

2012-000653

Klamath County, Oregon



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01/25/2012 10:23:25 AM

Fee: \$72.00

**Seller Name and Address:**

Richard W. and Barbara Suzanne Smith  
505 Mt. Pitt  
Klamath Falls, OR 97601

**Buyer Name and Address:**

Paul M. and Melanie J. Grabke  
2420 Montelius  
Klamath Falls, OR 97601

**After Recording Return to:**

AmeriTitle

**Until A Change is Requested**

**Send Tax Statements to:**

Richard W. and Barbara Suzanne Smith  
505 Mt. Pitt  
Klamath Falls, OR 97601

**The true and actual consideration stated in this**

**instrument is:** \$110,000.00

**LAND SALE CONTRACT**

**THIS CONTRACT** is made and entered into this 29 day of November, 2011, by and between **RICHARD W. SMITH and BARBARA SUZANNE G. SMITH**, Husband and Wife, hereinafter called "Seller", and **PAUL M. GRABKE and MELANIE J. GRABKE**, Husband and Wife, hereinafter called "Buyer" (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

**W I T N E S S E T H:**

Seller agrees to sell to Buyer and Buyer agrees to buy from Seller for the price and on the terms and conditions set forth hereafter all of the real property situate in the County of Klamath, State of Oregon, civilly described as 2420 Montelius Street, Klamath Falls, Oregon and legally described on Exhibit A, attached hereto and incorporated herein by reference as though fully set forth herein.

SUBJECT TO taxes, contracts and/or liens for irrigation and/or drainage, covenants, conditions, restrictions, easements, homeowners association provisions, rights-of-way and other matters now of records, and those apparent on the land.

ALSO SUBJECT TO rights of the public in and to any portion of the herein described property lying within the boundaries of roads or highways.

It is mutually agreed as follows:

**1. Possession:** Buyer shall be entitled to possession of the property pursuant to this agreement as of the date of closing. Buyer has, however, had possession of the property as a tenant prior to closing.

2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment.

3. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of **ONE HUNDRED TEN THOUSAND and no hundredths Dollars (\$110,000.00)** which such sum shall be payable as follows:

(a) The purchase price shall be payable in monthly installments in the sum of **\$ 590.50**, the first of such installments to be payable the 1st day of ~~December~~ <sup>February 1st 2012</sup>, 2011, with a further and like installment due the same day of each month thereafter until **THIRTY SIX (36) MONTHS FROM THE DATE OF CLOSING WHEN THE ENTIRE UNPAID BALANCE, INCLUDING PRINCIPAL AND INTEREST SHALL BE FULLY DUE AND PAYABLE.**

(b) In addition to the sums payable for principal and interest set forth hereinabove, Buyer shall be required to pay a sum equivalent to one twelfth of the annual assessments of taxes and insurance. The parties understand and agree that the current billing for insurance is in the sum of ~~\$ 679.82~~ <sup>1,067.44</sup> and that the taxes not including special assessments currently levied are in the sum of **\$ 1007.86**. Thus, Purchaser shall be required to pay the additional sum of ~~\$ 140.64~~ <sup>22.51</sup> per month as a contribution toward such expenses until December 1, 2012. On or about said date, and the same day of each year thereafter, Seller shall advise the Buyer of the amount of monthly payment necessary to be made by Buyer pursuant to paragraph 3(b) to reimburse Seller for all taxes, insurance and any other assessments paid by Seller. The monthly payment shall then be adjusted to reflect said revised contribution by Buyer toward taxes, insurance and assessments.

(c) Unpaid balances shall bear interest at the rate of **FIVE PERCENT (5.0%)** per annum.

(d) Buyer may make advance or excess payments without penalty, and if so made, such payments shall be applied toward account interest, and the remainder will be applied toward the principal balance. No partial prepayment shall excuse the payment of installments next coming due.

4. **Late Payment Penalty:** In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of **FIVE PERCENT (5.0%)** of the amount of payment then due, in addition to the regularly scheduled payments set forth in paragraph 3 hereinabove as and for a late payment penalty, should Buyer fail to make any payment required to be made hereunder within fifteen (15) days of the date due. Seller shall be required to notify both Buyer and the escrow agent named herein (or its successor) of the accrual of such late payment charge, which such charge shall be reflected only as an

additional charge to Buyer and not as a credit to either interest or principal.

