

51676

Vol. 72 Page 12748

Q8-5519  
CONTRACT OF SALE

THIS AGREEMENT, Made this 7<sup>th</sup> day of September,  
1973, between BOBBY ALLEN DORTCH, hereinafter called Seller, and  
KENNETH HOLBROOK, hereinafter called Buyer;

W I T N E S S E T H:

That in consideration of the stipulations herein con-  
tained and the payments to be made as hereinafter specified,  
Seller hereby agrees to sell and Buyer agrees to purchase, the  
following described real property situate in Klamath County, State  
of Oregon, to-wit:

The NW $\frac{1}{4}$  of SE $\frac{1}{4}$  and Lot 8 in Section 31, Township 39  
South, Range 10 East of the Willamette Meridian, Klamath  
County, Oregon.

That portion of Lot 7 and the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  lying within the  
following boundaries, to-wit:

Beginning at the Northeast corner of the SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ;  
thence West on subdivision line to the meander line of  
the East side of Lost River; thence following said me-  
ander line down stream to a point 7 chains 68 links  
North of the South section line; thence Northeasterly  
on a straight line to a point 4.40 chains South of the  
place of beginning; thence North 4.40 chains to the place  
of beginning, all in Section 31, Township 39 South,  
Range 10 East of the Willamette Meridian.

The NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 31, ALSO beginning at the  
Northeast corner of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 31;  
thence West 20 chains to stone; thence South 4 chains and  
40 links to stone; thence Northeasterly to the place of  
beginning, in Township 39 South, Range 10 East of the  
Willamette Meridian, also that part of the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of  
Section 32, Township 39 South, Range 10 East of the Will-  
amette Meridian lying West of the Hill Road.

EXCEPTING that part conveyed to the United States of  
America in Deed Book 46 at page 171.

ALSO EXCEPTING parts conveyed to Great Northern Railway  
Company by Deed Book 95 at page 565.

The purchase price of the property, which Buyer agrees  
to pay, is the sum of \$81,200.00, payable as follows:

(a) \$20,000.00 down payment, receipt of which is hereby  
acknowledged.

(b) \$61,200.00 deferred balance, payable as follows:  
Interest only on October 31, 1974; annual installments

LAW OFFICES  
DEESLEY & KNUTSON, P.C.  
181 SOUTH SIXTH STREET  
KLAMATH FALLS, OR. 97601  
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1 of \$3,000.00 or more, plus interest, the first such  
2 installment to be paid on the 31st day of October,  
3 1975, and a like installment to be paid on the 31st  
4 day of each October thereafter until the full sum of  
principal and interest due and owing on the deferred  
balance due under the terms of this contract has been  
paid.

5 Interest on the deferred balance of the purchase price  
6 is fixed at the rate of 7% per annum simple interest on  
7 the declining balances of the deferred balance. Inter-  
est commences on September 20, 1973.

8 All installments due Seller from Buyer under this agree-  
9 ment shall be paid without demand to the escrow holder hereinafter  
10 named. All such installments received shall be applied first to  
11 interest accrued to the date of receipt and then applied to reduce  
12 principal.

13 The above described property is subject to a seller's  
14 lien created by that certain land sale contract made July 15, 1969,  
15 and recorded in Vol. M-69, page 6400, Microfilm Records of Klamath  
16 County, Oregon, wherein Opal C. Waters and Fay A. Waters, her hus-  
17 band, or the survivor of them, therein referred to as "Vendor",  
18 and Louis F. Perdriau and Frances H. Perdriau, husband and wife,  
19 as tenants by the entirety, of an undivided one-half interest, and  
20 Bobby Allen Dortch and Mary Helen Dortch, husband and wife, as  
21 tenants by the entirety, as to an undivided one-half interest, are  
22 therein referred to as "Purchasers", the original of which contract  
23 is placed, together with a warranty deed from the said Vendor, and  
24 title insurance, in escrow with South Sixth Street Branch of First  
25 National Bank of Oregon, as Collection Escrow Holder thereof, se-  
26 curing a Seller's lien in the original principal sum of \$60,000.00,  
27 plus interest at the rate of 7% per annum. Seller herein has re-  
28 duced the said Seller's lien to \$43,680.96, with interest paid to  
29 August 2, 1973.

