

57256

CONTRACT—REAL ESTATE

Vol. 78 Page 23925

THIS CONTRACT, Made this 24th day of October, 1978, between Sallie M. Merkel

and Brian A. Mikkeltorg and Elaine C. Mikkeltorg, 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 described lands and premises situated in Klamath County, State of Oregon, to-wit:

PARCEL 1

Lot 7, Block 5, LENOX ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 2

Lots 8 and 3, Block 5, LENOX ADDITION to the City of Klamath Falls, 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. Taxes for the fiscal year 1978-1979, a lien, but not yet due and payable.
2. Sewer and water use charges, if any, due to Stewart Lenox Sewer District.

(For continuation of this document, see reverse side of this contract.)

for the sum of Twenty-four thousand eight hundred and no/100 Dollars (\$24,800.00) (hereinafter called the purchase price), on account of which Five thousand and no/100 Dollars (\$5,000.00) 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: \$19,800.00) to the order of the seller in monthly payments of not less than Two hundred and no/100 Dollars (\$200.00) each, or more, prepayment without penalty,

payable on the 1st day of each month hereafter beginning with the month of December, 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 10 per cent per annum from October 24, 1978, until paid, interest to be paid monthly and \* in addition to (being included in 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 other than agricultural purposes.

The buyer shall be entitled to possession of said lands on 19 78, 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 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 value

not less than \$ 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 encumbrances 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 encumbrances 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.

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:

MTG

NAME, ADDRESS, ZIP

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

Brian A. & Elaine C. Mikkeltorg  
5511 Sylvia  
Klamath Falls, Oregon

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/reel number. Record of Deeds of said county.

Witness my hand and seal of County affixed.

Recording Officer  
Deputy

By

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 \_\_\_\_\_ 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 re-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.

It is further understood and agreed by and between the parties hereto that Purchasers shall furnish Seller with paid receipt for taxes and fire insurance each year.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 24,800.00. ~~However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration indicated hereby.~~

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 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.

*Sallie M. Merkel*  
Sallie M. Merkel

*Brian A. Mikkelsen*  
Brian A. Mikkelsen  
*Elaine C. Mikkelsen*  
Elaine C. Mikkelsen

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

STATE OF OREGON, )  
County of Klamath ) ss.  
October 24, 19 78

STATE OF OREGON, County of \_\_\_\_\_ ) ss.  
\_\_\_\_\_, 19\_\_\_\_

Personally appeared the above named Sallie M. Merkel and Brian A. Mikkelsen and Elaine C. Mikkelsen, husband and wife, who acknowledged the foregoing instrument to be their voluntary act and deed.

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 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.

Before me, *[Signature]*  
(OFFICIAL SEAL) Notary Public for Oregon  
My commission expires 8-23-81

Before me: \_\_\_\_\_ (SEAL)  
Notary Public for Oregon  
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 conveyer of the title to be conveyed. Such instruments, or a memorandum thereof, shall be recorded by the conveyer not later than 15 days after the instrument is executed and the parties are bound thereby.  
ORS 93.690 (3) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than \$100.

It is further understood and agreed between the parties hereto that Buyers have made an independent investigation and inspection of the premises herein described, and have entered into this Contract without relying on any statement or representation or covenant not specifically embodied in this Contract, and accept the property described in this Contract "as is" in its present condition, and requires no work of any kind to be done on said property by Seller.

3. Real Estate Contract, including the terms and provisions thereof, dated April 28, 1977, recorded May 2, 1977 in Volume M77, page 7528, Microfilm Records of Klamath County, Oregon, between Hershel Leon Smith and Loretta Nadine Smith, husband and wife, Vendors and Jimmy R. Cagle and Kathleen L. Cagle, husband and wife, Vendees. (AFFECTS Parcel 2), which Buyers herein do not assume and agree to pay, and Seller further covenants to and with Buyers that the said prior contract 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 contract upon payment of this contract.

4. Real Estate Contract, including the terms and provisions thereof, dated November 2, 1977 and recorded November 8, 1977 in Volume M77, page 21517, Microfilm Records of Klamath County, Oregon, Jimmy R. Cagle and Kathleen L. Cagle, husband and wife, Vendors and Sallie M. Merkel, Vendee. (AFFECTS Parcel 2), which Buyers herein do not assume and agree to pay, and Seller further covenants to and with Buyers that the said prior contract 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 contract upon payment of this contract.  
(See attached Exhibit "A" and by this reference incorporated herein as if fully set forth herein;)

5. Real Estate Contract, including the terms and provisions thereof, dated August 7, 1978, and recorded August 8, 1978, in Volume M78, page 17398, Microfilm Records of Klamath County, Oregon, George Yates and Ellen Yates, husband and wife, Vendors, and Sallie M. Merkel, Vendee. (AFFECTS Parcel 1), which Buyers herein do not assume and agree to pay, and Seller further covenants to and with Buyer that the said prior contract 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 contract upon payment of this contract.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

led for record at request of Mountain Title Co.

the 24th day of October A. D. 1978 at 4:32 o'clock P. M.

fully recorded in Vol. M78, of Deeds on Page 23925

Fee \$9.00

Wm D. MILNE, County Clerk

By Lernetha S. Gutsch

EXHIBIT "A"