

TN

42502

CONTRACT—REAL ESTATE

Vol. 180 Page 5870



THIS CONTRACT, Made this 27th day of March, 1980, between Charles D. Whittemore and Bonnie J. Whittemore, husband and wife, hereinafter called the seller, and Paul A. Barker and Anselma Barker, husband and wife, 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 Exhibit A, attached hereto.

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 Plevna District Improvement Company.
3. Rights of the public in and to any portion of said premises lying within the limits of roads and highways.

for the sum of Eighteen Thousand Five Hundred Dollars (\$18,500.00) (hereinafter called the purchase price) on account of which Five Thousand 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: \$13,500.00) to the order of the seller in monthly payments of not less than Two Hundred Twenty Seven Dollars (\$227.00) each, month

payable on the 1st day of each month hereafter beginning with the month of May 1, 1980, 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 8 per cent per annum from March 27, 1980 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. See other side for "Payment agreement Continued"

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 March 27, 1980

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 premises and the buildings, now or hereafter erected thereon, in good condition and repair and will not suffer or permit any waste or strip thereof; that he will keep said premises free from construction 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 \$... and 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 4 years xx 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 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 seller is a creditor, on 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. If the contract becomes a first lien to finance the purchase of a dwelling use Stevens-Ness Form No. 1307 or similar.

Charles D. and Bonnie J. Whittemore, 3600 S. 6th Klamath Falls, Oregon 97601

SELLER'S NAME AND ADDRESS

Paul A. and Anselma Barker, Rt. 3, Box 228, Klamath Falls, Oregon 97601

BUYER'S NAME AND ADDRESS

After recording return to:

Klamath First Federal 540 Main Klamath Falls, Oregon 97601

NAME, ADDRESS, ZIP

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

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 _____/volume No. _____ on page _____ or as document fee/file/instrument/microfilm No. _____, Record of Deeds of said county.

Witness my hand and seal of County affixed.

NAME

TITLE

By _____ Deputy

80 MAR 28 PM 3 06

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 of return, reclamation or compensation for 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 therefor 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 \$ 18,500.00. However, the actual consideration paid for this transfer, stated in terms of dollars, is \$ 18,500.00.

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.

Paul A. Barker
Anselma Barker

Charles D. Whittemore SR.
Bonnie J. Whittemore

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

STATE OF OREGON,

County of Klamath

March 28, 19 80.

Personally appeared the above named Charles D. and Bonnie J. Whittemore, and Paul A. and Anselma Barker,

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

Before me:

(OFFICIAL SEAL)

Notary Public for Oregon
My commission expires 6-30-82

STATE OF OREGON, County of _____, 19 _____ 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 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:

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.

Payment Agreement continued: (RECEIVED RECORDS SECTION)

On or before March 1, 1984, the buyers agree to pay in full the balance due the sellers. This balance will be the amount owed on this contract less the balance remaining on the contract held in escrow at the Main Branch of Klamath Federal Savings and Loan, Klamath Falls, Oregon, 97601, Escrow #99-5185, by and between Harvey F. and Lina Curtis, dated 11-13-78, on March 27, 1980 the balance on said escrow was \$9433.00. When the balance due the sellers is paid in full, the sellers agree to assign all of their rights and interest in the contract held in Escrow #99-5185 to the buyers, and the buyers agree to assume the contract held in Escrow #99-5185, and at that time the sellers agree to provide buyers with a Title Insurance Policy.

"Exhibit A"

5872

DEED DESCRIPTION

A parcel of land, containing 8.07 acres, more or less, situated in the Northeast one-quarter of Section 13, Township 39 South, Range 8 East, Willamette Meridian and being a portion of vacated "WEST KLAMATH" Subdivision to Klamath County, Oregon; being more particularly described as follows:

Beginning at a 1" iron pipe marking the East one-quarter corner of Section 13; (1) thence S 89° 51' 07" E--293.70 feet, along the East-West centerline of Section 13, to a 5/8" rebar on the Northeasterly line of Lot 7 of Block 35; (2) thence N 16° 55' 46" E--342.87 feet, along the Northeasterly line of Lots 1,2,3,4,5,6 and 7 of Block 35, to a 5/8" rebar at the Northeast corner of Lot 1 of Block 35; (3) thence S 73° 01' 12" E--110.00 feet, along the Northwesterly line of said Lot 1, to a 5/8" rebar at the Northwesterly corner of said Lot 1; (4) thence N 16° 55' 48" E--60.00 feet to a 1/2" rebar at the Southwesterly corner of Lot 6 of Block 36; (5) thence S 73° 01' 56" E--30.00 feet to a 1/2" rebar on the centerline of First Street; (6) thence N 16° 55' 45" E--199.77 feet, along the centerline of said First Street to a 1/2" rebar at the intersection of the Lot line common to Lots 14 and 15 of Block 31 extended; (7) thence S 72° 56' 28" E--150.26 feet, along said line and along the Lot line common to Lots 14 and 15 and extending to a 1/2" rebar on the centerline of the alley of Block 31; (8) thence N 17° 00' 43" W--200.21 feet, along the centerline of said alley, to a 1/2" rebar; (9) thence N 89° 18' 18" E--801.13 feet to a 1/2" rebar on the East line of Section 13; (10) thence S 00° 23' 00" E--691.62 feet, along said Section line, to the place of beginning.

NOTE: All references to Lots, Blocks and Streets in the foregoing description shall be assumed to be prefaced by the word "VACATED".

NOTE: Basis of Bearings: Filed Survey No. 1157.

Exhibit A

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 23th day of March, A.D., 1930 at 3:06 o'clock P. M., and duly recorded in Vol. 1180, of Deeds on Page 5272.

FEE \$10.00

WM. D. MILNE, County Clerk

By Bernice H. Hetch Deputy