

K-3274 73560

CONTRACT—REAL ESTATE

Vol. 79 Page 21284

THIS CONTRACT, Made this 31 day of August, 1979, between Raymond W. Bernhardt and Erna P. F. Bernhardt, husband and wife, and Oliver Phillips, 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:

Lot 32 in Block 41 of Tract 1184, Oregon Shores-Unit 2-First Addition according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Subject, however, to the following:

1. Taxes for 1979-1980 now a lien but not yet payable.
2. Reservations and restrictions contained in Deed of Tribal Property given by United States of America, Department of the Interior, acting by of Indian Affairs, to Roland James Hicks, dated March 6, 1959, recorded May 11, 1959, Vol. 312, page 342, Deed Records of Klamath County, Oregon, and re-recorded July 14, 1959, Vol. 314, page 133, Deed Records of Klamath County, Oregon, as follows: "1. Sale is subject to Right of Way (For continuation of this document, see reverse side of this contract.)

for the sum of Eight thousand five hundred and no/100---Dollars (\$8,500.00) (hereinafter called the purchase price) on account of which One thousand and no/100---Dollars (\$1,000.00) 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 remaining balance of \$7,500.00 shall be paid in monthly installments of not less than \$90.00, each, including interest at the rate of 10% per annum on the unpaid balance, the first of such installments to be paid on the 1st day of September, 1979, and shall continue on the 1st day of each month thereafter until July 1, 1980, when said payments shall increase to the sum of \$180.00 per month, including interest at the rate of 10% per annum and shall continue on the 1st day of each month thereafter until the entire purchase price, including both principal and interest, is paid in full.

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 even if buyer is a natural person for business or commercial purposes 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 10 percent per annum from August 31, 1979, until paid, interest to be paid monthly and a 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 August 1979.

The buyer shall be entitled to possession of said lands on closing 1979, 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 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 full insurable value.

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 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 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 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 assigns.

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. 1306 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.

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/reel number

Record of Deeds of said county.

Witness my hand and seal of County affixed.

Recording Officer

Deputy

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:

NAME, ADDRESS, ZIP

NAME, ADDRESS, ZIP

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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 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 vest 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.

Notwithstanding to the effect of the above, 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 \$8,500.00. However, the actual consideration consists of the value of the property given or promised which is \$8,500.00.

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.

Raymond W. Bernhardt  
Erna P. F. Bernhardt  
Oliver Phillips

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

STATE OF OREGON, County of Klamath, ss.

Personally appeared the above named Raymond W. Bernhardt and Erna P. F. Bernhardt, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me, Notary Public for Oregon, My commission expires 85-83.

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 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)

granted to Klamath County Court, approved June 24, 1925, by John H. Edwards, Assistant Secretary of the Interior, pursuant to the Act of March 3, 1901 (31 Stat. L. 1058-1084), Departmental Regulations thereunder, and subject to the terms and conditions and covenants of stipulations executed by the Klamath County Court, dated May 25, 1925.

2. Right of Way to Pacific Telephone and Telegraph Company for telephone line approved by Jos. M. Dixon, First Assistant Secretary on March 16, 1931, approved subject to the provisions of the Act of March 3, 1901 (31 Stat. L. 1058-1084); Departmental regulations thereunder; and subject also to any prior valid existing right or adverse claim.

3. Title to the above described property is conveyed subject to any existing easements for public roads and highways, for utilities, and for railroads and pipe lines and for any other easements or rights of way of record."

3. Reservations and restrictions contained in the dedication of Tract 1184-Oregon Shores-Unit 2-1st Addition as follows: "(1) Building setbacks as pertain to the RD 10,000 zone as now in effect, (2) Drainage, public utilities, and T.V. easements as shown on the annexed plat, (3) all streets to be maintained by the lot owners within this subdivision, (4) Subject to easements and rights-of-way of record or apparent, (5) additional restrictions or conditions as provided for in any recorded protective covenants or homeowner association documents."

4. Declaration of Restrictions Tract 1184 Oregon Shores Subdivision-Unit 2 First Addition recorded November 15, 1978, Vol. M78, page 25925, Deed Records of Klamath County, Oregon.

(See attached Exhibit "A" and by this reference incorporated herein as if fully set forth herein.)

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5. Trust Deed, including the terms and provisions thereof, given by Raymond W. Bernhardt and Erna P. F. Bernhardt, husband and wife, to Transamerica Title Insurance Company, a California corporation, as Trustee, and Wells Fargo Realty Services, Inc., a California corporation, as Beneficiary, dated January 31, 1979, recorded March 16, 1979, Vol. M79, page 5993, Mortgage Records of Klamath County, Oregon, to secure the payment of \$7,020.00, which Buyer herein does not assume and agree to pay and Sellers further covenant to and with Buyer that the said prior trust deed 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 trust deed upon payment of this contract.

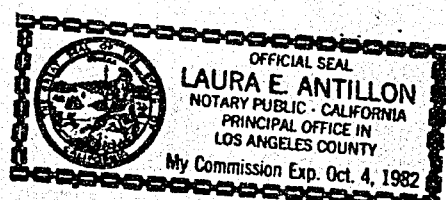
STATE OF ~~OREGON~~ CALIFORNIA }  
County of Los Angeles } ss.

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

BE IT REMEMBERED, That on this 30th day of August, 1979, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Oliver Phillips

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.



Laura E. Antillon  
Notary Public for ~~OREGON~~ California  
My Commission expires Oct. 4, 1982

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.

this 6th day of September A. D. 1979 at 12:14 o'clock P.M., and  
fully recorded in Vol. M79, of Deeds on Page 21284

Wm D. MILNE, County Clerk.

Fee \$10.50

By Bernhardt & Ketch