

10/3/78

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Highway Division  
File 23064

Vol. <sup>m</sup> 78 Page 24807

ORIGINAL

LAND SALE CONTRACT

THIS AGREEMENT, made and entered into this 23 day of October, 1978, by and between the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, hereinafter referred to as "State", and FOOTHILLS DEVELOPMENT COMPANY, an Oregon corporation, hereinafter referred to as "Purchaser".

WITNESSETH:

That State, for the consideration hereinafter mentioned, covenants and agrees to and with Purchaser to sell and convey unto Purchaser, and Purchaser agrees to purchase from State, the following described property, to wit:

A parcel of land lying in Block 125, Buena Vista Addition to Klamath Falls, Klamath County, Oregon, the said parcel being described as follows:

Beginning at the most Northerly corner of said Block 125; thence Southeasterly along the Northeasterly line of said Block 125, a distance of 85 feet; thence Southerly in a straight line 260 feet, more or less, to a point on the Northeasterly line of said Block 125, said point being 110 feet Southwesterly of the most Easterly corner of said Block 125; thence Southwesterly along the Southeasterly line of said Block 125, a distance of 65 feet to the most Southerly corner of said Block 125; thence Northwesterly along the Southwesterly line of said Block 125, a distance of 320 feet, more or less, to the most Westerly corner of said Block 125; thence Northeasterly along the Northwesterly line of said Block 125, a distance of 168.4 feet to the place of beginning.

The parcel of land to which this description applies contains 42,019 square feet.

The above described property shall hereafter be referred to as "premises".

1. PAYMENTS. Purchaser agrees to pay State therefor the sum of One Thousand Seven Hundred Fifty and No/100 DOLLARS (\$1,750.00) payable as follows:

- a. Seven Hundred Fifty and No/100 DOLLARS (\$750.00) as the down payment, receipt of which is acknowledged, and
- b. The balance of One Thousand and No/100 DOLLARS (\$1,000.00) to be paid in installments of not less than Forty Six and 50/100 DOLLARS (\$46.50) per month, which includes interest at the rate of 10 3/4 percent per annum on the unpaid balance of

Tax statements are to be sent to the following address:

State of Oregon, Department of Transportation  
Department of Transportation Bldg. Rm. 119  
Salem, OR 97310

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the purchase price and subsequent tax advances, said monthly payments to commence on the 1st day of the month following the execution of this contract by both parties, and continue monthly thereafter on the 1st day of each following month until the full amount of said principal and all tax and other advances, including all interest thereon, is paid.

2. UNPAID BALANCE. Purchaser may pay all or any part of the balance due on this contract at any time prior to the time herein specified and required.

3. IMPROVEMENTS. All buildings and improvements hereafter placed upon premises shall be kept in good repair by Purchaser and not be removed prior to final payment under this contract.

4. TAXES. State will pay all real property taxes assessed against premises and improvements thereon becoming due and payable after the date of this contract, as said real property taxes become due, or in advance of the due date thereof and add said taxes to the principal balance due on the purchase price of premises. The amount of the monthly payments under this contract will be adjusted on January 1, 1979 and on January 1st of each year thereafter to reflect the amount of the annual real property taxes assessed against premises and improvements thereon.

Except for the real property taxes as hereinabove provided, Purchaser agrees to regularly and seasonably pay all other liens, assessments and charges, including local improvement assessments, which are or may be hereafter lawfully imposed or which constitute or will constitute liens or encumbrances against premises. Should Purchaser fail or refuse to pay and discharge any of the above-mentioned liens, assessments or charges prior to the time they are to become delinquent, State, at its option, may pay the same and add the amount expended to the balance of the purchase price.

5. DEED. In case Purchaser, its successors or assigns, shall pay the several sums of money aforesaid, punctually and at the time above specified, and shall strictly and literally perform all and singular the agreements and stipulations

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aforesaid, according to the time, intent, and tenor thereof, then State will give unto Purchaser, its successors or assigns, upon request and upon surrender of this contract, a deed conveying premises.

6. CONDITIONS, RESERVATIONS and RESTRICTIONS. The property sold shall be subject to the following conditions, reservations and restrictions and the deed of conveyance shall contain the following provisions with regards thereto:

"This conveyance is made and delivered upon the following express conditions, reservations and restrictions:

"1. That there is reserved to the State of Oregon, its successors and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, and geothermal resources; provided, however, that the right hereby reserved to use the surface for any of the above activities shall be subordinate to that actual use of the surface of the premises deeded herein, or any part thereof, being made by the surface rights owner at the time that the State's lessee conducts any of the above activities. In the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the State's lessee conducts any of the above activities.

"2. That there is reserved to Grantor, and waived by Grantee, all access rights between the above described real property and the right of way of the The Dalles - California Highway abutting on said parcel, which public highway is further identified as State Highway No. 4.

"3. That the above described land shall never be used for the placing or maintenance of any advertising sign, display or device, except such sign, display or device used to advertise the activities on said land, or the lease of said land or any portion thereof. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents or employees to enter upon said land and remove, destroy or obliterate any unauthorized sign, display or device, without liability for damage or injury thereto, and to recover the cost of such removal, destruction or obliteration from the owner of said land.

"4. That no junk, scrap, junked motor vehicles or parts thereof, debris, trash, waste or other such materials shall be placed on said land for whatever purpose in any manner so as to be visible from a state highway, provided that such items as listed above can otherwise be placed on said land without violating any applicable law, ordinance or regulation. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents or employees to enter upon said land and remove or destroy any unauthorized junk, scrap or other material mentioned above and recover the cost of such removal or destruction from the owner of said land.