**5. Payment of Liens and Taxes:** a) Subject to the provisions of the foregoing Paragraph 3(b), Buyer shall pay promptly all indebtedness incurred by Buyer's acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date. The exception to this provision is that Seller shall be required to pay all real property taxes (not including special assessments) assessed before the same become past due or delinquent (it being within the contemplation of the parties that such payment shall be made from out of funds paid in accordance with paragraph 3(b) above).

All such taxes, assessments and charges for the current year shall be prorated as of the date of closing. In the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered a proper receipt therefor.

b) If the property will have a farm, forest or historic deferred property tax status after closing, and if the deferred status terminates for any reason, Purchaser shall be solely responsible for all deferred taxes and interest and hold Seller harmless therefrom. Seller agrees to cooperate with Purchaser in maintaining deferred status.

**6. Insurance:** It is agreed that Buyer will keep any building or improvements on said property insured against loss or damage by fire or other casualty in an amount of not less than the full insurable value thereof with loss payable to the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession. In addition, Buyer shall be required to maintain liability insurance on the premises with limits of not less than \$500,000.00. The said insurance shall be paid for in the first instance by Seller and Seller shall then be reimbursed by Buyer as provided in the foregoing paragraph 3(b).

**7. Waste Prohibited:** Buyer agrees that all improvements now located or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any

waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair. Buyer shall make no substantial alterations to the premises without the prior written consent of Seller.

**8. Transfer of Title; Collection Escrow:** Seller shall, upon the execution hereof, make and execute in favor of Buyer a good and sufficient Deed in Statutory Special Warranty form conveying said property free and clear of all liens and encumbrances, except as provided hereinabove and shall place said document in escrow with AmeriTitle. The parties shall enter into collection escrow instructions with AmeriTitle. The costs of establishment of such collection escrow shall be paid by Buyer. The monthly service fees shall be paid by Buyer. Such collection escrow instructions shall provide that at such time as Seller shall have paid any amounts of taxes or insurance pursuant to subparagraph 3(c) hereinabove, Seller shall notify such collection escrow agent to add back such sums to the unpaid principal balance effective the date of such payment of taxes or insurance. Such instructions shall also provide that when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said Deed shall be delivered to Buyer, but in case of default by Buyer, the said Deed, together with the recorded original of this agreement shall be delivered to Seller. In the latter event, all monthly payments made pursuant to paragraphs 3(b) and 3(c) hereinabove shall be and remain the property of and shall be retained by Seller.

**9. Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of Buyer's own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability, that no attempt has been made to influence Buyer's judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement, with no express, implied, or other warranties by Seller.

**10. Consent to Assignment:** Buyer shall not assign this agreement, Buyer's rights thereunder, or in the property covered thereby without the written consent of Seller. In the event the within described property, any part thereof, any interest therein (whether legal or equitable) is sold, agreed to be sold, conveyed, assigned or alienated by the Buyer without having first obtained the written consent of the Seller, then, at the Seller's option, all obligations secured by this instrument, irrespective of the maturity date expressed herein, shall become immediately due and payable.

**11. Time of Essence:** It is understood and agreed between the parties that time is of the essence of this contract.

**12. Default:** In case Buyer shall fail to make the payments aforesaid, or make them punctually and upon the strict terms and at the times above specified or fail to keep any of the terms or conditions of this agreement, then Seller, shall, at his option, have the following rights, in addition to other remedies provided under Oregon law:

a. To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

b. To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

c. To withdraw said deed and other documents from the escrow; and/or

d. To foreclose this contract by suit or by strict foreclosure in equity.

In any of such cases, all rights and interest created or then existing in favor of Buyer as against Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above described and all other rights acquired by Buyer hereunder shall revert to and revest in Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of 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 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. Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right, and nothing in this contract shall preclude appointment of the Seller as such receiver.

**13. Abandonment:** Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and Seller's security interest herein, and in the event possession is so taken by Seller, Seller shall not be deemed to have waived Seller's right to exercise any of the foregoing rights.

**14. Attorney Fees:** In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other

party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

**15. No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision thereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by 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.

