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14179

CONTRACT—REAL ESTATE

Vol. 76 Page 7726

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THIS CONTRACT, Made this 12th day of May 1976, between James Russell McGibbeny and Shirley M. McGibbeny, husband and wife, hereinafter called the seller, and Jerry Brandon and Irene F. Brandon, husband and wife, hereinafter called the buyer,

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in Klamath County, State of Oregon, to-wit:

PARCEL 1

A parcel of land situated in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, Township 35 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at a one-half inch iron pin at the intersection of the North line of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 11 with the centerline of the County Road known as Skeen Ranch Road, said point being South 89° 19' 45" East a distance of 694.57 feet from the iron pin marking the Northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 11; thence South 11° 22' 10" West along the centerline of said road a distance of 600.00 feet to a one-half inch pin; thence North 82° 48' 26" East a distance of 966.70 feet to a one-half inch iron pin on the Westerly bank of the Sprague River; thence continuing North 82° 48' 26" East to the centerline or thread of said river; thence Northwesterly along the centerline of said river to its intersection with the North line of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 11; thence North 89° 19' 45" West to a one-half inch iron pin on the Westerly bank of said river; thence continuing North 89° 19' 45" West a distance of 540.42 feet to the point of beginning.

PARCEL 2

A parcel of land situated in the S1/2 SW1/4 of Section 11, Township 35 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: (for continuation of this document see reverse side of this Contract) for the sum of Twenty-three Thousand and No/100ths Dollars (\$23,000.00) (hereinafter called the purchase price), on account of which Seven Thousand and No/100ths Dollars (\$7,000.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller); the buyer agrees to pay the remainder of said purchase price (to-wit: \$16,000.00) to the order of the seller in monthly payments of not less than ONE HUNDRED FIFTY-TWO and 91/100ths Dollars (\$152.91) each or more, prepayment without penalty. Contract to be paid in full 15 years from the date of this Contract,

payable on the 25th day of each month hereafter beginning with the month of June, 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 8% per cent per annum from May 25, 1976 until paid, interest to be paid monthly and * ~~being included in~~

the minimum monthly payments above required. Taxes on said premises for the current tax year shall be prorated between the parties hereto as of the date of this Contract.

The buyer warrants to and covenants with the seller that the real property described in this contract is (A) primarily for buyer's personal, family, household or agricultural purposes, (B) for use of organization or even if buyer is a natural person is for business or commercial purposes other than agricultural purposes.

The buyer shall be entitled to possession of said lands on closing, 1976, and may retain such possession so long as he is not in default under the terms of this contract. The buyer agrees that at all times he will keep the buildings on said premises, now or hereafter erected, in good condition and repair and will not suffer or permit any waste or strip thereof; that he will keep said premises free from mechanic's and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney's fees incurred by him in defending against any such liens; that he will pay all taxes hereafter levied against said property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon said premises, all promptly before the same or any part thereof become past due; that at buyer's expense, he will insure and keep insured all buildings now or hereafter erected on said premises against loss or damage by fire (with extended coverage) in an amount full insurable

not less than \$100,000. In a company or companies satisfactory to the seller, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller as soon as insured. Now if the buyer shall fail to pay any such liens, costs, water rents, taxes, or charges or to procure and pay for such insurance, the seller may do so and any payment so made shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's breach of contract.

The seller agrees that at his expense and within 30 days from the date hereof, he will furnish unto buyer 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. Seller also agrees that when said purchase price is fully paid, and upon request and upon surrender of this agreement, he will deliver a good and sufficient deed conveying said premises in fee simple unto the buyer, 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 buyer and further excepting all liens and encumbrances created by the buyer or his assigns.

(Continued on reverse)

*IMPORTANT NOTICE: Delete, by lining out, whichever phrase and whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures; for this purpose, use Stevens-Ness Form No. 1308 or similar unless the contract will become a first lien to finance the purchase of a dwelling in which event use Stevens-Ness Form No. 1307 or similar.

McGibbeny	STATE OF OREGON,
SELLER'S NAME AND ADDRESS	County of _____ ss.
Brandon	I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book _____ on page _____ or as file/reel number _____, Record of Deeds of said county.
BUYER'S NAME AND ADDRESS	Witness my hand and seal of County affixed.
After recording return to:	Recording Officer
Mountain Title Company	By _____ Deputy
Attention: Milly	
NAME, ADDRESS, ZIP	
Until a change is requested all tax statements shall be sent to the following address.	
Jerry and Irene F. Brandon	
P.O. Box 287	
Sprague River, Oregon 97639	
NAME, ADDRESS, ZIP	

And it is understood and agreed between said parties that time is of the essence of this contract, and in case the buyer shall fail to make the payments above required, or any of them, punctually within ten days of the time limited therefor, or fail to keep any agreement herein contained, then the seller at his option shall have the following rights: (1) to declare this contract null and void, (2) to declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable and/or (3) to foreclose this contract by suit in equity, and in any of such cases, all rights and interest created or then existing in favor of the buyer as against the seller hereunder shall revert to and vest in said seller without any act of re-entry, or any other act of said seller to be performed and without any right of the 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. And the said seller, in case of such default, shall have the right immediately, or at any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all the improvements and appurtenances thereon or thereto belonging.

