

39776

CONTRACT—REAL ESTATE

Vol. 77 Page 23265

THIS CONTRACT, Made this 30th day of November, 1977, between Omar K. McCart and Ruth M. McCart, husband and wife, and Willard R. Lilly, hereinafter called the seller, 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: Lots 11 and 12, Block 18, FAIRVIEW ADDITION NO. 2 to the City of Klamath Falls, Oregon, 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. Sewer use charges, if any, due to the City of Klamath Falls,
2. Right of way for underground tunnel and incidentals, 25 feet wide, conveyed to the United States of America recorded March 5, 1906, Volume 19, page 500, Deed Records of Klamath County, Oregon. (General location)
3. Trust Deed, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein.

Dated: June 5, 1976

Recorded: June 10, 1976 in Volume M76, page 8563, Microfilm Records of Klamath County, Oregon

Amount: \$70,000.00

Grantor: Omar K. McCart and Ruth M. McCart, husband and wife

Trustee: D. L. Hoots

(for continuation of this document see reverse side of this contract)

for the sum of One Hundred Twenty Thousand and No/100ths-Dollars (\$120,000.00) (hereinafter called the purchase price), on account of which Twenty-Five Thousand and No/100ths Dollars (\$25,000.00) 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: \$95,000.00) to the order of the seller in monthly payments of not less than Seven Hundred Fifty-Five and No/100ths Dollars (\$755.00) each,

payable on the 1st day of each month hereafter beginning with the month of January, 1978, 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% per cent per annum from December 1, 1977 until paid, interest to be paid monthly and being included in the minimum monthly payments above required. Taxes on said premises for the current tax year shall be pro-rated 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 for a buyer who is a natural person as for business or commercial purposes other than agricultural purposes.

The buyer shall be entitled to possession of said lands on December 1, 1977, 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 thereof; 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

full insurable

not less than \$100,000.00. 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 such liens, costs, water rents, taxes, or charges or to procure and pay for such insurance, the seller may do so and any payment so made shall be added 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.

The seller agrees that at his expense and within 30 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 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.

After recording return to:

MTC
Attn: Marlene

NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address:

Dr. Willard R. Lilly
2610 Uhrmann Road
Klamath Falls, OR 97601

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of _____

I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book _____ on page _____ or as file/del number _____, Record of Deeds of said county.

Witness my hand and seal of County affixed.

By _____ Recording Officer
Deputy

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 30 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 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 the seller and the right to the possession of the premises above described and all other rights acquired by the buyer hereunder shall revert to and vest 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 all payments theretofore 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 said 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.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 120,000.00. However, the actual consideration consisted of or included other property or value given or promised which is 20% of the consideration indicated herein.

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

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but their respective heirs, executors, administrators, personal representatives, successors in interest and assigns as well.

IN WITNESS WHEREOF, said parties have executed this instrument in triplicate; 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.

Omar K. McCart
Omar K. McCart
Ruth M. McCart
Ruth M. McCart

Willard R. Lilly
Willard R. Lilly

NOTE—The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON,

County of Klamath

November 30, 19 77

Personally appeared the above named

Omar K. McCart, Ruth M.

McCart and Willard R. Lilly

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

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires 7/19/78

STATE OF OREGON, County of _____ ss.

Personally appeared _____, 19 _____

_____ 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 be-

half 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 (SEAL)

My commission expires:

ORS 93.635 (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 is executed and the parties are bound, shall be acknowledged, in the manner provided for acknowledgment of deeds, by the conveyor of the title to be 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.

ORS 93.990(3) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than \$100.

(DESCRIPTION CONTINUED)

Beneficiary: Security Savings and Loan Association, an Oregon corporation, which Buyer herein does not assume and agree to pay, and Sellers further covenant to and with Buyer that the said prior Trust Deed 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 Trust Deed upon payment of this contract.

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

Dated: June 7, 1976

Recorded: June 14, 1976 in Volume M76, page 8781, Microfilm Records of

Klamath County, Oregon

Amount: \$10,000.00

Grantor: Omar K. McCart and Ruth M. McCart, husband and wife

Trustee: Mountain Title Company

Beneficiary: James T. Mitchell and Wila D. Mitchell, husband and wife,

which Buyer herein does not assume and agree to pay, and Sellers further

covenant to and with Buyer that the said prior Trust Deed 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

Trust Deed upon payment of this contract.

5. Financing Statement recorded in Volume M76, page 8783, Microfilm

Records of Klamath County, Oregon by Omar K. McCart and Ruth M. McCart

to Security Savings and Loan Association.

It is further agreed by Buyer that he will not pay more than 30% in

principal in any one tax year, and further agrees not to pay the entire

balance of the contract before January 1, 1981.

Buyer further agrees to pay the entire balance of this contract June 1,

1981.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 1st day of

December A.D., 19 77 at 11:12 o'clock A.M., and duly recorded in Vol. M77,

of Deeds on Page 23265.

FEE \$6.00

WM. D. MILNE, County Clerk

By Bernard H. Helach Deputy