

4687

Vol. 7175

10688

CONTRACT

38-7160

THIS AGREEMENT made and entered into as of the 1st day of September, 1975, by and between Kenneth C. Gulick and Elizabeth Gulick, Husband and Wife, hereinafter sometimes referred to as Seller, and Donald W. Miller and Evelyn M. Miller, Husband and Wife, hereinafter sometimes referred to as Purchaser,

W I T N E S S E T H:

That Seller, for and in consideration of the covenants and agreements herein stated to be kept and performed by the Purchaser, agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and pay to Seller the purchase price hereinafter stated for the following described real property:

The E $\frac{1}{2}$ W $\frac{1}{2}$ in Section 17, Township 25 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon. EXCEPTING THEREFROM the NE $\frac{1}{4}$ NW $\frac{1}{4}$, containing a total of 120 acres, more or less.

Together with the following rights and interests in the North 40 acres of the above-described real property which is except as otherwise stated in this contract specifically excluded from this transaction: Purchaser shall have an easement for right of way purposes on all that real property situated in the Westerly 30 feet of the above-referenced North 40 acres which is otherwise specifically excluded from this conveyance. Said easement is appurtenant to each and every portion of the property herein conveyed.

Further, the Seller grants to Purchaser a first right of refusal to purchase the above-referenced North 40 acres section which is excluded from this conveyance with the exception of the easement for right of way purposes over the Westerly 30 feet thereof. Prior to the sale or conveyance of this property in any way, the Seller shall give to Purchaser a written notice of intent to sell or convey - - such notice shall be in writing and shall be mailed to Purchaser at Purchaser's last known address. Purchaser shall have 90 days from the receipt of said notice within which to exercise his right to purchase the said property at the then agreed fair-market price therefore. If Purchaser fails to exercise his then right to purchase the said property within the said 90 days, or if Purchaser declines to Seller in writing his right to purchase said property prior to the lapse of the said 90 days - - then Seller shall have the right and privilege to sell or otherwise dispose of the said property with-

out any right or interest of Purchaser, save and except the easement over the Westerly 30 feet of said property as hereinabove contained.

Price and Terms:

The purchase price of the property, including the above-described easement and the above-described first right of refusal in connection with the North 40 acres, which Purchaser agrees to pay to Seller, is One Hundred Fourteen Thousand Dollars (\$114,000.00), which shall be paid as follows:

(1) Ten Thousand Dollars (\$10,000.00) in cash, which Seller acknowledges receipt of;

(2) One Hundred Four Thousand Dollars (\$104,000.00) shall be paid in annual installments of not less than Eleven Thousand Seven Hundred Twenty-Eight Dollars (\$11,728.00) each, payable on the first day of September of each year hereafter beginning with September 1, 1976, and continuing until said purchase price is fully paid. All of said purchase price may be paid at any time; all deferred balances of said purchase price shall bear interest at the rate of five percent (5%) per annum from September 1, 1975 until paid, interest to be paid annually and being included in the minimum monthly payments above required. Taxes on said property shall be paid by Purchaser separate and apart from the above-required minimum annual payments.

Prepayment:

The Purchaser may make additional payments on this contract at any time to apply on the principal balance.

Possession and Care of Property:

Purchaser shall have the right to possession of said property on September 1, 1975, and may retain such possession so long as Purchaser is not in default under the terms of this contract. Thereafter Purchaser shall maintain the said property, and not permit any waste or strip thereof; he will keep said premises free from mechanics' and other liens and save the Seller harmless therefrom and reimburse Seller for all costs and attorneys' fees incurred by him in defend-

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ing against such liens.

Annual Property Taxes and Other Items:

Taxes on the said property for the current taxable year up through June 30, 1976 shall be the responsibility of the Seller. Thereafter the Purchaser shall pay the annual property taxes on said property, when due. Purchaser agrees to pay and assume all public liens, charges and assessments made on or after the date of this contract upon said property.

If in the future at any time during which this contract is in force the premises hereby conveyed become disqualified for the special tax assessment for farm use so that additional taxes, interest and penalty are assessed, then any such assessments for taxes, interest and penalty relating to tax years up through June 30, 1976 will be paid by Seller, and any such assessments for or relating to the tax year beginning July 1, 1976 or any subsequent tax years shall be paid by Purchaser.

Access Road:

Seller agrees that at his own expense he will furnish an access road from the presently used Forest Service Road on the U. S. Forest Service property to the West of the subject property to another road on Forest Service property which runs generally parallel to the subject property but is closer to the Westerly border thereof than the presently used Forest Service Road. This access road will commence at the presently used Forest Service Road at a point approximately due East from the Northern border of the North 40 acres theretofore described, and shall run in an Easterly direction to the road which lies just West of the Westerly border of the subject property and which runs South along a line which is generally parallel to the Western border of the subject property.

Conveyance:

Seller agrees that when said purchase price is fully paid and upon request and upon surrender of this agreement, Seller shall de-

liver a good and sufficient deed conveying said premises in fee simple unto the Purchaser, his heirs and assigns, free and clear of encumbrances as of the date hereof and free and clear of all encumbrances since said date placed, permitted, or arising by, through or under Seller, excepting, however, the said easements and restrictions and the taxes, municipal liens, water rents and public charges so assumed by the Purchaser and further excepting all liens and encumbrances created by the Purchaser or his assigns.