30 IT IS UNDERSTOOD that Buyer herein does not assume said  
31 Seller's lien and the obligations secured thereby. Seller, there-  
32 fore, covenants and agrees with Buyer with respect to said Seller's



1 lien to:

2 (a) Pay and perform the terms thereof as provided in said  
3 contract;

4 (b) not to increase the amount of the lien created by said  
5 contract by incurring any further indebtedness under the  
6 terms thereof and to reduce the present unpaid balance of  
7 the obligation of \$43,680.96 (plus interest) secured by  
8 said contract according to the terms thereof; and

9 (c) To hold Buyer harmless from and indemnify Buyer against  
10 any and all liability, loss or damage Buyer might otherwise  
11 suffer by reason of the lien created by said contract, in-  
12 cluding, but not limited to, claims costs, demands, attorney  
13 fees, or judgments, and to defend Buyer from any other claims  
14 brought or suits or actions filed against Buyer by reason of  
15 the aforesaid contract unless the same are based upon de-  
16 falcation by Buyer.

17 If Seller neglects or fails to pay the sums due or to  
18 become due under the terms of the aforesaid contract, or fails to  
19 perform any of the terms, covenants, and conditions of said con-  
20 tract, or his covenants contained in this portion of this contract,  
21 and said failure is not occasioned by reason of any default on the  
22 part of Buyer, Seller agrees to pay to Buyer all sums paid or in-  
23 curred by Buyer in protecting Buyer's right secured by this con-  
24 tract, including, but not limited to, costs, charges and expenses  
25 (including costs of evidence of title or validity of Buyer's int-  
26 erest in said real property) and reasonable attorney fees, with or  
27 without trial and if a trial, both at trial and on appeal, incurred  
28 by Buyer, which sum shall bear interest at the rate of ten (10%)  
29 per annum from date of written demand therefor; PROVIDED, HOWEVER,  
30 that before the provisions of this paragraph shall operate, Buyer  
31 shall have given notice to Seller of his intention to advance the  
32 payments to Seller's vendor and Seller shall have thirty (30) days  
within which to make said payment.

If Seller fails to pay Buyer the sums due Buyer under  
the provisions of this contract or fails to perform the terms and  
provisions of the contract not assumed by Buyer, according to the  
terms thereof, such failure shall constitute a material breach of  
this contract, and Buyer shall be entitled to either offset the



1 same from Buyer's obligation to Seller secured by this contract,  
2 or to institute such suit or action as may be necessary to recover  
3 the sums due Buyer under this provision of this contract, or pursue  
4 other such remedies as may be allowed by law or by equity under the  
5 premises.

6 Seller warrants and represents to Buyer that he is law-  
7 fully seized in fee simple of the subject premises, except as here-  
8 inabove set forth, and further warrants and represents that he will  
9 make all payments on the above-mentioned encumbrance as same fall due,  
10 and in the event of his failure to do so, Buyer may give written  
11 notice to Seller of such deficiencies and in the event of the Seller's  
12 failure to remedy said deficiencies within 30 days after receipt of  
13 such written notice, Buyer shall have the right to rescind this con-  
14 tract and recover the moneys paid thereon.

15 Seller specifically warrants and covenants that Buyer shall  
16 be entitled to peaceful and uninterrupted possession of the above  
17 described premises on September 20, 1973, so long as Buyer complies  
18 with his obligations under this contract.

19 It is agreed between the parties hereto that should Buyer  
20 desire to prepay any portion of the contract balance, there shall be  
21 no penalty for such prepayment; all taxes, if any, shall be prorated  
22 as of the date of this contract.

23 All buildings now erected on said premises will be kept  
24 insured by Buyer in favor of Seller against loss or damage by fire  
25 in an amount not less than insurable value in a company or companies  
26 satisfactory to Seller, and Buyer will have all policies of insurance  
27 on said property made payable to Seller as their respective interests  
28 may appear; Buyer will deliver said policies to Seller when insured.

