

46950

LAND SALE CONTRACT

THIS AGREEMENT, made and entered into this 15th day of April, 1978, by and between DAVID L. GARDNER and JUDITH A. GARDNER, husband and wife, hereinafter referred to as Sellers, which term includes the heirs, successors, personal representatives and assigns of said persons, and GERALD DON DOUGLAS, JR. and LORNA DOUGLAS, husband and wife, hereinafter referred to as Purchasers, which term includes the heirs, successors, personal representatives and assigns of said persons,

W I T N E S S E T H :

That Sellers, for and in consideration of the covenants and agreements herein stated to be kept and performed by the Purchasers have agreed to sell and convey to the Purchasers and the Purchasers have agreed to purchase and to pay to the Sellers the sums of money hereinafter stated for the following described real property, situated in the County of Klamath, State of Oregon, to-wit:

The E $\frac{1}{2}$ NW $\frac{1}{4}$, EXCEPTING THEREFROM the Westerly 90 feet The W $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$, all in Section 29, Township 39 South, Range 13 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM a piece or parcel of land situate in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section, Township and Range, containing 1,600 square feet (being 40 feet along its East-West dimension and 40 feet along its North-South dimension) at the exact center of which is located the irrigation well identified as "Well No. 2" in Application No. G4819 to Appropriate the Ground Waters of the State of Oregon and from which center of well the Northwest corner of said Section 29 bears North 67° 47 $\frac{1}{2}$ West 2740.2 feet, more or less, distant.

Subject, however, to the following:

1. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Langell Valley Irrigation District.
2. The rights of the public in and to that portion of the above property lying within the limits of public roads and highways.
3. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.
4. An easement created by instrument, including the terms and provisions thereof,

Dated	:	November 19, 1975	Book: M-75 Page: 14597
Recorded	:	November 19, 1975	
In Favor Of	:	G. Roger Hamilton and Karen S. Hamilton	
For	:	Right to install and operate a sprinkler irrigation mainline	

LAND SALE CONTRACT
Page -1

5. An easement created by instrument, including the terms and provisions thereof,

Dated : October 9, 1971
 Recorded : February 13, 1976 Book: M-76 Page: 2085
 In Favor of : Roger Hamilton and Karen Hamilton, husband and wife

For : Easement for ingress and egress from well site and for electric power supply.

6. Memorandum of Assignment of Contract, including the terms and provisions thereof, between Glenn Baldwin and Judy Baldwin, husband and wife. Assignors, and David L. Gardner and Judith Gardner, husband and wife, Assignees,

Dated : September 29, 1976
 Recorded : October 5, 1976 Book: M-76 Page: 15650,

which original Contract dated September 1976 Buyers herein assume and agree to pay according to the terms and provisions thereof, the unpaid principal balance of which is \$34,714.24 with interest paid to 2-13-78, and hold Sellers harmless therefrom.

7. Mortgage, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$32,370.34,

Dated : September 29, 1976
 Recorded : October 5, 1976 Book: M-76 Page: 15652
 Mortgagor : David L. Gardner and Judith Gardner, husband and wife

Mortgagee : Glenn Baldwin and Judy Baldwin, husband and wife, which Mortgage Buyers herein assume and agree to pay according to the terms and provisions thereof, the unpaid principal balance of which is \$32,036.22 with interest paid to: 10-7-77, payable to Glenn Baldwin and Judy Baldwin, husband and wife.

PURCHASE PRICE - ADDITIONAL PAYMENTS

The purchase price of the property which Purchasers agree to pay, shall be the sum of \$150,000.00 payable as follows:

(a) The sum of \$40,000.00, which has previously been paid as earnest money, the receipt whereof is hereby acknowledged;

(b) The remainder to be paid to the order of Sellers at the times and in amounts as follows, to-wit:

As part of the consideration herein Purchasers agree to assume and pay that certain unrecorded Contract of Sale dated December 27, 1972, described as escrow number IC-3363 - HARRY R. WAGGONER et ux, Sellers, DAVID L. GARDNER et ux, Buyers, with a present unpaid balance of \$34,714.24 with interest paid to 2-13-78, which is presently escrowed at First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon; and Purchasers agree to assume and pay that certain Mortgage dated September 29, 1976, described as escrow number IC-3635 - DAVID L. GARDNER et ux, Mortgagor, to GLENN BALDWIN and JUDY BALDWIN, husband and wife, Mortgagee, with a present unpaid balance of \$32,036.22 with interest paid to 10-7-77, escrowed at the First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon; and the remainder to be paid to the order of the Sellers at the times and in amounts as follows, to-wit:

\$43,249.54 with interest at the rate of 8% per annum from April 15, 1978, payable in annual installments of not less than \$4,960.00 per year, including interest at the rate of 8%, the first annual installment to be paid on the 15 day of April, 1979, and a further annual installment on the 15th day of each year thereafter until the full balance and interest are paid in full.

