

29192

LAND SALE CONTRACT

THIS AGREEMENT made and entered into this 25th day of April, 1977, by and between ISLA A. GELLATLY, a single woman, hereinafter referred to as SELLER, and DONALD O. BIEBER and GLENDA A. BIEBER, husband and wife, _____

hereinafter referred to as BUYERS;

W I T N E S S E T H :

In consideration of the agreements herein contained, Seller hereby agrees to sell, and Buyers hereby agree to purchase, that certain land and all tenements, hereditaments and appurtenances thereunto belonging, described as follows:

The following described real property in Klamath County, Oregon:

In Township 35 South, Range 10 East of the Willamette Meridian:

Section 28: W $\frac{1}{2}$ SW $\frac{1}{4}$

Section 29: E $\frac{1}{2}$ E $\frac{1}{2}$

Section 33: S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPT any portion lying within the right of way of the Chiloquin-Sprague River Highway.

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. Rights of the public and of governmental bodies in that portion of the above described property lying below the high water mark of Sprague River and the ownership of the State of Oregon in that portion lying below the high water mark thereof.
3. Reservations as shown in Deed from the United States to Theodore A. Crume, recorded March 9, 1959 in Book 310 at page 371, Deed Records, as follows: "Title to the above described property is conveyed subject to any existing easements for public roads and highways, for public utilities and for railroads and pipe lines..."
4. An easement created by instrument, including the terms and provisions thereof,
 Dated : February 20, 1965
 Recorded : February 4, 1966 Book: M-66 Page: 1013
 In favor of : Pacific Power and Light Company

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Return: T/A

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For : Electric transmission and distribution
lines (Affects NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 33, 20 feet wide, no exact
location given)

on the following terms and conditions:

FIRST. TOTAL PURCHASE PRICE: The total purchase price is the sum of \$175,000.00.

SECOND. DOWN PAYMENT: Buyers shall pay to Seller as a down payment on said total purchase price the sum of \$20,000.00, to be paid concurrently with the execution of this agreement, and the execution hereof shall be deemed an acknowledgment 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.

THIRD. PAYMENT OF BALANCE: The balance of the price, being the sum of \$155,000.00, shall be paid in monthly installments of not less than \$1,000.00 each, or more, prepayment without penalty, payable on the 28th day of each month hereafter beginning with the month of January, 1978, and continuing on the 28th day of each month thereafter until said purchase price is fully paid, and an additional payment of \$5,000.00 to be paid to the order of the Seller on December 31, 1977, ~~including interest at the rate of 8%~~; a \$10,000.00 lump sum payment on December 31, 1978; and a \$10,000.00 lump sum payment on the 31st day of December each year thereafter until the balance, both principal and interest, 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 annum from January 1, 1978 until paid, interest to be paid monthly and being included in the minimum monthly payments above required. Buyers shall have the privilege of increasing any monthly payment or prepaying the whole consideration at any time provided that additional payments shall not excuse Buyers from making the regular monthly payments provided for in this contract until the remaining balance has been paid in full. It is hereby agreed by and between the parties hereto that the \$5,000.00 lump sum payment on December 31, 1977, shall be applied to principal only.

FOURTH. TAXES AND LIENS: Except as herein expressly provided to the contrary, all current taxes and other assessments on the properties shall be prorated between the parties as of the date of May 1, 1977. Buyers agree to pay all such taxes and assessments thereafter levied before they become delinquent. Buyers further agree to pay and discharge of record all other liens which may thereafter be claimed or imposed against said properties, or any part thereof, within thirty (30) days after the filing thereof or shall supply assurances satisfactory to Seller that said liens, or any judgments or decrees entered thereon, will be paid and discharged of record.

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

SIXTH. REPRESENTATION: Buyers certify that this contract is accepted on the basis of Buyers' own examination and personal knowledge of the properties and opinion as to the value thereof; that the only material representations and warranties inducing this transaction are those expressly set forth herein; that no agreement or promise to alter, repair or improve said properties has been made by Seller or any agent of Seller; and Buyers hereby

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agree to take said properties and the improvements thereon in the condition they are in at the time of execution of this agreement. Buyers agree to keep said properties and the improvements in a good condition of repair and maintenance, and Buyers will commit no waste thereof.

SEVENTH. SELLER'S WARRANTIES: Seller covenants with Buyers as follows: Except as expressly provided herein to the contrary, Seller is the sole owner of said properties and seized in fee simple of the above described real property; that Seller's title to the same is marketable; that Seller has a right to transfer title to the same and possession thereof; that the properties are presently free from all matured and inchoate liens, charges and encumbrances whatsoever, except as the same may be noted in this agreement; that Buyers shall have quiet enjoyment of the properties and that Seller will warrant and defend the same against all lawful claims and demands whatsoever, except as stated herein.

