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R-45680

Volume 3 Page 25819

MEMORANDUM OF OCCUPANCY BY EDWIN F. KNAPP and LELIA B. KNAPP, or the survivor, dated as of the date set opposite the signatures of the Parties, effective September 30, 1993, regardless of when executed, between EDWIN F. KNAPP and LELIA B. KNAPP, or the survivor (Knapp) and EDGAR M. CUTLER and MARY E. CUTLER, husband and wife (Cutler);

W I I N E S S E I H:

I. Reservation of Occupancy: Knapp has heretofore reserved possession of, and the right to use and occupy, as Knapp's primary residence, the Residence (as herein defined), on the terms set forth in this instrument, on the following described real property situate in Klamath County, Oregon, to-wit:

Lot 15 and the S $\frac{1}{2}$ of Lot 16 in Cloverdale, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

II. Termination: Knapp's possession of the Residence shall terminate upon the earlier of the following events (Termination): the death of both Knapps, or abandonment of the Residence evidenced either in writing by Knapp to Cutler stating an intent to abandon the Residence or Knapp's living out of the Residence for 6 consecutive months.

III. Delivery of Occupancy: By no later than 90 days following Termination, Knapp, or Knapp's heirs, shall deliver the Residence to Cutler together with heating and cooking stoves, refrigerators, freezers, washers and dryers, curtains and drapes, curtain and drapery rods, bathroom and plumbing fixtures, water heaters, electric light fixtures, and light bulbs and florescent lamps. To the extent any property to which Knapp, or Knapp's heirs, may, or might, claim an interest to should remain in or on the Residence following the expiration of the aforesaid 90 days following Termination, the same shall be conclusively deemed abandoned to Cutler.

IV. Further Assurances: Following Termination, Knapp, or Knapp's heirs, upon reasonable request by Cutler, shall execute, acknowledge, and deliver such document required by any title company to remove from the record any exception to title to the Residence this instrument should create.

V. Knapp's Obligations: Utilities and upkeep shall be Knapp's obligation during Knapp's use and occupancy of the Residence subject to the limitations set forth herein. Utilities shall be paid by Knapp to the provider of them. Upkeep is intended to mean the Residence buildings, yard, domestic water, and sanitary systems, be kept in their present condition subject to reasonable wear and tear and no Party to this instrument intends it to obligate either to reconstruct any building comprising the Residence.

VI. Cutler's Obligations: Real property taxes and insurance affecting the buildings comprising the Residence shall be Cutler's obligation during Knapp's use and occupancy of the Residence. All fire insurance proceeds shall be subject to the provisions of this instrument governing fire insurance.

AFTER RECORDING RETURN TO:

Giacomini & Knieps, Attorneys at Law
706 Main St.
Klamath Falls, OR 97601

VII. Occupancy Risk: Occupancy of the Residence by Knapp shall be at Knapp's sole risk with regard to any injury which may be caused to Knapp, Knapp's family, or Knapp's invitees. Knapp shall save and hold Cutler harmless from, and hereby indemnifies Cutler against, any of the following that may result by, from, or in any manner grow out of, any claim of liability for or on account of any death or injury to any person in or about the Residence. This covenant shall include (without limiting the generality of the foregoing) court costs and attorney fees (both at trial or on appeal). As part performance of this covenant, Knapp shall maintain, at Knapp's expense, a policy or policies of comprehensive liability insurance written by one or more insurance companies licensed to do business in the State of Oregon which will insure Knapp and Cutler against liability for injury to persons or for death of any person or persons occurring in or about the Residence. Liability under such insurance shall not be less than \$50,000.00 for any one event. Knapp shall provide Cutler with copies or certificates of all policies. Such policies shall also provide that they will not be cancelled or materially changed except after 30 days' notice to Cutler.

VIII. General Provisions: This Instrument shall be subject to the following provisions which shall apply to each portion of it as the circumstances and context may require.

A. Severability: All provisions contained in this Instrument are severable, and in the event any provision contained in it shall be held invalid by any court of competent jurisdiction, this Instrument shall be interpreted as though the invalid provision was not contained in it.

B. Headings: The headings contained in this Instrument are for convenience only and are not to be construed as part of this Instrument.

C. Instrument as Though Prepared by All Parties: This Instrument shall be construed as though prepared by all Parties.

D. Pronouns: Pronouns used in this Instrument shall be construed in accordance with the appropriate gender or neuter, and as either singular or plural, as the context requires.

E. Notice: Any notice, demand, or communication to be given by any Party to the other in connection with this Instrument shall be deemed to have been fully given when written and deposited in a sealed envelope with the United States Postal Service as certified mail, with postage prepaid, and addressed to the Party to receive the same at the address shown in this Instrument. Any Party may change its address by giving the other Party written notice of a new address in the same manner as the giving of notice. Addresses for purpose of giving notice as of the date of execution in this Instrument are:

EDWIN F. & LELIA B. KNAPP
2741 Homedale Road
Klamath Falls, OR 97603

EDGAR M. & MARY E. CUTLER
1801 Highway 20, #31
Colusa, CA 95932

F. No Conflict of Interest: The Parties do not consider the professional services of Giacomini & Knieps in connection with the transaction contemplated by this Instrument to create any conflict of interest. Cutler acknowledges that Cutler has, at all times, been free to consult with an attorney of Cutler's choosing and selection prior to the execution of this Instrument.