Purchasers shall have the privilege of increasing any

monthly payments or prepaying the whole consideration at any time, provided that no additional payments shall be credited as regular future payments nor excuse Purchasers from making the regular monthly payments provided for in this agreement. Such prepayments shall be made without penalty to the Purchasers.

In the event Purchasers fail to pay when due any amounts required of Purchasers to be paid to third parties hereunder, Sellers may pay any or all such amounts. If Sellers make any such payments, the amounts thereof shall be immediately due and payable. Until paid, such amounts shall be secured by this Contract and shall bear interest at the rate of 8% per annum. Sellers' election to make any payments pursuant to this paragraph shall not constitute a waiver of Sellers' rights to declare Purchasers to be in default of this Contract.

All payments to Sellers hereunder shall be made to the First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, until further notice has been given in writing by Sellers to Purchasers.

CLOSING

The sale shall be closed on or before April 15, 1978, through Transamerica Title Insurance Co., 3940 South Sixth Street, Klamath Falls, Oregon, the cost of which shall be shared equally by the parties.

At closing Purchasers shall pay the amount of cash specified under PURCHASE PRICE - ADDITIONAL PAYMENTS, subparagraph (a), and Sellers shall have received a commitment for the issuance of a Purchasers' title insurance policy as described under TITLE INSURANCE.

PRORATION - TAXES & ASSESSMENTS

Except as otherwise provided herein, all items to be prorated shall be prorated as of April 15, 1978.

All taxes levied against the property for the current tax year shall be prorated between Sellers and Purchasers as of April 15, 1978. Purchasers agree to pay when due all taxes and assessments which are hereafter levied against the property, but may elect to pay assessments in accordance with any available installment method. If Purchasers object in good faith to the validity or the amount of any such tax or assessment, Purchasers, at their own expense, may contest the validity or amount of the tax or assessment. Purchasers shall otherwise keep the property free from all public, municipal and statutory liens which may be hereafter lawfully imposed upon the property.

POSSESSION

Purchasers shall be entitled to possession of the property from and after May 15, 1978, provided, however, that Sellers and Sellers' agents may enter upon the property at reasonable times for the purpose of inspecting the property.

ADDITIONAL COVENANTS

Commencing with the possession date and thereafter at all times during the term of this Contract, Purchasers shall with respect to the property do the following:

Keep all building, other improvements and landscape now existing or which shall hereafter be placed on the property, in good condition and repair and not permit any waste or removal

thereof, nor make any substantial improvements or alterations without the prior written consent of Sellers.

Promptly comply with all laws, ordinances, regulations, directions, rules, 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 and endorsements. The policy shall be written in the full replacement value with loss payable to the Sellers and Purchasers as their respective interests may appear, and certificates evidencing the policy shall be delivered to the Sellers and shall contain a stipulation providing that coverage will not be cancelled or diminished without a minimum of ten (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 fifteen (15) days of the casualty.

Purchasers shall indemnify and defend Sellers from any claim, loss or liability arising out of or related to any activity of Purchasers on the property or any condition of the property.

INSURANCE

At Purchasers' expense, they 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 \$_____, in a company or companies satisfactory to the Sellers, with loss payable first to the Sellers then to the Purchasers as their respective interest may appear and all policies of insurance to be delivered to the Sellers as soon as insured.

SELLERS' WARRANTY

Sellers covenant that Sellers are the owners of a good and marketable title to the property free of all liens and encumbrances except as set forth on page 2.

TITLE INSURANCE

Sellers shall furnish at Sellers' expense Purchasers' Title Insurance Policy in the amount of \$150,000.00 within ten (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

Sellers shall forthwith deliver to Purchasers a warranty deed conveying the property showing the encumbrances against the property which Purchasers herein agree to assume and pay.