**16. Binding on Successors:** This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing.

**17. Inclusion of Personal Property:** It is agreed between Buyer and Seller that certain personal property is to be conveyed along with the real property pursuant to this agreement. Such personal property includes the following:

fireplace insert  
range

Such personal property is sold "**AS IS, WITH ALL FAULTS.**"

**18. Detectors / Asbestos:** Buyer and Seller certify that there are installed in the improvements to the real property working smoke and carbon monoxide detectors installed pursuant to applicable law, prior to closing. Buyer also acknowledges receipt of Lead Based Paint Disclosures and the pamphlet "Protect Your Family From Lead in Your Home." Purchaser is satisfied with the results of the inspection as it relates to the presence of asbestos.

**19. Representation By Attorney:** The parties hereto acknowledge that this contract was prepared by NEAL G. BUCHANAN, Attorney at Law, 435 Oak Avenue, Klamath Falls, Oregon 97601, solely on behalf of the Seller / Vendor and that said attorney in no way represents the Buyer / Vendee who have been advised to seek the advice of said Buyer / Vendee's independent counsel and tax advisor.

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 434, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR

FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS, 2009."

**IN WITNESS WHEREOF** the parties have caused this agreement to be executed as of the day and year first above written.

**SELLER:**

Richard W. Smith  
Richard W. Smith

Barbara Suzanne G. Smith  
Barbara Suzanne G. Smith

**BUYER:**

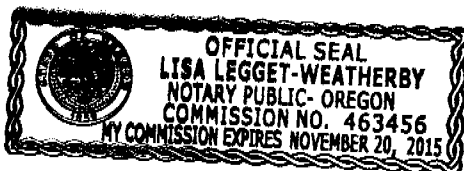
Paul M Grabke  
Paul M Grabke

Melanie J. Grabke  
Melanie J. Grabke

STATE OF OREGON, County of Klamath ) ss.

PERSONALLY APPEARED the above-named Richard W. Smith and Barbara Suzanne G. Smith and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me this 29 day of November, 2011.

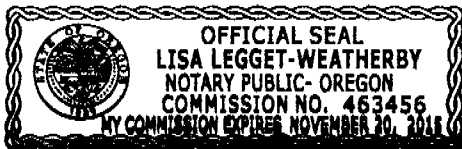


Lisa Weatherby  
NOTARY PUBLIC FOR OREGON  
My Commission Expires 11/20/2015

STATE OF OREGON, County of Klamath ) ss.

PERSONALLY APPEARED the above-named Paul M. Grabke and Melanie J. Grabke and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me this 29 day of November, 2011.



Lisa Weatherby  
NOTARY PUBLIC FOR OREGON  
My Commission Expires 11/20/2015

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

A tract of land situated in the SE1/4 SE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the Southerly line of said Section 19, said point being on the Westerly line of Montelius Street and being South 89°38' West a distance of 10.0 feet from the iron axle marking the Southeast corner of said Section 19; thence Northerly along the Westerly line of Montelius Street a distance of 310.04 feet to an iron pin; thence West at right angles to the East line of said Section 19 a distance of 278.53 feet to an iron pin; thence South parallel with the East line of said Section 19 a distance of 311.8 feet to the Southerly line of said Section 19; thence North 89°38' East along the Southerly line of said Section 19 a distance of 283.53 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the SE1/4 SE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a 1/2" iron pin on the Westerly right of way line of Montelius Street from which the Southeast corner of said Section 19 bears South 00°55'30" East 310.04 feet and North 89°51'18" East 10.00 feet; thence South 00°55'30" East along said right of way line 36.84 feet; thence West 251.77 feet; thence South 273.81 feet to a point on the South line of said Section 19; thence South 89°51'18" West along the said South line 27.35 feet; thence North 310.72 feet; thence East 278.53 feet to the point of beginning.

**PARCEL 2:**

A Tract of land being in a portion of vacated Block 34 and vacated Thrall Street of "Buena Vista Addition", situated in the NE1/4 NE1/4 of Section 30, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon being more particularly described as follows:

Beginning at the Northeast corner of said Section 30 (also being the Northeast corner of vacated Block 34); thence South 00°13'18" West along the East line of said vacated Block 34, 42.47 feet; thence South 81°10'47" West 127.11 feet; thence South 72°21'32" West 105.55 feet; thence South 86°11'21" West 32.68 feet; thence North 04°19'21" West 95.72 feet to the North line of said Section 30; thence Northeast 89°51'18" East 266.18 East to the point of beginning.