

93040

CONTRACT—REAL ESTATE Vol. 1180 Page 22978

THIS CONTRACT, Made this 24th day of November, 1980, between
John W. Garboden and Susan Garboden
and Arthur Shimp, hereinafter called the seller,

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:

Lot 24 and the N 1/2 of Lot 25 in Block 12, STEWART, 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. Trust Deed, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$23,000.00

Dated : November 29, 1977

Recorded : November 30, 1977

Trustor : John W. Garboden and Susan Garboden, husband and wife

Trustee : William Sisemore

Beneficiary : Klamath First Federal Savings and Loan Association, a corporation, which Trust 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 and mobile home will be released from the (For continuation of this contract see reverse side of this document)

for the sum of Thirty-six Thousand and No/100ths Dollars (\$36,000.00) (hereinafter called the purchase price) on account of which Two Thousand and No/100ths Dollars (\$2,000.00) 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: \$34,000.00) to the order of the seller in monthly payments of not less than THREE HUNDRED NINETY-FOUR and 38/100ths Dollars (\$394.38) each, or more, prepayment without penalty, and an additional lump sum payment of \$1,000.00 on or before May 1, 1981; payable on the 24th day of each month hereafter beginning with the month of December, 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 10% per cent per annum from November 24, 1980 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 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, or (B) for use or enjoyment of a business or commercial purpose, whether agricultural purposes.

The buyer shall be entitled to possession of said lands on close of escrow plus 30 days, 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 full insurable value; 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 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. If the contract becomes a first lien to finance the purchase of a dwelling use Stevens-ness Form No. 1307 or similar.

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:

TA-Branch

NAME, ADDRESS, ZIP

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

Arthur Shimp
3150 Cortez
Klamath Falls, Oregon 97601

STATE OF OREGON,

County of SS.

I certify that the within instrument was received for record on the day of, 1980, at o'clock M., and recorded in book/reel/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.

By NAME TITLE
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 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 terminate, 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 money 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.

TOGETHER WITH: 1972 Pacifica Mobile Home - Length _____ Width _____
Serial No. 12303.
The sum of \$25,000.00 represents that part of the purchase price allocated to the real property, and the sum of \$11,000.00 represents that portion of the purchase price allocated to the mobile home.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 36,000.00. However, the actual consideration contained or included in this instrument is not to be construed as a limitation on the actual consideration.

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 W. Garboden
Susan Garboden

Arthur Shimp

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

STATE OF OREGON,

County of Klamath } ss.
November 25, 1980

STATE OF OREGON, County of _____ } ss.
November 25, 1980

Personally appeared the above named

John W. Garboden, Susan Garboden
and Arthur Shimp

Personally appeared _____

each for himself and not one for the other, did say that the former is the _____ and who, being duly sworn, president and that the latter is the secretary of _____

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

Before me:
(OFFICIAL SEAL) _____
Notary Public for Oregon
My commission expires 11-2-82

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

(DESCRIPTION CONTINUED)
lien of said Trust Deed upon payment in full of this contract.
3. Subject to the requirements and provisions of ORS Chapter 481 pertaining to the registration and transfer of ownership of a mobile home, and any interests or liens disclosed thereby.
4. Trust deed, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$5,000.00
Dated : September 10, 1980
Recorded : September 11, 1980 Book: M-80 Page: 17137
Trustor : John W. Garboden and Susan Garboden
Trustee : William L. Sisemore
Beneficiary : Town and Country Mortgage and Investment Co., an Oregon corporation

The above trust deed was assigned by Instrument
Dated : September 10, 1980
Recorded : September 11, 1980 Book: M-80 Page: 17139,
To : Evelyn Lindsay
which Trust Deed 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 and mobile home will be released from the lien of said Trust Deed upon payment in full of this contract.
See attached Exhibit "A" and by this reference incorporated herein.

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THE FOLLOWING COVENANTS AND PROVISIONS ARE HEREBY MADE
PART OF THE CONTRACT TO WHICH THIS EXHIBIT "A" IS ATTACHED

Buyer herein specifically agrees to pay the full contract balance
on or before December 24, 1992.

It is further agreed by and between the parties hereto that in the
event the lenders on either of the herein mentioned Trust Deeds
shall require said loans to be paid in full by reason of Sellers
selling the above described property, that the Buyer herein agrees
to apply for a new loan and pay said balance of said Trust Deeds
in full.

It is further agreed by and between the parties hereto that in the
event Sellers herein are delinquent for a period of 60 days from
the date of the payment of either of the above mentioned Trust
Deeds that the Buyer herein shall be authorized to make said pay-
ment or payments on behalf of the Sellers and shall be authorized
to present a paid receipt to the escrow agent, authorizing said
escrow agent to deduct said payment or payments from the balance
of the contract.

Sellers agree to execute a Combined Bill of Sale and Power of
Attorney for transference of title by the Department of Motor
Vehicles to Arthur Shimp. It is further hereby agreed by and
between the parties hereto that until the Trust Deed to Klamath
First Federal Savings and Loan Association has been paid in full
that said Combined Bill of Sale and Power of Attorney shall be held
in the collection escrow at Frontier Title Company. When the
Trust Deed has been paid the Sellers may have the option to either
transfer the title to the mobile home to Buyer showing the Sellers'
name on the title or in the alternative may place said title in the
collection escrow until the contract has been paid in full. Sellers
further agree that it is their responsibility that when the Trust
Deed has been paid in full that they shall sign said title to the
mobile home and deliver said title to the escrow holder.

Sellers shall have and may use any or all of the remedies of Sellers
available under the Oregon Uniform Commercial Code.

It is further understood and agreed between the parties hereto that Buyer
has made an independent investigation and inspection of the premises
herein described, and has entered into this Contract without relying on
any statement or representation or covenant not specifically embodied
in this Contract, and accepts 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 Sellers.

In the event suit or action is instituted to collect any sum or
sums or money due hereunto or to replevy said mobile home, Buyer
agrees to pay, in addition to the statutory costs and disbursements,
(1) Plaintiff's reasonable attorney's fees to be fixed by the
trial court and (2) on appeal, if any, similar fees in the appellate
court to be fixed by the appellate court.

Buyer herein agrees to furnish Sellers with proof of payment for
taxes and fire insurance each year.

Exhibit "A"

STATE OF OREGON; COUNTY OF KLAMATH; ss.
I hereby certify that the within instrument was received and filed for record on the

26th day of NOVEMBER A.D., 1990 at 11:09 o'clock AM., and duly recorded in
Vol M80, of DEEDS on page 22978.
Fee \$ 10.50

W. D. MILNE, County Clerk
By Jaqueline J. Milne Deputy