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Vol 145 Page 21368

This Agreement, made and entered into this 31<sup>st</sup> day of December, 1985 by and between JAMES C. UPTON and DORIS B. UPTON, husband and wife, and

hereinafter called the vendor, and

GARY D. FAIRCHILD and DEBORAH J. FAIRCHILD, husband and wife, hereinafter called the vendee.

WITNESSETH

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

Lot 4, Block 6 and Lot 5, Block 6, FIRST ADDITION TO WEST HILLS HOMES, EXCEPT THEREFROM the South 140 feet of said Lot 5, in the County of Klamath, State of Oregon

SUBJECT TO: That certain Deed of Trust dated January 10, 1983, wherein James C. Upton and Doris B. Upton, husband and wife, are Grantors, William Sisemore is Beneficiary, and Klamath First Federal Savings & Loan Association is Trustee, which Trust Deed Vendors shall assume and pay and they shall hold Vendees harmless therefrom.

at and for a price of \$ 65,000.00, payable as follows, to-wit:

\$ 15,000.00 at the time of the execution of this agreement, the receipt of which is hereby acknowledged; \$50,000.00 with interest at the rate of 11% per annum from December 31, 1985 payable in installments of not less than \$ 516.10 per month, inclusive of interest, the first installment to be paid on the 31st day of January 1986, and a further installment on the 31st day of every month thereafter until the full balance and interest are paid. In addition to the payments due hereunder, Vendees shall pay all taxes and insurance when due. However, in the event Vendees do not pay the taxes and insurance when due, Vendors may at their option pay said taxes and insurance and add them back to the principal of this contract by presentation of paid receipts to the escrow holder herein; said amounts so added to bear interest at the rate provided herein.

Vendee agrees to make said payments promptly on the dates above named to the order of the vendor, or the survivors of them, at the Klamath First Federal Savings & Loan Association at 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 80% insurable value with loss payable to the parties as their respective interests may appear, said policy or policies of insurance to be held by Vendors copy of Vendees 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. Taxes shall be prorated as of December 31, 1985.

and agree not to suffer or permit any part of said property to become subject to any taxes, assessments, liens, charges or incumbrances whatsoever having precedence over rights of the vendor in and to said property. Vendee shall be entitled to the possession of said property as of December 31, 1985.

Vendor will on the execution hereof make and execute in favor of vendee good and sufficient warranty deed conveying a fee simple title to said property free and clear as of this date of all incumbrances whatsoever, except as set forth in said Warranty Deed.

KLAMATH COUNTY  
RECORDED  
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which vendee assumes, and will place said deed

together with one of these agreements in escrow at the Klamath First Federal Savings & Loan Association,

at Klamath Falls, Oregon, and shall enter into written escrow instruction in form satisfactory to said escrow holder, instructing said escrow holder that when, and if, vendee shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said escrow holder shall deliver said instruments to vendee, but that in case of default by vendee said escrow holder shall, on demand, surrender said instruments to vendor.

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Escrow fees shall be deducted from the first payment made hereunder. The escrow holder may deduct cost of necessary revenue stamps from final payments made hereunder.

In the event vendee shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and at the times above specified, or fail to keep any of the other terms or conditions of this agreement, time of payment and strict performance being declared to be the essence of this agreement, then vendor shall have the following rights: (1) To foreclose this contract by strict foreclosure in equity; (2) To declare the full unpaid balance immediately due and payable; (3) To specifically enforce the terms of this agreement by suit in equity;

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

And in case suit or action is instituted to foreclose this contract or to enforce any of the provisions hereof, vendee agrees to pay reasonable cost of title report and title search and such sum as the trial court may adjudge reasonable as attorney's fees to be allowed plaintiff in said suit or action, and if an appeal is taken from any judgment or decree of such trial court, the vendee further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal.

Vendee further agrees that failure by vendor at any time to require performance by vendee of any provisions hereof shall in no way affect vendor's right 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.

In construing this contract, it is understood that vendor or the vendee may be more than one person; that if the contract 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.

THE TERMS AND PROVISIONS OF THAT CERTAIN ATTACHMENT DENOTED EXHIBIT "A" ARE BY THIS REFERENCE INCORPORATED HEREIN AS IF FULLY SET FORTH.

WITNESS MY HAND AND SEAL THIS \_\_\_\_ day of December, 1985.

James C. Upton  
JAMES C. UPTON

Doris B. Upton  
DORIS B. UPTON

Gary D. Fairchild  
GARY D. FAIRCHILD

Deborah J. Fairchild  
DEBORAH J. FAIRCHILD

STATE OF OREGON )  
COUNTY OF KLAMATH) SS

PERSONALLY APPEARED JAMES C. UPTON & DORIS B. UPTON, ~~known to me~~  
on this 31<sup>st</sup> day of December, 1985, and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

TRUDIE DURANT  
NOTARY PUBLIC - OREGON

STATE OF OREGON )  
COUNTY OF KLAMATH) SS

Trudie Durant  
NOTARY PUBLIC FOR THE STATE OF OREGON  
MY COMMISSION EXPIRES: \_\_\_\_\_

PERSONALLY APPEARED GARY D. FAIRCHILD and DEBORAH J. FAIRCHILD,  
on this 31<sup>st</sup> day of December, 1985, and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

TRUDIE DURANT  
NOTARY PUBLIC - OREGON

My Commission Expires 9/30/89

Trudie Durant  
NOTARY PUBLIC FOR THE STATE OF OREGON  
MY COMMISSION EXPIRES: \_\_\_\_\_

EXHIBIT "A"

TO AGREEMENT OF DECEMBER 31, 1985

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1. The parties recognize this property is subject to a prior encumbrance in favor of Klamath Falls First Federal Savings and Loan which contains a due on sale provision. The parties agree to mutually cooperate in obtaining approval of Klamath Falls First Federal Savings and Loan of this sale and Vendors further agree to hold harmless Vendee should Klamath Falls First Federal Savings and Loan enforce the due on sale provision.
2. The parties agree that \$5,000.00 of the \$15,000.00 down payment shall be held by escrow holder in an interest bearing account until such time as Vendor obtains or completes the improvements located on said real property and obtains a Certificate of Occupancy from the Klamath County Building Department or a written release of said funds by Vendees to Vendors. It is contemplated by the parties that such completion (and issuance of the Certificate of Occupancy) shall occur on or before April 1, 1986. Should the said events not occur, Vendee shall have the option of either:
  - (a) extending the time for completion; or
  - (b) upon prior written notification to Vendor obtain the services by bid of a licensed professional contractor/builder to complete the residence and payment of said contractor/builder shall come from said remaining escrow funds with the then remainder of said funds to be disbursed to Vendor.

James C. Upton  
JAMES C. UPTON

Gary D. Fairchild  
GARY D. FAIRCHILD

Doris B. Upton  
DORIS B. UPTON

Deborah J. Fairchild  
DEBORAH J. FAIRCHILD

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EXHIBIT "A"

STATE OF OREGON COUNTY OF KLAMATH

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Filed for record at request of \_\_\_\_\_ the \_\_\_\_\_ day  
of December A.D. 19 85 at 4:44 o'clock P.M. and duly recorded in Vol M85  
of Deeds on Page 21368

FEE \$13.00

Evelyn Blehn, County Clerk  
By Tom Smith