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CONTRACT—REAL ESTATE

Vol. 79 Page 18712

THIS CONTRACT, Made this 13th day of July, 1979, between  
Gordon W. Malcomb

and Ellis Construction

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 NW1/4SE1/4SW1/4 Section 21, Township 40 South, Range 8 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

Subject, however, to the following:

1. Taxes for the year 1979-1980 are now a lien but not yet payable.
2. Rights of the public in and to any portion of said premises lying within the limits of public roads and highways, including public road dedication in Deed Book 46 at page 56, Book 46 at page 57, Book 46 at page 48, which contains reverter provisions.
3. An easement, created by instrument, including the terms and provisions thereof,

Recorded : Book 113 at page 376, Book 110 page 546 and Book 113 at page 373

In favor of : The Pacific Telephone and Telegraph Company, a California Corporation

For : Construction, maintenance and operation of lines, wire and cables.

(For continuation of this document, see reverse side of this contract.)

for the sum of Twelve thousand nine hundred and no/100 Dollars (\$12,900.00.) (hereinafter called the purchase price), on account of which Three thousand two hundred twenty-five Dollars (\$3,225.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by theand no/100 seller); the buyer agrees to pay the remainder of said purchase price (to-wit: \$9,675.00) to the order of the seller in monthly payments of not less than One hundred twenty-five and 25/100--- Dollars (\$125.25) each, or more, prepayment without penalty,

payable on the 6th day of each month hereafter beginning with the month of September, 1979, 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 9 1/2 per cent per annum from August 6, 1979 until paid, interest to be paid monthly and \* (in addition to being included in the minimum monthly 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 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 business if buyer is a natural person in the business or commercial purposes other than agricultural purposes.

The buyer shall be entitled to possession of said lands on closing 8/6/79 and may retain said 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 full insurable value

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 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 encumbrances 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 encumbrances 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-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.

Gordon W. Malcomb  
210 Grant Falls, OR 97601  
Klamath Falls, OR 97601

SELLER'S NAME AND ADDRESS

Ellis Construction  
P.O. Box 36  
Reno, OR 97627

BUYER'S NAME AND ADDRESS

After recording return to:  
T/A - Julie

NAME, ADDRESS, ZIP

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

Ellis Construction  
P.O. Box 36  
Reno, OR 97627

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 \_\_\_\_\_ 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.

Recording Officer

By \_\_\_\_\_ Deputy

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STATE OF OREGON - INSTRUMENT

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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 30 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 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 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 \$12,900.00.

However, the actual consideration consideration of or includes other property, or value, given or promised which is not the actual consideration (indicate which) 1

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 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.

ELLIS CONSTRUCTION

By: Robert D. Ellis PresidentBy: Gordon W. Malcomb

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

STATE OF OREGON,

County of KlamathJuly 16, 1979STATE OF OREGON, County of KlamathAugust 3, 1979Personally appeared Robert D. EllisPersonally appeared the above named Gordon W. Malcomb

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 Ellis

and acknowledged the foregoing instru-

ment to be his voluntary act and deed.Before me: Construction

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 be-

half 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 OregonMy commission expires: 2/14/81

(SEAL)

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires 2/14/81

ORS 93.635. 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 \$100.

(DESCRIPTION CONTINUED)

4. An easement created by instrument, including the terms and provisions thereof,

Dated : June 6, 1977

Recorded : August 15, 1977

Book: M-77

Page: 14809

In favor of : Shamrock Development Company

For : Access right of way across the West 30 feet of the herein described property.

5. Contract, including the terms and provisions thereof,

Dated : August 31, 1977

Recorded : October 14, 1977

Book: M-77

Page: 19672

Vendor : Robert J. Mullen, Sr.

Vendee : Robert W. Malcomb,

The vendees interest in said contract was assigned by instrument

Dated : April 26, 1978

Recorded : April 26, 1978

Book: M-78

Page: 8293

To : Gordon W. Malcomb, which Buyer herein does not assume

and agree to pay and Seller further covenants to and with Buyer 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 contract upon payment of this contract.

Buyer specifically agrees to pay the full contract balance on or before

September 6, 1989.

Seller reserves an easement over the North 30 feet of the NW SE SW SW, Section 21, Township 40, Range 8.

Seller reserves an easement for access for the public over the West 30 feet of the herein described property.