G. Attorney Fees: In case suit or action is instituted for declaration of rights hereunder or to foreclose this Instrument, or to enforce any of the provisions hereof, the Parties agree to pay the costs of title reports and such sums as the trial court may judge reasonable as attorney fees and collection costs to be awarded the prevailing Party in that suit or action, and, if any appeal is taken from any judgment or decree, further attorney fees and costs as may be adjudged reasonable by the court to be awarded the prevailing Party.

H. Arbitration: Either Party may require arbitration of any matter arising under or in connection with this Instrument. Arbitration is initiated and required by giving notice specifying the matter to be arbitrated. If a court action is already pending on any matter concerning which the notice is given, the notice is ineffective unless given before expiration of 30 days after service of process on the person giving notice. Arbitration shall be in conformity with and subject to provisions of the Oregon Revised Statutes relating to arbitration as they stand amended at time of notice. Arbitrators shall be bound by this Instrument. Pleadings in any action on the same matter shall, if arbitration is required or consented to, be deemed amended to limit issues to those contemplated by the rules prescribed above. Each Party shall pay half of arbitration including arbitrators' fees. Attorney fees shall be awarded as separately provided herein. Three arbitrators shall be appointed as follows: (a) within 30 days of notice requiring arbitration, each Party shall appoint one arbitrator and give notice of appointment to other Party; (b) the two arbitrators shall choose a third arbitrator within 20 days after appointment of the second; and (c) if either Party fails to appoint an arbitrator, or if the two arbitrators fail to choose a third, appointment shall be made by the then presiding judge of Circuit Court for Lake County, Oregon, acting in its individual and non-official capacity on application of either Party and on 20 days' notice to the other Party; provided that either Party may, by notice given before commencement of arbitration hearing, consent to arbitration by the arbitrator appointed by the other Party, in which event, no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

I. Succession: This Instrument shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, personal representatives, assigns or successors in interest of each Party.

J. Definitions: In addition to definitions contained in the text of this instrument, the following terms shall have the following meanings:

1. Instrument: The term "Instrument" shall mean this document.

2. Knapp: The term "Knapp" shall mean EDWIN F. KNAPP and LELIA B. KNAPP, or the survivor.

3. Cutler: The term "Cutler" shall mean EDGAR M. CUTLER and MARY E. CUTLER, husband and wife.

4. Residence: The term "Residence" shall mean main house, contiguous yard, any garage or carport, parking area, and non-exclusive use of existing roadway for ingress and egress.

5. Party, Party's, or Parties: The terms "Party", "Party's", or "Parties" shall mean Knapp and Cutler, as the context and circumstances shall require.

DATE

SIGNATURE

10-2-93

Edwin F. Knapp
EDWIN F. KNAPP

10/2/93

Lelia B. Knapp
LELIA B. KNAPP

10-2-93

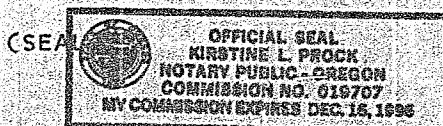
Edgar M. Cutler
EDGAR M. CUTLER

10-2-93

Mary E. Cutler
MARY E. CUTLER

STATE OF OREGON, County of Klamath) ss: October 2, 1993

Personally appeared before me the above named EDWIN F. KNAPP and LELIA B. KNAPP and acknowledged the foregoing instrument to be their voluntary act and deed.



Kirstine L. Prock
NOTARY PUBLIC FOR OREGON
My Commission Expires: 12/16/96

STATE OF OREGON, County of Klamath) ss: October 2, 1993

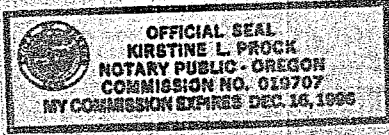
Before me, Kirstine L. Prock, Notary Public of the State of Oregon, personally appeared EDGAR M. CUTLER and MARY E. CUTLER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within

25823

Instrument as husband and wife and acknowledged to me that they executed the same, and that by their signatures on the instrument they executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Kirstine L. Prock
NOTARY PUBLIC FOR ~~OREGON~~ *OREGON*
My Commission Expires: 12/16/96

WHEN RECORDED MAIL TO:

GIACOMINI & KNIIPS
ATTORNEYS AT LAW
706 MAIN STREET
KLAMATH FALLS, OR 97601

STATE OF OREGON

County of Klamath

ss:

I certify that the within instrument was received for record on the 5th day of October, 1993, at 11:26 o'clock A.M., and recorded in Book M93 on Page 25819 or as filing fee number 69201.

Record of Deeds of said County.

Witness my hand and seal of County affixed.

Evelyn Biehn County Clerk

BY: *Pauline M. Mulholland* Title Deputy

Fees: \$30.00