

28710

REAL ESTATE CONTRACT

THIS AGREEMENT dated May 1, 1977, by and between ERNEST D. FIRSICK and GLORIA I. FIRSICK, husband and wife, hereinafter called "Seller" and STANLEY S. STONIER and DOLORES E. STONIER, husband and wife, hereinafter called "Buyer";

W I T N E S S E T H :

Seller hereby agrees to sell to Buyer and Buyer hereby agrees to

purchase from Seller the following described real property, to-wit:

In Township 36 South, Range 11 East of the Willamette Meridian:
Section 1: S $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

In Township 36 South, Range 12 East of the Willamette Meridian:
Section 6: W $\frac{1}{2}$ Lot 3, All Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$

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. Reservations included in Land Status Reports, recorded December 3, 1958 in Book 307 at page 191, Deed Records, and recorded March 10, 1959 in Book 310 at page 390, Deed Records. (Affects property in Section 6, Township 36 South, Range 12 East of the Willamette Meridian)

3. An easement created by instrument, including the terms and provisions thereof,

Recorded : October 7, 1958 Book: 304 Page 433

In favor of : Pacific Power & Light Company

For : Electric transmission line right of way 100 feet wide (Affects Westerly 100 feet Sec. 6, Twp 36 S., R 12 EWM.)

4. Reservations of a half interest in all minerals of every kind together with the right to prospect and take possession of the same as set forth in Deed from Inez Weeks Hunter, et al., to Oliver C. Kinney, dated February 16, 1959, recorded March 9, 1959 in Book 310 at page 386, Deed Records. (Affects property in Section 1, Township 36 South, Range 11 East of the Willamette Meridian)

5. An easement created by instrument, including the terms and provisions thereof,

Dated : June 11, 1958 Book: 12 Page 565

For : Roadway over the South 40 feet of Sec. 1, Twp 36 S., R 11 EWM.

TOTAL PURCHASE PRICE: The total purchase price is the sum of ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100THS (\$165,000.00) DOLLARS.

DOWN PAYMENT: Buyers shall pay to Seller as a down payment on said total purchase price the sum of \$45,000.00, to be paid concurrently with the execution of this agreement, and the execution hereof shall be deemed an acknowledgement of the receipt of said down payment by Seller. It is understood that this down payment includes any money paid by Buyers as earnest money for the purpose of binding this transaction.

PAYMENT OF BALANCE: The balance of the price, being the sum of \$120,000.00, shall be paid in annual installments of interest only at the rate of 8% per annum from May 1, 1977:

December 31, 1977 - \$6,400.00

December 31, 1978 - \$9,600.00

December 31, 1979 - \$9,600.00

December 31, 1980 - \$9,600.00

December 31, 1981 - \$9,600.00

The entire balance both principal and interest may be paid after one year from May 1, 1977 without prepayment penalty; provided, however, that no principal payment shall be allowed in the year 1977. The entire balance both principal and interest can be paid off at the end of five (5) years - December 31, 1981, or if it is not,

the payments will increase to \$15,000.00 per year including interest at 8% per annum. Said \$15,000.00 annual payments to be due and payable on the 31st day of December commencing 1982 and each year thereafter until the balance both principal and interest is paid in full. All deferred balances of said purchase price shall bear interest at the rate of 8% per annum from May 1, 1977 until paid.

The Buyer warrants to and covenants with the Seller that the real property described in this contract is:

Primarily for Buyers's personal, family, household or agricultural purposes.

TAXES AND ASSESSMENTS: The Buyer assumes and agrees to pay before delinquency, taxes and assessments of any kind or character which may hereafter become a lien on said real estate.

INSURANCE: Buyer agrees to keep the following items insured against loss by fire, to-wit: barn, electric motor and electric panel on the irrigation pump, in an amount of not less than \$ _____ with loss payable to the parties hereto as their interests appear at the time of loss. Buyer to provide Seller with a copy of the policy or policies as soon as same have been insured. In the event Buyer fails to pay any premium for said 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 this Contract.

PAYMENTS BY SELLER: In the event Buyer fails to make any tax or other payment as herein required, or to maintain insurance, Seller may, but is not hereby required to, make such payment or effect such insurance, and any amount so paid by Seller, together with interest thereon at the same rate as provided in this contract for the unpaid balance, from the date of Seller's payment until repaid shall be reimbursed by Buyer on demand and secured by this contract, all without prejudice to any other right Seller may have by reason of such default.

REPRESENTATIONS: Buyer agrees that full inspection of said property has been made, and that neither Seller, Seller's assigns, nor Seller's representatives have made any representations concerning the condition of the property or the improvements thereon nor has any agreement for alteration, improvement or repair been made unless the same is set forth in this agreement.

RISK OF LOSS: Buyer assumes all hazards of damage to or destruction of any improvements now or hereafter located on said real estate and of the taking of said real estate or any part thereof for public use, and agrees that no such damage, destruction or taking shall constitute a failure of consideration.

USE AND MAINTENANCE: Buyer covenants to keep the buildings and other improvements, if any, now or hereafter located on said real estate in good repair and not to permit waste nor use nor permit the use of said property for any illegal purpose. Buyer covenants to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utilities furnished to said real estate after Buyer is entitled to possession.

FULFILLMENT DEED: Seller agrees, upon receipt of full payment of the purchase price and interest in the manner above specified and when all other terms, conditions and covenants of this contract have been met, to convey the above described real property to Buyer by statutory warranty deed, free and clear of encumbrances except those which may attach after the date hereof through any person other than the Seller or Seller's successors and assigns, and except such encumbrances as Buyer has assumed or to which Buyer has purchased subject as stated above.