EIGHTH. DEFAULT: If Buyers fail to make any of the payments herein stated within thirty (30) days of the specified payment date, or if Buyers fail to perform any of the other terms, covenants or conditions of this contract, and if any such default in payment or performance shall remain uncorrected by Buyers for thirty (30) days after written notice of such default has been given by certified mail by Seller to Buyers at the Buyers' last known post office address (provided always, that NO NOTICE WHATSOEVER SHALL BE REQUIRED OF SELLER FOR ANY DEFAULT IN PAYMENT OF ANY DEFERRED INSTALLMENTS OF PURCHASE PRICE), time of payment and strict performance in all things being of the essence of this agreement, Seller shall have the following rights:

(1) To declare the entire unpaid balance of the purchase price, both principal and interest, immediately due and payable and to exercise any of the following options:

- (a) To sue for the unpaid balance then due on this agreement;
- (b) To foreclose this contract by strict foreclosure in equity; and to the appointment of a receiver during the pendency of the suit;
- (c) To sue for specific enforcement of this agreement;

(2) or, to declare this agreement null and void and to retain as liquidated damages the payments theretofore made under this agreement by Buyers, and any repair and improvements made upon said properties. If Seller shall so elect to declare this agreement null and void as hereinabove provided, all of the right, title and interest of Buyers shall immediately revert to and revest in Seller without any other act by Seller to be performed and without any right of Buyers of reclamation or compensation for money paid or repairs or improvements added, as absolutely, fully and perfectly as if no agreement had ever been made, and Buyers agree to surrender peaceably said properties and the possession thereof to Seller, or in default thereof Buyers may, at the option of the Seller, be treated as a tenant holding over unlawfully after expiration of a lease and may be ousted and removed as such. Provided always that the recitation of remedies herein shall not be deemed exclusive and shall not bar the parties from any other or additional or supplemental remedy or remedies afforded at law, in equity, or otherwise.

NINTH. DELINQUENT CHARGES: If Buyers shall fail to pay any taxes, assessments, liens or any other expense necessary to preserve Seller's lien hereby retained, and the value and priority thereof, Seller, without obligation to do so, and without waiver of Buyers' default, have the right to pay the same, and treat the

State of Oregon
County of Klamath
I hereby
received and
day of May
o'clock A
in Book 177
of said County

file
4/12/55

amount so paid as a debt due and owing from Buyers to Seller, secured by the lien of this agreement, and to bear interest at contract rate per annum until paid.

TENTH. WAIVER: No waiver of a breach of any covenant, term or condition of this agreement shall be a waiver of any other or subsequent breach of the same, or any other term, covenant or condition, or as a waiver of the term, covenant or condition itself; nor shall such waiver require any notice of any kind to be given to reinstate the defaulted term, covenant or condition, or to make time and strict performance again of the essence.

AFTER TWO YEARS,

ELEVENTH. RELEASE OF ACREAGE: It is specifically understood and agreed that Buyers may request a release of acreage, and if all payments are current Seller agrees to give said release upon receipt of \$250.00 per acre, said payment to be applied to the then owing contract balance. Expenses of said release, including a survey if necessary, to be borne by the Buyers. It is further agreed by and between the parties hereto that the locations of said releases cannot jeopardize Seller's security position.

TWELFTH. 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 contract contains the entire agreement of the parties and cannot be modified except upon written agreement. This agreement shall benefit and bind the heirs, executors, administrators, successors and assigns of the parties.

THIRTEENTH. ATTORNEY'S FEES: Should suit, action or other legal proceeding be instituted to declare or enforce any right created by this instrument, the prevailing party therein shall be entitled to the costs and disbursements provided by statute, and such other sum as the Court may adjudge reasonable for attorney's fees.

FOURTEENTH. RESTRICTIONS ON ASSIGNMENT: Unless otherwise expressly provided herein, no interest in this contract, nor in and to the properties herein agreed to be sold and conveyed, or any part thereof, shall be sold, conveyed, or in any other manner transferred, assigned, or encumbered by Buyers without the written consent of Seller first obtained, which may not be unreasonably withheld.

FIFTEENTH. 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 97601, 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.
- (d) Installment note.

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 Buyers' payment and performance hereof; but upon full and faithful payment and performance hereof by Buyers, title shall pass, and the escrow agent shall

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State of Oregon,
County of Klamath } ss.
I hereby certify that the within
received and filed for record on the
day of May, 1977, at
o'clock, A.M. and recorded on Page
in Book 177 Records of DEEDS
of said County.

WM. D. MILNE, County Clerk
By: *[Signature]* Deputy
503 Park Ave.
Eugene, Oregon 97401
NAME ADDRESS

then deliver to Buyers all instruments deposited in escrow.

As used herein the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this contract.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed this 25th day of April, 1977.

Isla A. Gellatly
Isla A. Gellatly

SELLER

Donald O. Bieber
Donald O. Bieber

Glenda A. Bieber
Glenda A. Bieber

BUYERS

STATE OF OREGON)
) ss.
County of Klamath)

Personally appeared, before me, the above named DONALD O. BIEBER and GLENDA A. BIEBER, husband and wife, _____

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

William B. Doone
Notary Public for Oregon
My Commission Expires: 7-7-81

STATE OF CALIFORNIA)
) ss.
County of San Joaquin)

Personally appeared before me the above named ISLA A. GELLATLY and acknowledged the foregoing instrument to be her voluntary act and deed.

Robert H. Gibson
Notary Public for California
My Commission Expires: 1-7-81
Robert H. Gibson

State of Oregon,) ss,
County of Klamath)

I hereby certify that the within instrument was
received and filed for record on the 6th
day of May, 1977, at 11:26
o'clock A. M. and recorded on Page 7849
in Book M77 Records of DEEDS
of said County.

WM. D. MILNE, County Clerk

4150 By Hazel Orsini Deputy

