

Aspen M-26955

THIS AGREEMENT, made and entered into this 12th day of December, 1983, by and between VINCENT GARCIA and LORRAINE A. GARCIA, husband and wife, hereinafter called Vendor, and RUSSELL D. FITZGERALD and ALISSA K. FITZGERALD, husband and wife, hereinafter called Vendee.

WITNESSETH:

Vendor agrees to sell to the vendee and the vendee agrees to buy from the vendor all of the following-described property situate in Klamath County, State of Oregon, to-wit:

Government Lots 5 and 6, EXCEPTING THEREFROM that portion of Lot 6 lying Northeast of Highway 62, also that portion of Government Lot 4 lying Easterly of the East right of way of the D-C Highway in Section 6, Township 35 South, Range 7 East of the Willamette Meridian, in the County of Klamath State of Oregon.

SUBJECT TO: Rights of the public in and to any portion of said premises lying within the limits of roads and highways: Easements and rights of way of record and those apparent on the land, if any; and also subject to a Contract wherein Eleanor B. Reynolds is seller and vendors herein are purchasers, which said Contract vendees hereby expressly assume and agree to pay and to hold vendors harmless therefrom, and also subject to 1983-84 real property taxes which vendees assume and agree to pay.

at and for a price of \$145,000.00, payable as follows, to-wit: \$40,819.12 by assumption of the above-described Reynolds-Mitchell contract; and the balance of \$104,180.88 to be paid as follows: Principal payment of \$5,000.00 due on March 1, 1984, and a principal payment of \$20,000.00 due on November 1, 1984, and the balance of \$99,180.88 is payable at the rate of \$1,669.75 per year, including interest at the rate of 10% per annum from November 1, 1984, the first installment to be due on the 1st day of November, 1985, and a like payment due on the 1st day of each November thereafter until the full balance and interest are paid.

Vendee agrees to make said payments promptly on the dates above named to the order of the vendor, or the survivors of them, at Klamath First Federal Savings and Loan Association, Klamath Falls, Oregon; to keep said property at all times in as good condition as the same now are, that no improvement, now on or which may hereafter be placed on said property shall be removed or destroyed before the entire purchase price has been paid and that said property will be kept insured in companies approved by vendor against loss or damage by fire in a sum not less than its full insurable value, with loss payable to the parties as their respective interests may appear, said policy or policies of insurance to be held by vendee, copy to vendor, that vendee shall pay regularly and seasonably and before the same shall become subject to interest charges, all taxes, assessments, liens and incumbrances of whatsoever nature and kind and agrees that vendee shall fully pay and perform said original Reynolds contract of December ____, 1975, described above, according to its terms and that default or breach of said contract shall constitute a default of this contract, and agrees not to suffer or permit any part of said property to become subject to any taxes, assessments, liens,

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Return: DTC

1 charges or incumbrances whatsoever having precedence over rights of the vendor
 2 in and to said property. Vendee shall be entitled to the possession of said
 property immediately.

3 Vendor will on the execution hereof make and execute in favor of vendee good
 4 and sufficient warranty deed conveying a fee simple title to said property free
 5 and clear as of this date of all incumbrances whatsoever, except as above stated,
 6 which vendee assumes, and will place said deed, together with one of these agree-
 7 ments in escrow at Klamath First Federal Savings and Loan Association, Klamath
 8 Falls, Oregon, and shall enter into written escrow instructions in form satis-
 9 factory to said escrow holder, instructing said holder that when, and if, vendee
 10 shall have paid the balance of the purchase price in accordance with the terms
 11 and conditions of this contract, said escrow holder shall deliver said instruments
 12 to vendee, but that in case of default by vendee said escrow holder shall, on
 13 demand, surrender said instruments to vendor.

14 But in case vendee shall fail to make the payments aforesaid, or any of them,
 15 punctually and upon the strict terms and at the times above specified, or fail to
 16 keep any of the other terms or conditions of this agreement, time of payment and
 17 strict performance being declared to be the essence of this agreement, then vendor
 18 shall have the following rights: (1) To foreclose this contract by strict fore-
 19 closure in equity; (2) To declare the full unpaid balance immediately due and pay-
 20 able; (3) To specifically enforce the terms of the agreement by suit in equity;
 21 and in any of such cases, except exercise of the right to specifically enforce
 22 this agreement by suit in equity, all the right and interest hereby created or
 23 then existing in favor of vendee derived under this agreement shall utterly cease
 24 and determine, and the premises aforesaid shall revert and revest in vendor without
 25 any declaration of forfeiture or act of reentry, and without any other act by
 26 vendor to be performed and without any right of vendee of reclamation or compensa-
 tion for money paid or for improvements made, as absolutely, fully and perfectly
 as if this agreement had never been made.

17 Should vendee, while in default, permit the premises to become vacant, vendor
 18 may take possession of same for the purpose of protecting and preserving the
 19 property and their security interest therein, and in the event possession is so
 20 taken by vendor they shall not be deemed to have waived their right to exercise
 21 any of the foregoing rights.

20 And in case suit or action is instituted to foreclose or to enforce any of
 21 the provisions hereof, the prevailing party in such suit or action shall be en-
 22 titled to receive from the other party his costs which shall include the reason-
 23 able cost of title report and title search and such sum as the trial court and/or
 24 appellate court, if an appeal is taken, may adjudge reasonable as attorney's fees
 25 to be allowed the prevailing party in said suit or action and/or appeal, if an
 26 appeal is taken.

24 Vendee further agrees that failure by vendor at any time to require per-
 25 formance by vendee of any provision hereof shall in no way affect vendor's right
 26 hereunder to enforce the same, nor shall any waiver by vendor of such 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.

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In construing this contract, it is understood that vendor or the vendee may be more than one person; 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, the parties hereto and their respective heirs, executors, administrators and assigns.

Witness the hands of the parties the day and year first herein written.

Vincent Garcia
Vincent Garcia

Russell D. Fitzgerald
Russell D. Fitzgerald

Lorraine M. Garcia
Lorraine M. Garcia

Alissa K. Fitzgerald
Alissa K. Fitzgerald

STATE OF OREGON)
) SS
County of Klamath)

On this 13 day of April, 1983, personally appeared the above-named Vincent Garcia and Lorraine A. Garcia, his wife; and Russell D. Fitzgerald and Alissa K. Fitzgerald, his wife, and acknowledged the foregoing instrument to be their act and deed. Before me:

NOTARY
(SEAL)

Sandra Handaaker
Notary Public for Oregon

My Commission Expires: 1-23-85

STATE OF OREGON,)
County of Klamath)
Filed for record at request of

on this 16 day of April A.D. 19 84
at 3:45 o'clock P M, and duly
recorded in Vol. M84 of Deeds.
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EVELYN BIEHN, County Clerk

By [Signature] Deputy

Fee 12.00

Return to Sender