homer A. Barnes and Hazel J. Barnes and Luther H. Dearborn

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

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.

Notary Public for Oregon  
My commission expires 7-19-77

Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Section 4 of Chapter 618, Oregon Laws 1976, provides:  
(1) All instruments contracting to convey fee title to any real property, at a time more than 12 months from the date that the instrument was executed and the parties are bound, shall be acknowledged, in the manner provided for acknowledgment of deeds, by the owner of the title being conveyed. Such instruments, or a memorandum thereof, shall be recorded by the conveyor not later than 15 days after the instrument is executed and the parties are bound thereby.  
(2) Violation of subsection (1) of this section is a Class B misdemeanor.

(DESCRIPTION CONTINUED)

an indebtedness with interest thereon and such future advances as may be provided therein, dated April 9, 1974, recorded April 9, 1974 in Volume M74, page 4320, Microfilm Records of Klamath County, Oregon, Homer A. Barnes and Hazel J. Barnes, husband and wife, mortgagors, and Klamath First Federal Savings and Loan Association, Klamath Falls, Oregon, mortgagee.  
5. Easements, including the terms and provisions thereof, granted to Lois G. Golden, as disclosed by instrument recorded September 17, 1976 in Volume M76, page 14622, Microfilm Records of Klamath County, Oregon.  
6. Easement, including the terms and provisions thereof, granted to Southern Oregon Broadcasting Company, an Oregon corporation, dba SO Cable TV, as disclosed by instrument recorded January 21, 1976 in Volume M76 page 972, Microfilm Records of Klamath County, Oregon.

13888

EXHIBIT "A"

A parcel of property located in Lot 5, Block 12 of 4th Addition to Winema Gardens, Klamath County, Oregon. More particularly described as follows:

Beginning at a point on the West line of said Lot 5, said point being South, a distance of 70.40 feet from the Northwest corner of said Lot 5; thence North, along the West line of said Lot 5, a distance of 50.68 feet, to a point being South, a distance of 19.72 feet from the Northwest corner of said Lot 5; thence North 84° 53' 42" East, a distance of 112.37 feet, to a point on the East line of said Lot 5, said point being South 05° 06' 18" East, a distance 9.76 feet from the Northeast corner of said Lot 5; thence South 05° 06' 18" East, along the East line of said Lot 5, a distance of 60.92 feet; thence West, along a line 70.40 feet when measured at right angles and parallel to the North line of said Lot 5, a distance of 117.37 feet, to the point of beginning.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record ~~XXXXXXXXXX~~ on this 3 day of August A. D. 1977 at 10:58 o'clock AM., on Page 13886

Duly recorded in Vol. M 77, of Deeds on Page 13886

Wm. D. MILNE, County Clerk

Fee \$6.00

*[Handwritten Signature]*