Title Insurance:

The Seller agrees that at his own expense and within 30 days from the date hereof, he will furnish unto Purchaser a title insurance policy insuring, in an amount equal to said purchase price, marketable title in and to said premises in the Seller on or subsequent to the date of this agreement, save and except the usual printed exceptions and the building and other restrictions and easements now of record, if any.

Condemnation:

In the event of condemnation or appropriation of all or any substantial part of the above-described property by any public or private corporation under the laws of eminent domain such portion of the moneys received in any said proceedings that shall relate to any of the property, the title to which is in the Seller or Seller's successors at the time of such taking, shall be applied as a credit upon the unpaid principal balance then existing under this contract; any excess shall be paid to the Purchaser.

Assignment:

The Purchaser agrees that he will not attempt to sell, transfer, assign, convey or dispose of his interests herein in any manner except as herein provided without first having obtained the written consent of the Seller. Seller agrees that he will not unreasonably withhold such consent in the event a responsible third party is obtained to assume Purchaser's interests herein. It is further under-

stood and agreed, however, that in the event of such consent and transfer of Purchaser's interests that Purchaser shall remain and continue to be personally liable for the full performance of all of the terms and conditions herein contained until Seller has received payment in full of all sums required to be paid herein.

Seller's Remedies on Breach:

In the event that Purchaser 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 of the essence of this agreement, then Seller shall have the following rights:

- (1) To foreclose this contract by a suit in equity.
- (2) To declare the full unpaid balance of the purchase price, together with interest thereon, immediately due and payable.
- (3) To specifically enforce the terms of this agreement by a suit in equity.
- (4) To declare this agreement null and void as of the date of the breach, and to retain as liquidated damages the amount of the payments theretofore made upon said premises. Under this option all of the right, title, and interest of the Purchaser shall revert and revest in Seller without any act of re-entry or without any other act by Seller to be performed, and Purchaser agrees to peacefully surrender the premises to Seller, or in default thereof Purchaser may, at the option of Seller, be treated as a tenant holding over unlawfully after the expiration of a lease, and may be ousted and removed as such.

The Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payments as provided for herein, until notice of said default has been given by Seller to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the

giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the mails of a certified letter containing said notice and addressed to Purchaser at Purchaser's last known address. If Purchaser shall fail to make payment as herein provided and said failure shall continue for more than 30 days after the payment becomes due, Purchaser shall be deemed in default and Seller shall not be obligated to give notice to Purchaser of a declaration of said default.

Purchaser's Representation:

The Purchasers certify that this contract of purchase is accepted and executed on the basis of their own examination and personal knowledge of the property and opinion of the value thereof; that no attempt has been made to influence their judgment; that no representations as to the condition or repair of said premises have been made by Seller or any agent of Seller; that no agreement or promise to alter, repair, or improve said premises has been made by Seller or by any agent of Seller; and that Purchaser takes said property in the condition existing at the time of this agreement.

Waiver:

Failure by Seller at any time to require performance by Purchaser of any of the provisions hereof shall in no way affect Seller's rights hereunder to enforce the same, nor shall any waiver by Seller of any breach hereof be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

Binding Effect:

The covenants, conditions and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto, provided, however, that nothing contained in this paragraph shall alter the restrictions hereinabove contained relating to assignment.

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Construction:

In construing this contract, it is understood that Seller and/or purchaser may be more than one person and that where the contract so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter.

Attorneys' Fees:

In case suit or action is brought by either of the parties hereto to enforce any of the rights or provisions expressed in this agreement, the parties not prevailing agree to pay the prevailing parties' costs and disbursements related to said proceeding, together with such sum as the Court may adjudge reasonable as attorneys' fees for the prevailing parties, including attorneys' fees on any appeal from a lower Court's ruling.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first hereinabove written.

Seller:

Kenneth C. Gulick
Elizabeth J. Gulick

STATE OF OREGON

COUNTY OF Deschutes

Purchaser:

Donald W. Miller
Eugene M. Miller

Date: Aug 25 1975

Personally appeared the above-named Kenneth C. Gulick and Elizabeth Gulick and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Bradley J. Farnham
Notary Public for Oregon
My Commission Expires 2/4/1977

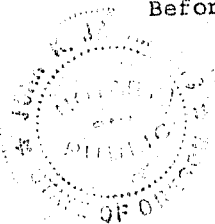
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STATE OF OREGON)
COUNTY OF MULTNOMAH) ss.

Date: Sept 4, 1975

Personally appeared the above-named Donald W. Miller and Evelyn M. Miller and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:



John F. Gubling
Notary Public for Oregon
My Commission Expires 7/10/76

Return
B. Rupert Koblegaard, atty
310 Mayer Bldg
Portland OR 97205

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Transamerica Title

Filed for record at request of

this 9 day of Sept A.D. 1975 at 3:50 o'clock P.M., and
duly recorded in Vol. M 75 of deeds on Page 10688
\$24.00

W. D. Miller, County Clerk
W. D. Miller