

65023

CONTRACT—REAL ESTATE

Vol. 119 Page 7400

THIS CONTRACT, Made this 16th day of February, 1979, between  
Priscilla J. Marshall, Star Rt. 2, Chiloquin, Oregon 97624  
 and Robert D. Lyella, 2943 Hostetter Rd., San Jose, Calif. 95132 hereinafter called the seller,

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:  
Township 35 south, Range 12 east Willamet Meridian section 19; South  $\frac{1}{2}$  of southeast  $\frac{1}{4}$  and the east  $\frac{1}{2}$  of the southwest  $\frac{1}{4}$  (160 acres). all subsurface rights have been reserved. Seller reserves a 60 foot wide meandering non-exclusive easement over and across the property for ingress and egress and mining, timbering and agriculture and all other roadway purposes. Seller grants to buyer a 60 foot wide meandering, on-exclusive easement over and across the property for ingress and egress and mining, timbering and agriculture and all other roadway purposes for access to the county road

for the sum of thirty two thousand Dollars (\$ 32,000.00), hereinafter called the purchase price, of which \$ 3,000.00 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: 302.82 or more per month payable on the 21st of each succeeding month

All of said purchase price may be paid at any time; all of the said deferred payments shall bear interest at the rate of 9 1/2 per cent per annum from this date until paid, said interest to be paid concurrently 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 upon recording contract

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 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 \$ 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 or 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 Deeds, 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

19 payable in installments of not less than \$ per and 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 premiums 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 to 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 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, and the said contract or mortgage. 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 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 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.

Priscilla J. Marshall  
Star Rt. 2 Box 568a  
Chiloquin, Oregon 97624  
 SELLER'S NAME AND ADDRESS

Robert D. Lyella  
2943 Hostetter Rd.  
San Jose, Calif. 95132  
 BUYER'S NAME AND ADDRESS

After recording return to:  
South Valley State Bank  
South 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. Lyella  
2943 Hostetter Rd.  
San Jose, Calif. 95132

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the day of, 1979, at o'clock M. and recorded in book on page or as file/real number.

Record of Deeds of said county.

Witness my hand and seal of County affixed.

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 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 with 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 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 thereon 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 \$ 32,000.00. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration (indicate which).<sup>①</sup>

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. Lyells*

*Winifred J. Marshall*

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

STATE OF ~~OREGON~~ California  
County of Santa Clara ss.  
March 29, 19 79  
Personally appeared the above named  
Robert D. Lyells

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

Before me:  
*Victoria Bruce*  
(OFFICIAL SEAL)  
Notary Public for ~~OREGON~~ California, No         
My commission expires 4/30/82 M<sub>3</sub>

ST STATE OF OREGON,  
County of Klamath ss.  
April 2, 19 79


Personally appeared the above named  
*Winifred J. Marshall*  
and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:  
*John B. Ruben*  
(OFFICIAL SEAL)  
Notary Public for Oregon  
My commission expires: 8-23-81

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 conveyer of the title to be 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.

ORS 93.990 (3) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than \$100.

(DESCRIPTION CONTINUED)

 **VICTORIA BRUCE**  
NOTARY PUBLIC - CALIFORNIA  
SANTA CLARA COUNTY  
My commission expires Apr. 30, 1982

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record at request of Mountain Title Co.  
this 4th day of April A. D. 1979 at 1:57 clock P.M., and  
fully recorded in Vol. M79, of Deeds on Page 7400  
**W. D. MILNE** County Clerk  
*Winifred J. Marshall*  
Fee \$6.00