

60611

CONTRACT—REAL ESTATE

Vol. 1779 Page

440

THIS CONTRACT, Made this 9 day of December, 1978, between
 Daniel Bailey, Star Rt. 2 Box 568; Chiloquin, Ore. 97624
 and Robert P. Lyells 2043 Hostetter Rd., San Jose, Calif. 95132, 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 de-
 scribed lands and premises situated in Klamath County, State of Oregon, to-wit:

Township 36 South, Range 12 East Willamet Meridian section 36; East 1/2 of the
 Southeast 1/4. All subsurface rights have been reserved. Grantor grants to grantee
 and his successors the nonexclusive use in easements recorded in vol. 178 Pg 966
 Klamath County records, excepting the right to draw and pump water. This conveyance
 is made subject to rights, rights of way easements of record and those apparent on
 the land. Seller retains a 30 foot wide meandering nonexclusive roadway easement
 for ingress and egress for mining, timbering and agriculture and all other roadway
 purposes..

for the sum of Twenty Eight Thousand -----Dollars (\$28,000.00),
 hereinafter called the purchase price, of which \$1,000.00 has been paid at the time of the execution
 hereof, the receipt whereof hereby is acknowledged by the seller; the buyer agrees to pay the balance of said
 purchase price to the order of the seller at the times and in the amounts as follows, to-wit: \$281.04 on more
 per month beginning January 21, 1979 and monthly thereafter.

All of said purchase price may be paid at any time; all of the said deferred payments shall bear in-
 terest at the rate of 9 1/2 per cent per annum from this date until paid, said interest to be paid
 monthly and * } being included in the minimum regular payments above required. Taxes on said
 premises for the current fiscal 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.

(B) for investment or business purposes.

The buyer shall be entitled to possession of said lands on upon recording contract and may retain such possession so long as
 he is not in default under the terms hereof. 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 thereon; 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 law-
 fully 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 to the seller as his interest 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 said described premises are now subject to a contract or a mortgage (the word mortgage as used herein includes within its meaning a trust
 deed) recorded in the Deed, Mortgage, Miscellaneous Records of said county in book this information available
 (reference to which hereby is made) on which the unpaid principal balance at this time is \$ and no more, with

interest paid to \$ per
 the seller agrees to pay all sums due and to become due on said contract or mortgage promptly at the times required for said payments and to keep
 said contract or mortgage free from default; should any of the installments on said mortgage so paid by the seller include taxes or insurance pre-
 miums on said described premises, the buyer agrees on seller's demand forthwith to repay to the seller that portion of said installments so paid
 applicable to taxes and insurance premiums; should the seller for any reason permit said contract or mortgage to be or become in default, the buyer
 may pay any sums required by said contract or mortgage to be paid or otherwise perform said contract or mortgage and the buyer shall be entitled to
 credit for all sums so paid by him against the sums next become due on the above purchase price pursuant to the terms of this contract.
 The seller agrees that at his expense and within days from the date hereof, he will furnish unto buyer a title insurance policy in-
 suring (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, and the said contract or mort-
 gage. 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 except-
 ing, 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 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:

South Valley State Bank

S. 6th St.

Klamath Falls, Oregon

NAME, ADDRESS, ZIP

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

Robert D. Lyells

2043 Hostetter Rd.

San Jose, Calif. 95132

NAME, ADDRESS, ZIP

STATE OF OREGON,

SS.

County of

I certify that the within instru-
 ment was received for record on the
 day of 19

at o'clock M., and recorded
 in book in page or as

file/reel number
 Record of Deeds of said county.

Witness my hand and seal of
 County affixed.

Recording Officer

By Jacqueline J. Miller 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 20 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, (3) to withdraw said deed and other documents from escrow and/or (4) 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 terminate and the right to the possession of the premises above described and all other rights acquired by the buyer hereunder shall revert to and revert 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 \$ 28,000.00. However, the actual consideration consists of or includes other property or value given or promised which is ^{part of the} whole consideration (indicate which).

In case suit or action is instituted to foreclose this contract or to enforce any provision hereof, the losing party in said suit or action agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in said suit or action and if an appeal is taken from any judgment or decree of such trial court, the losing party further promises to pay such sum as the appellate court shall adjudge reasonable as the prevailing party'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 or a corporation; 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.

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but their respective heirs, executors, administrators, personal representatives, successors in interest and assigns as well.

IN WITNESS WHEREOF, said parties have executed this instrument in triplicate; 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.

Robert D. Lyella
Robert D. Lyella

Daniel Bailey
Daniel Bailey

NOTE—The sentence between the symbols ①, if not applicable, should be deleted. See ORS 93.030.

STATE OF California
County of Santa Clara
December 21, 1978

Personally appeared the above named
Robert D. Lyella
and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:
Jane Loer

Notary Public for California
My commission expires Dec. 2, 1979

STATE OF OREGON, County of _____ ss.
19____

Personally appeared _____ and
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 _____

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: (SEAL)

ORS 93.635 (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 conveyor of the title to be conveyed. Such instruments, or a memorandum thereof, shall be recorded by the conveyor not later than 15 days after the instrument is executed and the parties are bound thereby.

ORS 93.990(3) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than \$1000.

STATE OF OREGON,
County of Klamath ss.

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

BE IT REMEMBERED, That on this 5th day of January, 1979, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Daniel Bailey

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he 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.

NOTARY PUBLIC - OREGON
DANIEL BAILEY

My Commission expires: _____

Daniel Bailey
Notary Public for Oregon
My Commission expires 3-6-81

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record NOT RECORDED
this 5th day of January A. D. 1979 at 11:31 o'clock A. M., on
duly recorded in Vol. M-79, of Deeds on Page 140

Fee \$6.00

Wm D. Milne
Wm D. MILNE, County Clerk