The buyer further agrees that failure by the seller at any time to require performance by the buyer of any provision hereof shall in no way affect his right hereunder to enforce the same, nor shall any waiver by said 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.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$23,000.00. In case suit or action is instituted to foreclose this contract or to enforce any of the provisions hereof, the buyer agrees to pay such sum as the 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 the trial court, the buyer further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal.

In construing this contract, it is understood that the seller or the buyer may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine 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.

IN WITNESS WHEREOF, said parties have executed this instrument in duplicate; if either of the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal affixed hereto by its officers duly authorized thereunto by order of its board of directors.

James Russell McGibbeny
Shirley M. McGibbeny

Jerry Brandon
Irene F. Brandon

NOTE-The sentence between the symbols (S), if not applicable, should be deleted.
STATE OF OREGON, } ss. S7
County of Klamath }
May 12th, 1976

STATE OF OREGON CALIFORNIA }
County of Los Angeles } ss.
May 20, 1976

Personally appeared the above named James Russell McGibbeny and Shirley M. McGibbeny
Jerry Brandon and Irene F. Brandon

Personally appeared the above named James Russell McGibbeny and Shirley M. McGibbeny

and acknowledged the foregoing instrument to be their voluntary act and deed.

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me
Mildred L. Lewis
Notary Public for Oregon
My commission expires 7/19/78

OFFICIAL SEAL
ROBERT E. SMITH
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE PUBLIC for Oregon California
LOS ANGELES
My Commission Expires Jan. 29, 1978

Section 4 of Chapter 618, Oregon Laws 1976, provides:
"(1) All instruments contracting to convey fee title to any real property, at a time more than 12 months from the date that the instrument is executed and the parties are bound, shall be acknowledged, in the manner provided for acknowledgment of deeds, by the owner of the title being conveyed. Such instruments, or a memorandum thereof, shall be recorded by the conveyor not later than 15 days after the instrument is executed and the parties are bound thereby.
"(2) Violation of subsection (1) of this section is a Class B misdemeanor."

(DESCRIPTION CONTINUED)
Beginning at a one-half inch iron pin in the centerline of the County Road known as the Skeen Ranch Road, said point being South 89° 19' 45" East a distance of 694.57 feet and South 11° 22' 10" West a distance of 600.00 feet from the iron pin marking the Northwest corner of the SW 1/4 of said Section 11; thence continuing South 11° 22' 10" West along the centerline of said road a distance of 179.62 feet to a one-half inch iron pin at the intersection with the centerline of a public usage road; thence South 28° 06' 50" East along the centerline of said public usage road a distance of 330.00 feet to a one-half inch iron pin; thence North 77° 20' 36" East a distance of 1718.42 feet to a one-half inch iron pin on the Westerly bank of Sprague River; thence continuing North 77° 20' 36" East to the centerline or thread of said river; thence Northwesterly along the centerline of said river to a point that is North 82° 48' 26" East from the point of beginning; thence South 82° 48' 26" West to a one-half inch iron pin on the Westerly bank of said river; thence continuing South 82° 48' 26" West a distance of 966.70 feet to the point of beginning.
Subject, however, to the following:
1. Rights of the public in and to any portion of the herein described property lying within the limits of roads and highways.
2. Rights of the public and of governmental bodies in and to that portion of the herein described property lying below the high water mark of the Sprague River.
3. Easement and right-of-way, including the terms and provisions thereof, dated April 7, 1939, recorded February 21, 1941 in Volume 135, page 473, Deed Records of Klamath County, Oregon from Wm. M. Bray to United States of America. (Blanket Easement)
4. Easement, including the terms and provisions thereof, dated July 3, 1963, recorded July 9, 1963 in Volume 346, page 419, Deed Records of Klamath County, Oregon for public road purposes from L. A. Glenger and Nina Glenger, husband and wife to Klamath County. (Affects Southwesterly side of Parcel 2)

STATE OF OREGON; COUNTY OF KLAMATH; ss.
I hereby certify that the within instrument was received and filed for record on the 25th day of May A.D., 1976 at 8:39 o'clock A.M., and duly recorded in Vol M 76 of DEEDS on Page 7726.
FEE \$ 6.00
WM. D. MILNE, County Clerk
By Hazel Drazic Deputy