29 Buyer, in consideration of the premises, hereby agrees  
30 that he will pay for all taxes, assessments and/or public and  
31 municipal liens which may hereafter lawfully be imposed upon said  
32 premises, promptly and before the same or any part thereof becomes  
past due. In the event Buyer shall allow the taxes or other



1 assessments upon said property to become delinquent or shall fail  
2 to remove any lien or liens imposed upon said property, the Seller,  
3 without obligation to do so, shall have the right to pay the amount  
4 due and to add said amount to the principal remaining due under  
5 this contract, to bear interest thereon at the rate provided herein.

6 Seller agrees to furnish Buyer with a purchaser's policy  
7 of title insurance upon the execution of this agreement insuring  
8 Buyer's interest as of the date of this contract.

9 At such time Buyer or his legal representatives or  
10 assigns shall pay the several sums of money aforesaid, punctually  
11 and at the times above specified, and shall strictly and literally  
12 perform all and singular the agreements and stipulations afore-  
13 said, according to the true intent and tenor thereof, then Seller  
14 shall give to Buyer, his heirs and assigns, upon request at the  
15 First National Bank of Oregon, South Sixth Street Branch, Klamath  
16 Falls, Oregon, a good and sufficient warranty deed of conveyance,  
17 conveying said premises in fee simple, free and clear of encum-  
18 brances as of the date of this contract.

19 Time is of the essence in this contract and Buyer cove-  
20 nants to promptly make all payments of principal and interest  
21 when due and to otherwise fully and promptly perform his obliga-  
22 tions hereunder, and the conditions contained hereunder. Seller  
23 may, upon thirty (30) day's written notice to Buyer, and providing  
24 default continues during said thirty (30) day period, declare  
25 this contract terminated and at an end, and upon such termination,  
26 all of Buyer's right, title and interest in and to the described  
27 property shall immediately cease. Seller shall be entitled to  
28 immediate possession of the described property and may forcibly  
29 enter and take possession of the same, removing Buyer and his  
30 effects therefrom, and all payments theretofore made by Buyer to  
31 Seller and all improvements or fixtures placed on the described  
32 property shall be retained by Seller as liquidated damages; or



1 IN THE ALTERNATIVE,

2 Seller may, at his option, foreclose this contract by  
3 strict foreclosure in equity, and upon the filing of such suit,  
4 all of Buyer's right, title and interest in and to the above des-  
5 cribed property shall immediately cease and Seller shall be en-  
6 titled to immediate possession of said property, removing Buyer  
7 and his effects, and all payments theretofore made by Buyer to  
8 Seller and all improvements or fixtures placed upon the described  
9 real property shall be forfeited to Seller as liquidated damages.  
10 Such right to possession in the Seller shall not be deemed incon-  
11 sistent with the suit for foreclosure but shall be in furtherance  
12 thereof, and in the event Buyer shall refuse to deliver possession  
13 upon the filing of such suit, Buyer, by the execution of this  
14 contract, consents to the entry of an interlocutory order granting  
15 possession of the premises to the Seller immediately upon the fil-  
16 ing of any suit for strict foreclosure without the necessity of  
17 Seller posting a bond, or having a receiver appointed; or, IN THE  
18 ALTERNATIVE,

19 Seller shall have the right to declare the entire un-  
20 paid principal balance of the purchase price, with interest there-  
21 on, at once due and payable, and in such event, Seller may either  
22 bring an action at law for the balance due, thereby waiving the  
23 security, or in the alternative, may file suit in equity for such  
24 unpaid balance of principal and interest and have the property  
25 sold at judicial sale, with the proceeds thereof applied to the  
26 court costs, attorney fees, and the balance due Seller, and may  
27 recover a deficiency judgment against the Buyer for any unpaid  
28 balance remaining thereon; EXCEPT, HOWEVER,

29 If Buyer should default in any of the items, covenants  
30 and provisions of this contract to be performed by him, and the  
31 unpaid principal balance of the deferred balance shall (as of the  
32 date of the institution of any suit or action by reason of such



1 default) be \$40,000.00 or less, the provisions of ORS 88.70 and  
2 88.80 relating to the foreclosure and redemption of the mortgage  
3 shall apply to the extent that any decree granted Seller shall  
4 not entitle Seller to a deficiency judgment and Buyer shall have  
5 one year in which to redeem.

