

TK

43848

CONTRACT—REAL ESTATE

Vol. 78

3777

CA

THIS CONTRACT, Made this 2nd day of February, 1978, between MARGARET O. EVERSON ZERBE, Trustee for Jerry Everson,

and JAMES F. BENSON and JOANNA R. BENSON, husband and wife,

, 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 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, Township 34 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

SUBJECT, however, to the following:

1. Reservations, including the terms and provisions thereof, as set forth in Deed recorded April 27, 1959 in Book 312 at page 55, Deed Records, as follows: "...and there is hereby reserved any and all roads, trails, telephone lines, etc., actually constructed by the United States, with the rights of the United States to maintain, operate or improve the same so long as needed or used for or by the United States".
2. Rights of the public in and to any portion of said premises lying within the limits of roads and highways.
3. An easement created by instrument, including the terms and provisions thereof, (for continuation of this description, see reverse side)

for the sum of Eight Thousand and 00/100-----Dollars (\$ 8,000.00) (hereinafter called the purchase price) on account of which Two Thousand and 00/100-----

-----Dollars (\$ 2,000.00) is paid on the execution hereof (the receipt of which is

hereby acknowledged by the seller), and the remainder to be paid to the order of the seller at the times and in

amounts as follows, to-wit: The buyers agree to assume and pay the seller's existing contract wherein they are purchasing the above described property from Eugene Fox having a balance of \$3,624.10 payable at the rate of \$40.00, or more per month including interest at the rate of 7.2% per annum on the declining balance. The remaining balance of \$2,375.90 shall be payable in monthly installments of \$60.00, or more, including interest at the rate of 8% per annum on the declining balance. Interest to start February 15, 1978 with the first payment due and payable March 1, 1978.

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 an organization or for a business or commercial purpose other than agricultural purposes.

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: eight per cent per annum from February 15, 1978 until paid, interest to be paid monthly and being included in the minimum regular 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 shall be entitled to possession of said lands on February 15, 1978, 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 mechanics' 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 \$-----

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 thirty 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, as for single unit to 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 heirs.

(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-Neess 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-Neess Form No. 1307 or similar.

Margaret O. Everson Zerbe
119 Glenn Avenue
Modesto, CA

SELLER'S NAME AND ADDRESS

James F. Benson, et ux
1144 Callas Lane, Apt. 4
Capitola, CA 95010

BUYER'S NAME AND ADDRESS

After recording return to:

Winema Real Estate
P.O. Box 376
Chiloquin, OR 97624

NAME, ADDRESS, ZIP

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

James F. Benson, et ux
1144 Callas Lane, Apt. 4
Capitola, CA 95010

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the day of 19

at o'clock AM, and recorded in book no 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 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 rest 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 \$ 8,000.00. ~~However, the actual consideration consists of or includes other property or value given or promised which is part of the consideration indicated which.~~

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.

James F. Benson
James F. Benson
Joanna R. Benson
Joanna R. Benson

Margaret O. Everson Zerbe
Margaret O. Everson Zerbe,
Trustee for Jerry Everson
Christine J. Everson

NOTE—The sentence between the symbols (1), if not applicable, should be deleted. See ORS 93.0301.

STATE OF CALIFORNIA

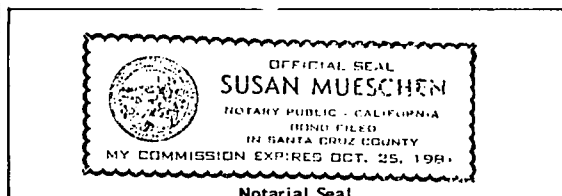
COUNTY OF Santa Cruz

SS:

On February 23, 1978

, before me, the undersigned, a Notary Public in and for said State, having my principal place of business in said County, personally appeared JAMES F. BENSON and JOANNA R. BENSON

known to me to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same.



Susan Mueschen
NOTARY PUBLIC in and for said County in State

Susan Mueschen

Printed or typed name of Notary Public

Inter-Related Services — No. 76

"(2) Violation of subsection (1) of this section is a Class B misdemeanor."

(DESCRIPTION CONTINUED)

Recorded : June 13, 1936 Book: 106 Page: 468
In favor of : Lee V. Corbell
For : Roadway

4. Reservation, including the terms and provisions thereof, as set forth in Land Status Report, recorded October 14, 1958 in Book 304 at page 644, Deed Records of Klamath County, Oregon.

5. Contract, including the terms and provisions thereof,

Dated : January 21, 1970
Recorded : June 25, 1970 Book: M-70 Page: 5190
Vendor : Glenger Enterprises, Inc., an Oregon Corporation
Vendee : Eugene Fox, a single man,

which buyer does not assume or agree to pay and seller herein covenants that he will hold the buyer harmless therefrom.

RECORDED IN CLERK'S OFFICE OF CLATSOP COUNTY OF OREGON, SA
for record at request of Trans America

THIS 23 day of February A.D. 19 78 at 3:30 o'clock P.M. in
fully recorded in Vol. 43848 of M78 on Page 3777

W.D. MILNE, County Clerk

Fee \$6.00

By *Bernetha J. Helich*