

38045

CONTRACT—REAL ESTATE

Vol. 77 Page 20667

THIS CONTRACT, Made this 30th day of September, 1977, between DONALD E. BAILEY and GEORGE A. PONDELLA, JR., hereinafter called the seller, and DANIEL DAVID EWING and BRENDA KAY EWING, 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:

See attached Exhibit "A" and by this reference incorporated herein as if fully set forth.

for the sum of Fifteen thousand five hundred and 00/100 Dollars (\$15,500.00) (hereinafter called the purchase price), on account of which Four thousand and 00/100 - - - Dollars (\$4,000.00) 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: \$11,500.00) to the order of the seller in monthly payments of not less than One hundred thirty-eight and 00/100 Dollars (\$138.00) each, or more, prepayment without penalty,

payable on the 15th day of each month hereafter beginning with the month of November, 1977, 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 1/2 per cent per annum from October 15, 1977 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,

The buyer shall be entitled to possession of said lands on closing, 1977, 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

not less than \$ full insurable value 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.

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:

MTC - So. 6th St.
Attn: Marlene

NAME, ADDRESS, ZIP

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

Mrs. & Mrs. Daniel David Ewing
2927 Valere Ave
Richmond, Calif. 94804

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the day of 1977,

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.

By

Recording Officer

Deputy

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 thereby, 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 remain 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 \$15,500.00.

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, 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.

Donald E. Bailey
Donald E. Bailey

Daniel David Ewing
Daniel David Ewing

George A. Pondella, Jr.
George A. Pondella, Jr.

Brenda Kay Ewing
Brenda Kay Ewing

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

STATE OF OREGON,

County of Klamath

September 10-24, 1977

Personally appeared the above named Donald E. Bailey and George A. Pondella, Jr.

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

Before me: *Shirley A. Cundiff*
Notary Public for Oregon
My commission expires 3-22-81

STATE OF OREGON, County of _____ ss.

Personally appeared _____, 19____

_____ 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 _____

_____ a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me: _____
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 conveyer 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."

CALIFORNIA
STATE OF OREGON

County of Col. ra Costa

FORM NO. 23 — ACKNOWLEDGMENT
STEVENS-HESS LAW PUB. CO., PORTLAND, ORE.

October

BE IT REMEMBERED, That on this 12 day of _____, 1977, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Daniel David Ewing and Brenda Kay Ewing, husband and wife,

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

SHIRLEY A. CUNDIFF
NOTARY PUBLIC - CALIFORNIA
COUNTY OF CONTRA COSTA
My Commission Expires February 12, 1978

Shirley A. Cundiff
Notary Public for California
My Commission expires February 12, 1978

EXHIBIT "A"

The N $\frac{1}{2}$ NE $\frac{1}{2}$ NW $\frac{1}{2}$ of Section 34, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon;

Subject, however, to the following:

(1) Taxes for the fiscal year 1977-1978, a lien but not yet due and payable.

(2) Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.

(3) Conditions and restrictions, including the terms and provisions thereof, as contained in deed recorded February 13, 1930 in Volume 88 at page 624, Deed Records of Klamath County, Oregon, to wit: "And there is reserved from the lands hereby granted a right of way for ditches or canals constructed by authority of the United States, and there is hereby reserved a first lien for all unpaid irrigation charges that have accrued or may accrue against the land involved in accordance with the Act of March 7, 1928 (45 Stats., 200-210)."

(4) Reservations and restrictions, including the terms and provisions thereof, as contained in Deed to Restricted Indian Land, recorded June 26, 1950 in Volume 300 at page 337, Deed Records of Klamath County, Oregon, to wit: "There is reserved from the lands hereby granted a right of way to the Pacific Telephone & Telegraph Company for pole line, approved by Joe M. Dixon, First Assistant Secretary of the Interior, on March 16, 1931, pursuant to the provisions of the Act of March 3, 1901 (31 Stat. L., 1058-1084). Title to the above described property is conveyance subject to any existing easements for public roads and highways, for public utilities, and for railroads and pipe lines, and for any other easements or rights of way of record. All subsurface rights, except water, are hereby reserved, in trust, for the grantor, Chauncey Miller Lotches."

(5) Unrecorded Contract of Sale dated May 23, 1969 between Gienger Enterprises, Inc., as Seller, and Jess W. Henryes and Rose M. Henryes, husband and wife, as Buyers, which Buyers herein 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 mortgage upon payment of this Contract.

(6) Unrecorded Contract of Sale dated May 11, 1970 between Jess W. Henryes and Rose M. Henryes, husband and wife, as Sellers, and James L. Doyal and Colleen N. Doyal, husband and wife, as Buyers, which Buyers herein 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 mortgage upon payment of this Contract.

(7) Unrecorded Contract of Sale dated July 11, 1977 between James L. Doyal and Colleen N. Doyal, husband and wife, as Sellers, and George A. Pondella, Jr. and Donald E. Bailey, as Buyers, which Buyers herein 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 mortgage upon payment of this Contract.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 28th day of October A.D., 19 77 at 10:09 o'clock A.M., and duly recorded in Vol. M77 of Deeds on Page 20667.

FEE \$ 9.00

WM. D. MILNE, County Clerk

By Sumethard Letach Deputy