6 In addition to the remedies hereinabove set forth,  
7 Seller shall have any and all other remedies under the law.

8 In case suit or action is instituted to enforce any of  
9 the provisions of this contract, the prevailing party shall be  
10 entitled to such sums as the Court may adjudge reasonable as  
11 attorneys' fees in said suit or action, in addition to costs and  
12 disbursements provided by statute.

13 The Buyer further agrees that failure by the Seller at  
14 any time to require performance by the Buyer of a provision here-  
15 of shall in no way affect the Seller's right hereunder to enforce  
16 the same, nor shall any waiver by said Seller of the breach of any  
17 provision hereof be held to be a waiver of any succeeding breach  
18 of any such provision, or as a waiver of the provision itself.

19 IT IS UNDERSTOOD AND AGREED by and between the parties  
20 hereto that neither this contract nor any interest in such con-  
21 tract, or in the above described property, shall be assigned,  
22 conveyed or transferred in any manner whatsoever, directly or in-  
23 directly, by the Buyer without the written consent of the Seller,  
24 nor may possession or control of the premises or any part thereof  
25 or interest therein be transferred by the Buyer without the  
26 written consent of the Seller.

27 IN WITNESS WHEREOF, the said parties have hereunto set  
28 their hands in duplicate the day and year first above written.

29 SELLER:

30 *Bobby Allen Dortch*

31 BUYER:

32 *Kenneth Holbrook*



12755

1 STATE OF OREGON )  
2 County of KLAMATH ) ss.

September 12<sup>th</sup>, 1973

3 Personally appeared the above named BOBBY ALLEN DORTCH  
4 and acknowledged the foregoing instrument to be his voluntary act  
5 and deed.

Before me:

*W. D. Goehner*  
Notary Public for Oregon  
My Commission expires: 11/23/76

7 STATE OF OREGON )  
8 County of KLAMATH ) ss.

September 7, 1973

9 Personally appeared the above named KENNETH HOLBROOK  
10 and acknowledged the foregoing instrument to be his voluntary act  
11 and deed.

Before me:

*Marlene T. Addington*  
Notary Public for Oregon  
My Commission expires: 3-21-77

12  
13 Marlene T. Addington  
14 Notary Public for Oregon \* \* \* \* \*  
My commission expires

## ADDENDUM TO CONTRACT OF SALE

15 I, the undersigned, surviving spouse of the original  
16 vendors of that certain contract of sale of real property dated  
17 July 15, 1969, recorded in Vol. M-69, page 6400, Deed Records of  
18 Klamath County, Oregon, and surviving spouse of the sellers of  
19 the real property described in the contract to which this consent  
20 is appended, do hereby consent to the foregoing contract. This  
21 consent shall not release any party to the contract dated July 15,  
22 1969, and shall not operate as a novation.

Dated this 14<sup>th</sup> day of September, 1973.

*Opal C. Waters*  
Opal C. Waters

27 STATE OF OREGON )  
28 County of KLAMATH ) ss.

September 14<sup>th</sup>, 1973

29 Personally appeared the above named OPAL C. WATERS and  
30 acknowledged the foregoing instrument to be her voluntary act and  
31 deed.

Before me:

*W. D. Goehner*  
Notary Public for Oregon  
My Commission expires: 11/25/76

LAW OFFICES  
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12756

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record at request of TRANSAMERICA TITLE INS. CO  
this 20th day of SEPTEMBER A. D., 1973 at 10:32 o'clock A. M., and duly recorded in  
Vol. M 73 of DEEDS on Page 12748  
FEE \$ 18.00

WM. D. MILNE, County Clerk  
By Hazel Drazil deputy