POSSESSION: Buyer shall be entitled to possession of the above described properties as of May 1, 1977 and may retain possession only so long as Buyer is not in default herein.

SELLER'S REMEDIES: Time is of the essence of this contract. In the event Buyer shall fail to comply with or perform any condition or agreement hereof promptly at the time and in the manner herein specified

COSTS
Seller's
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or attorney
Seller all
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NOTICES: All
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addresses: mail
Livermore, Cal
TITLE INSURAN
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and shall fail to correct said default within a period of 30 days after personal service or date of mailing of notice thereof as herein provided, the same shall constitute a material breach of this agreement, and thereupon Seller may exercise any of the following optional, cumulative remedies:

- a. Seller may elect to declare this contract null and void and all of Buyer's rights hereunder terminated and upon so doing, all payments made by Buyer hereunder may be declared forfeited to Seller as liquidated damages, and Seller shall have the right to re-enter and take possession of the real estate and Buyer in such event agrees to immediately surrender possession of said premises.
- b. Seller may elect to bring action or actions on any intermediate overdue installment or on any payment or payments made by Seller and repayable by Buyer, it being stipulated that the covenants to pay intermediate installments or to pay items repayable by Buyer are independent of the covenant to make a deed, and that every such action is an action arising on contract for the recovery of money only, as if the promise to pay had been expressed in a different instrument. Buyer agrees that no such action shall constitute an election not to proceed otherwise as to any subsequent default, and no waiver by Seller or any default of Buyer shall be construed as a waiver of any subsequent default.
- c. Seller may accelerate and declare the entire unpaid balance immediately due and payable and may commence an action against Buyer for said unpaid balance, together with any other sums due Seller or herein required to be paid by Buyer by virtue of this contract, including but not limited to interest and delinquent taxes or assessments, and to commence an action for the entire principal balance of the purchase price plus such other sums. The failure of Seller to bring an action against Buyer at any time upon the violation of any of the terms of this contract by Buyer shall not be construed to be a waiver of any of the rights of Seller specified herein.
- d. Seller may foreclose this contract by suit in equity, and in any of such cases, all the right and interest hereby created or then existing in favor of the Buyer derived under this agreement, shall utterly cease and determine, and the premises aforesaid shall revert and revest in the Seller without any declaration of forfeiture or act of re-entry, or without any other act by Seller to be performed and without any right of the Buyer of reclamation or compensation for money paid or for improvements made as absolutely fully and perfectly as if this agreement had never been made.

COSTS AND ATTORNEY'S FEES: In the event Seller elects to exercise Seller's rights under any of the options above set forth, through court action or otherwise, and the Seller incurs any costs, expenses or attorney's fees by reason of such exercise, Buyer agrees to pay Seller all such reasonable costs, expenses and a reasonable attorney's fee in connection with the enforcement of Seller's rights.

NOTICES: All demands, notices and notices of forfeiture may be personally served upon the parties or service thereof may be made by certified mail, addressed to the respective parties at the following addresses: That Seller's address is P. O. Box 304, Sprague River, Oregon 97624. That Buyer's address is Star Route, Livermore, CALIFORNIA 94550.

TITLE INSURANCE: Seller has delivered, or agrees to deliver within 30 days of the date hereof, a purchasers' policy of title insurance in standard form, or a commitment therefor, issued by a title insurance company entitled to do business in the state where the above described property shall be located, in the amount of the purchase price, insuring 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, and 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 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 Buyer and further excepting all liens encumbrances created by the Buyer or his assigns.

PARTIES: The obligations of the undersigned are joint and several, and wherever the context hereof so admits or requires, the singular shall include the plural. This agreement shall benefit and bind the heirs, executors, administrators, successors and assigns of the parties.

ESCROW: As soon as practicable after the execution of this agreement, the parties shall deliver to FIRST NATIONAL BANK OF OREGON, 601 Main Street, Klamath Falls, Oregon, in escrow the following documents:

- a. A full warranty deed covering the above described real property.
- b. A recorded Contract of Sale.
- c. Such escrow instructions as shall meet with the approval of the above named escrow agent.

The parties instruct the above named escrow agent to receive for collection the installments provided for herein and to remit the same to Seller as Seller may from time to time direct. Seller retains a lien on said properties to secure Buyer's payment and performance hereof; but upon full and faithful payment and performance hereby by Buyer, title shall pass, and the escrow agent shall then deliver to Buyer all instruments deposited in escrow.

SURVIVORSHIP: It is agreed by the parties hereto that the rights of Seller herein are the property and for the benefit of Seller jointly while they are both living, and the property and for the benefit of the survivor of them upon the death of either; that it is the intention of Seller that the proceeds of all payments upon this contract will be the property of Seller jointly while they are both living and the property of the survivor of them upon the death of either, said rights of survivorship being in the nature of tenants by the entirety and with right of survivorship. It is further agreed that this contract is executed in favor of Buyer as tenants by the entirety and with right of survivorship.

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

Return: T/A

Ernest D. Firsick
Gloria I. Firsick
 "SELLER"

Stanley S. Stonier
Dolores E. Stonier
 "BUYER"

STATE OF OREGON)
)
 County of Klamath) ss

April 22, 1977

Personally appeared, before me, the above named ERNEST D. FIRSICK and GLORIA I. FIRSICK, husband and wife, and STANLEY S. STONIER and DOLORES E. STONIER, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Kathy R. Mallama
 Notary Public for Oregon
 My Commission Expires 6-13-80

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 27th day of APRIL, 19 77 at 10:58 o'clock A M., and duly recorded in Vol. M77, of DEEDS on Page 7151.

\$ 12.00

FEE

WM. D. MILNE, County Clerk

By Kathy R. Mallama Deputy