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"5. That this property shall not be used for the operation of any garbage dump or sanitary land fill. If such use is made of the property, Grantor may, at its election, enter upon said land and restore it to the condition that existed prior to said use for garbage dump or sanitary land fill purposes and recover the cost thereof from the owner of said land.

"6. That this conveyance is made upon the further condition, which shall constitute a covenant running with the land, that Grantor shall not at any time become liable to Grantee, its successors or assigns in interest for damages to the land herein described or any buildings, structures, improvements or property of any kind or character now or hereafter located upon said land or for any injuries to any owner, occupant or any person in or upon said land or for any interference with the use and enjoyment of said land or for damages which except for this covenant might constitute a nuisance caused directly or indirectly by noise or air pollutant emissions from transportation vehicles using the highway or transportation facility adjacent to said land. Any reference in this covenant to the highway or transportation facility adjacent to said land refers to the highway or transportation facility as it now exists and also as it will exist with future improvements. Grantee for itself and for those who may hold title to any of said land under or through it, hereby covenants not to sue Grantor for any of said injuries or damages.

"It is understood that the conditions, restrictions, covenants and reservations herein set out have been considered in determining the amount of consideration of this conveyance.

"The rights and remedies herein reserved or provided shall not be exclusive and shall not be in derogation of any other right or remedy which Grantor may have. The restrictions, rights, and conditions herein contained shall run with said land and shall forever bind Grantee, its successors and assigns. Where any action is taken to enforce the above mentioned conditions, Grantor shall not be liable for any trespass or conversion as to any real or personal property. Where legal proceedings are commenced by Grantor to enforce the foregoing restrictions or for the recovery of the aforementioned removal or destruction costs, Grantor, if successful, shall be entitled to reasonable attorney fees and court cost.

"7. That Grantee assumes the obligation for all costs and legal encumbrances, if the property should later be declared an archeological site, subject to Federal and State Antiquity law. Cost of removal and re-interment of any human remains which may be found on the site shall also be an obligation of Grantee.

7. ASSIGNMENT. Purchaser shall not sell, assign, or transfer this contract unless the written consent of State is first obtained. In case such sale, assignment, or transfer is so authorized by State, the assignees thereof shall be entitled to all the rights and privileges and shall be under all the obligations and duties of Purchaser as specified herein.

8. DEFAULTS. Time and the prompt and punctual payment of all sums payable hereunder, and the exact performance and observance of each and all of the agreements

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and provisions herein contained, are in each and every case of the essence of this contract.

If Purchaser shall fail to pay, when the same becomes due as herein provided, any installment specified herein, or shall become delinquent in the payment of said installments or any of them or in the payment of any assessments levied or assessed or becoming payable against premises, or shall fail to keep premises free from liens and encumbrances accruing after this date, or shall otherwise fail to keep and perform the agreements herein, State may at its option, terminate this contract by giving Purchaser thirty (30) days notice in writing of its intentions to do so, and upon the expiration of said thirty (30) day period and the continued default in any covenant or condition by Purchaser during such period, then State may, without tender of performance, or suit or action, declare this contract null and void, and all the rights of Purchaser in said contract and all its estate, equity, interest, or right of possession in premises shall cease and terminate, and all payments made by Purchaser to State, whether on principal or interest, or for taxes, liens or assessments, and including any and all buildings and improvements upon premises, shall be forfeited to State, the same being considered liquidated damages for the non-performance of this contract, and State shall have the right of immediate possession of premises without the necessity of court action; or State may elect to consider this contract existing, and, in case of a continued default by Purchaser for a period of thirty (30) days after notice to Purchaser calling attention to such default, State may declare the whole of the unpaid purchase price, together with all accrued interest, immediately due and payable. In the event any suit or action is brought by State to enforce the collection of the said unpaid purchase price and interest, or to obtain possession of premises in the event Purchaser fails to surrender the same peaceably on default or for the collection of any unpaid installment or installments, Purchaser agrees to pay such reasonable attorney's fees as the court may allow to State.



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Whenever the word "Purchaser" is used herein the same shall be deemed to include Purchaser, its successors or assigns.

The real property hereinabove described is no longer needed or required by State for highway, scenic or park purposes.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

FOOTHILL DEVELOPMENT COMPANY, an  
Oregon corporation

By Harold C. Lacy  
President

By Agnes Clara Lacy  
Secretary

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION,  
Highway Division

By J. E. Boyd  
J. E. Boyd, Right of Way Manager

10/23/78

APPROVED AS TO FORM:

James L. Lacey  
Asst. Attorney General and Counsel

STATE OF Wash ~~OREGON~~, County of Clark

Oct 10, 1978. Personally appeared Harold C. Lacy  
and Agnes Clara Lacy, who, being sworn, stated that they are the Pres-  
ident and Secretary of grantor corporation and that this instrument was voluntarily  
signed in behalf of the corporation by authority of its Board of Directors. Before

me:

Sharon V. Whittle  
Notary Public for ~~Oregon~~ Wash

My Commission expires 7/29/78

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STATE OF OREGON, County of Marion

Oct. 23, 1978. Personally appeared J. B. Boyd, who being sworn, stated that he is the Right of Way Manager for the State of Oregon, Department of Transportation, Highway Division, and this document was voluntarily signed on behalf of the State of Oregon, by authority delegated to him. Before me:

Adele L. Egan  
Notary Public for Oregon

My Commission expires Oct. 30, 1980



STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Dept. of Transportation

on 2nd day of November A. D. 1978 at 3:21 o'clock P.M., and

lawfully recorded in Vol. M78 of Deeds

on Page 24807

W. D. MILNE, County Clk.

Bernetha Shetch

Fee \$21.00

Department of Transportation  
HIGHWAY DIVISION  
TRANSPORTATION BUILDING  
SALEM, OREGON 97310