

TK

22983

CONTRACT—REAL ESTATE

Bl. 76 Page 20102

THIS CONTRACT, Made this 4th day of October, 1976, between

Mitchell Dean Rose

and Kevin L. Giberson

hereinafter called the seller,

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: The S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, Township 36 South, Range 13 East of the Willamette Meridian, Klamath County, Oregon.

Subject, however, to the following:

1. Rights of the public in and to any portion of said premises lying within the limits of roads and highways.
2. Recitals, including the terms and provisions thereof, as disclosed by deed from United States of America to Rachel R. Tupper, et al recorded August 10, 1959 in Deed Volume 314, page 656, Records of Klamath County, Oregon.

3. An easement created by instrument, including the terms and provisions thereof, dated November 5, 1965, recorded November 23, 1965 in Volume M65, page 4000, Microfilm Records of Klamath County, Oregon, in favor of United States of America for transmission line and access road easement over Section 7, Township 36 South, Range 13 East of the Willamette Meridian and a portion of E $\frac{1}{2}$ NW $\frac{1}{4}$, Government Lot 2, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and Government Lots 3 and 4.
4. An easement created by instrument, including the terms and provisions thereof dated March 26, 1966, recorded April 21, 1966 in Volume M66, page 3555, Microfilm Records of Klamath County, Oregon, in favor of Portland General Electric Co., for electric transmission line easement over Section 7, Township 36 South, Range 13 East of the Willamette Meridian, and portion of E $\frac{1}{2}$ NW $\frac{1}{4}$, Government Lot 2, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and Government Lots 3 and 4.
(For continuation of this document see reverse side of this document)

for the sum of Ten Thousand and No/100ths-----Dollars (\$10,000.00) (hereinafter called the purchase price), on account of which Three Thousand and No/100ths-----Dollars (\$3,000.00) 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: \$7,000.00) to the order of the seller in monthly payments of not less than SIXTY-FIVE and NO/100THS-----Dollars (\$65.00) each, or more, prepayment without penalty.

payable on the 1st day of each month hereafter beginning with the month of November, 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 7 1/2 per cent per annum from date of Contract 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 pro-rated 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 other purposes, to-wit: for business or commercial purposes—other than agricultural purposes.

The buyer shall be entitled to possession of said lands on closing escrow, 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 therefrom; 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 value

not less than \$10,000.00 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 disclosure 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.

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:

MTC
Attn: Collection Dept.

NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address.

Kevin L. Giberson
1527 Yale St. #2
Santa Monica, Calif. 90404

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of Klamath

I certify that the within instrument was received for record on the 16th day of DECEMBER, 1976,

at _____ o'clock _____ M., and recorded in book _____ on page _____ or as

file/reel number _____

Record of Deeds of said county.

Witness my hand and seal of

County affixed.

Recording Officer

Deputy

20103

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 utterly cease and determine and the right to the possession of the premises above described and all other rights acquired by the buyer 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 \$ 10,000.00. ~~However, the actual consideration consists of or includes other property or value given or promised which is part of the consideration indicated which is~~

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, the feminine 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.

Mitchell Dean Rose
Mitchell Dean Rose

Kevin L. Giberson
Kevin L. Giberson

NOTE—The sentence between the symbols (), if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON, CALIFORNIA)
County of Los Angeles) ss.
October December 3, 1976.

STATE OF OREGON, County of) ss.
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Personally appeared _____ and
_____ who, being duly sworn,
each for himself and not one for the other, did say that the former is the
_____ president and that the latter is the
_____ secretary of _____

Personally appeared the above named
Kevin L. Giberson

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

Before me:
(OFFICIAL SEAL) *[Signature]*
Notary Public for Oregon
My commission expires April 20, 1979

Before me:
(OFFICIAL SEAL)
Notary Public for Oregon
My commission expires:

Section 4 of Chapter 618, Oregon Laws 1975, 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.”

5. Unrecorded Real Estate Contract, (DESCRIPTION CONTINUED) including the terms and provisions thereof and such other exceptions as may appear necessary upon the recording thereof, dated September 26, 1969, between Robert C. Johnson and Patricia A. Johnson, Vendor and Mitchell Dean Rose and Terrie Rae Rose, his wife, Vendee. (Includes other property). The Vendor's interest in said Real Estate Contract was assigned by instrument dated October 6, 1975, recorded October 16, 1975 in Volume M75, page 12822, Microfilm Records of Klamath County, Oregon, to Clara Rohwein and Linda L. Rohwein, not as tenants in common, but with right of survivorship, which Vendees do not assume and agree to pay, and Sellers further covenant to and with Buyers that the said prior Contract shall be paid in full prior to, or at the time this contract is fully paid and that said above described real property will be released from the lien of said contract upon payment of this contract.

STATE OF OREGON) ss.
COUNTY OF KLAMATH)
December 16, 1976

Personally appeared the above named Mitchell Dean Rose and acknowledged the foregoing to be his voluntary act and deed.

Official Seal

Before me:
[Signature]
Notary Public for State of Oregon
My Commission Expires March 21, 1977

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 16th day of DECEMBER A.D., 1976 at 1:42 o'clock P.M., and duly recorded in Vol M 76 of DEEDS on Page 20102.

FEE \$ 6.00

WM. D. MILNE, County Clerk
By *[Signature]* Deputy