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43817

CONTRACT—REAL ESTATE

Vol. 78 Page 3730

THIS CONTRACT, Made this 28th day of February, 1978, between  
John M. Smith

and Edwin Lowell Barger and Goldie Fern Barger,  
husband and wife

, 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 de-  
scribed lands and premises situated in Klamath County, State of Oregon to-wit:

The W $\frac{1}{2}$  of Tract 20 in Block 3 of FIRST ADDITION TO ALTAMONT ACRES,  
EXCEPT the South 5 feet taken for widening purposes of Delaware  
Street, in the County of Klamath, State of Oregon.

Subject, however, to the following:

1. Regulations, including levies, liens and utility assessments of the City of Klamath Falls.
2. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Klamath Irrigation District.
3. Regulations, including levies, liens, assessments, rights of way and easements of the South Suburban Sanitary District.

for the sum of Eleven Thousand Five Hundred and No/100ths Dollars (\$ 11,500.00 )  
(hereinafter called the purchase price), on account of which One Thousand Five Hundred and  
Dollars (\$1,500.00 ) 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: \$ 10,000.00 ) to the order  
of the seller in monthly payments of not less than ONE HUNDRED TWENTY-FIVE AND NO/100THS  
Dollars (\$ 125.00 ) each, or more, prepayment without penalty,

payable on the 1st day of each month hereafter beginning with the month of April, 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 7 $\frac{1}{2}$ % per cent per annum from  
February 28, 1978 until paid, interest to be paid monthly and \* ~~XXXXXX~~  
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 other purposes, to-wit: ~~XXXXXX~~

The buyer shall be entitled to possession of said lands on February 28, 1978, 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 mechanics  
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 fees which here-  
after 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 value

not less than \$ ~~XXXXXX~~ in a company or companies satisfactory to the seller, with loss payable first to the seller and then to the buyer as  
then 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 lien, taxes, 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 in  
sum 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-Ness 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-Ness Form No. 1307 or similar.

John M. Smith  
1776 Burns Street  
Klamath Falls, Oregon 97601.

SELLER'S NAME AND ADDRESS

Edwin Lowell Barger, et ux  
1434 Oregon Avenue  
Klamath Falls, Oregon 97601

BUYER'S NAME AND ADDRESS

After recording return to:

O. W. Goakey  
Attorney at Law  
431 Main Street  
Klamath Falls, Oregon 97601

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

3221 Delaware Street  
Klamath Falls, Oregon 97601

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of

I certify that the within instru-  
ment was received for record on the  
day of , 1978,  
at o'clock M., and recorded  
in book on page or as  
file/reel number

Record of Deeds of said county.

Witness my hand and seal of  
County affixed.

Recording Officer

By

Deputy

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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 20 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 at once due and payable, (3) to withdraw said deed and other documents from escrow and, or (4) 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 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 therein 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 \$11,500.00. However, the actual consideration received by the seller includes other property of value given or promised which is part of the consideration indicated which is -

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.

*John M. Smith*  
John M. Smith

*Edwin Lowell Barger*  
Edwin Lowell Barger  
*Goldie Fern Barger*  
Goldie Fern Barger

NOTE—The sentence between the symbols (1), if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON, )  
County of Klamath ) ss.  
February 28, 1978

Personally appeared the above named  
John M. Smith, Edwin Lowell  
Barger and Goldie Fern Barger

and acknowledged the foregoing instru-  
ment to be their voluntary act and deed.

Before me:  
(OFFICIAL SEAL) *Thurgood K. Hoakey*

Notary Public for Oregon  
My commission expires 3-19-81

STATE OF OREGON, County of ) ss.  
February 28, 1978

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 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  
My commission expires:

(SEAL)

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)

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of O. W. Goakey Atty.

this 28th day of February, A.D. 1978 at 11:46 o'clock AM, in

duly recorded in Vol. M78, of Deeds on Page 3730

Wm D. MILNE, County Clerk

By *Bernetha A. Fitch*

Fee \$6.00