DEFAULT

Purchasers herein expressly covenant and agree to pay or see to the payment of the unrecorded Contract of Sale dated December 27, 1972, by and between HARRY R. WAGGONER and NORMA E. WAGGONER, husband and wife, as Sellers, and GLENN BALDWIN and JUDY

BALDWIN, husband and wife, as Buyers, which was assigned by instrument dated September 29, 1976, to DAVID L. GARDNER and JUDITH A. GARDNER, husband and wife, and that certain Mortgage dated September 29, 1976, by DAVID L. GARDNER and JUDITH A. GARDNER, husband and wife, Mortgagor, and GLENN BALDWIN and JUDY BALDWIN, husband and wife, as Mortgagee, and to prevent any default thereunder, and further agree that should any default be made in the payment of any installment of principal and interest on the prior Contract of Sale and Mortgage, and should any such installment of principal and interest remain unpaid and in arrears for a period of thirty (30) days, or should any suit be commenced or other action taken to foreclose said Contract of Sale and prior Mortgage, then the amount secured by this Contract shall become due and payable in full at any time thereafter, at the option of the Sellers.

Time is of the essence in this Contract. Default shall occur if:

Purchasers fail to make any payment at the time required by this agreement;

Purchasers fail to perform any other obligation imposed by this Contract and do not correct or commence correction of such failure within thirty (30) days after receipt of written notice from Sellers specifying the manner in which Purchasers are in default; or

Purchasers become insolvent, a receiver is appointed to take possession of all or a substantial part of Purchasers' properties, Purchasers make an assignment for the benefit of creditors or file a voluntary petition in bankruptcy, or Purchasers are the subject of an involuntary petition in bankruptcy which is not dismissed within 90 days. If Purchasers consist of more than one person or entity, the occurrence of any of these events as to any one person or entity shall constitute a default hereunder.

In the event of a default, Sellers may take any one or more of the following steps:

Declare the entire balance of the purchase price and interest immediately due and payable;

Foreclose this Contract by suit in equity;

Specifically enforce the terms of this Contract by suit in equity;

Declare this Contract null and void as of the date of the breach and retain as liquidated damages the amount of the payments previously made hereunder. In such event, all of the right, title and interest of Purchasers to the property shall revert to and be vested in Sellers without any act by Sellers to be performed, and Purchasers agree to peaceably surrender the property to Sellers. Should Purchasers fail to so surrender the property, Sellers may at their option treat Purchasers as a tenant holding over unlawfully after the expiration of a lease and Purchasers may be ousted and removed as such.

The remedies provided above shall be non-exclusive and in addition to any other remedies provided by law.

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 address as stated in this Contract or such other addresses as either party may designate by written notice to the other.

NON-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 in itself or any other provisions.

DISCLOSURE

The Purchasers certify that this contract of purchase is accepted and executed on the basis of their own examination and personal knowledge of the property and opinion of the value thereof; that no attempts have been made to influence their judgment; that no representations as to the condition or repair of said premises have been made by the Sellers or any agent of the Sellers; that no agreement or promise to alter or repair or improve said premises have been made by the Sellers or by any agent of the Sellers; that Purchasers take said property and the improvements thereon in the condition existing at the time of this agreement.

ATTORNEY FEES

In the event suit or action is instituted to enforce any of the terms of this Contract, the prevailing parties shall be entitled to recover from the other parties such sum as the Court or Courts may adjudge reasonable as attorney fees at trial or on appeal of said suit or action, in addition to all other sums provided by law.

COMPLETE AGREEMENT


This document is the entire, final and complete agreement of the parties pertaining to the sale and purchase of the property described above, 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.

CONSTRUCTION


As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, the feminine and neuter as the context requires. All captions used herein are intended solely for the convenience of reference and shall in no way limit any of the provisions of this Contract.

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


David L. Gardner


Gerald Don Douglas, Jr.


Judith A. Gardner
SELLERS


Lorna Douglas
PURCHASERS

STATE OF OREGON)
) ss.
County of Klamath)

April 25, 1978

Personally appeared the above named DAVID L. GARDNER and JUDITH A. GARDNER, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: [Signature]
DONNA K. RICK
NOTARY PUBLIC-OREGON
Notary Public for Oregon
My Commission Expires: _____

STATE OF MICHIGAN)
) ss.
County of Ingham)

April 14, 1978

Personally appeared the above named GERALD DON DOUGLAS, JR. and LORNA DOUGLAS, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Valera Cozik

Valera Cozik
Notary Public for Oregon Michigan
My Commission Expires: 8-19-78

STATE OF OREGON; COUNTY OF KLAMATH; ss.

led for record at request of Transamerica Title Co.

as 26th day of April A. D. 19 78 at 10:30 o'clock A.M., an

div recorded in Vol. M78, of Deeds on Page 8196

Wm D. MILNE, County Clerk

By [Signature]

Fee \$21.00

TA. D. D. D.