

98651

CONTRACT—REAL ESTATE

Vol. m81 Page

7129

THIS CONTRACT, Made this 17<sup>th</sup> day of April, 1981, between  
Paul A. Montgomeryand David V. Davis and Kimberly A. Davis, husband and wife,  
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 S $\frac{1}{2}$  of Lot 1 and the Easterly 7.9 feet of the S $\frac{1}{2}$  of Lot 2, Block 46, FIRST ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

Subject, however, to the following:

1. Regulations, including levies, liens and utility assessments of the City of Klamath Falls.
2. Trust deed, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$13,250.00

Dated : April 24, 1972

Recorded : April 28, 1972

Book: M-72 Page: 4563

Trustor : Patricia Peterson, a widow

Trustee : William Ganong, Jr.

Beneficiary : First Federal Savings and Loan Association

of Klamath Falls, a corporation

(for continuation of this Contract see reverse side of this document)

for the sum of Thirty-Six Thousand and No/100ths-----Dollars (\$ 36,000.00 )  
(hereinafter called the purchase price) on account of which Eight Hundred Fifty and No/100ths  
-----Dollars (\$ 850.00 ) 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: As part of the consideration herein Seller has given credit to Buyers in the sum of \$10,044.76 for that certain real property described as Lot 14, in Block 7, as shown on that certain map entitled, "HOWE'S ADDITION TO OROVILLE CALIFORNIA." Said map being on file in the office of the Recorder of the County of Butte, State of California, recorded March 20, 1909 in Book 6 of Maps, at page 99 and by Seller agreeing to assume the Deed of Trust presently against said real property dated May 26, 1977 owing to Florence Smith with a present balance due and owing thereon of \$10,044.76 with interest paid to 4-1-81.  
(for continuation of this Contract see attached Exhibit "A").

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 investment or business purpose (even if buyer is a resident of the State of Oregon).

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%  
per cent per annum from April 17, 1981, until paid, interest to be paid monthly and 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  
April 17, 1981

The buyer shall be entitled to possession of said lands on closing escrow 81  
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 liens 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

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 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.

(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; 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:

TA Branch One

NAME, ADDRESS, ZIP

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

Mr. & Mrs. David V. Davis  
422 N 6<sup>th</sup> St.  
Klamath Falls, Oregon 97601

NAME, ADDRESS, ZIP

STATE OF OREGON,

County of

I certify that the within instrument was received for record on the  
day of April, 1981,

at 10 o'clock M., and recorded  
in book        on page        or as

file/rec'd number         
Record of Deeds of said county.

Witness my hand and seal of  
County affixed.

By

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 in equity, and in any of such cases, all rights and interests created or then existing in favor of the buyer as against the seller hereunder shall utterly cease and determine and the right to the possession of the premises above described and all other rights acquired by the buyer hereunder shall revert to and revest 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 seller as the agreed and reasonable rent of said 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 heretofore 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, together with all the improvements and appurtenances thereon or there to the land aforesaid, without any process of law, and take immediate possession thereof.

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.

Seller herein agrees to pay all underlying Contracts against said property when this Contract is paid in full.

Buyer to be responsible to pay for his own taxes and insurance and show proof to Seller.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 36,000.00

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.

Paul A. Montgomery, by *David V. Davis*  
Kimberly A. Davis  
NOTE—The sentence between the symbols ( ) is not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON,  
County of Klamath } ss.  
April 17, 1981

STATE OF OREGON, County of \_\_\_\_\_, 19\_\_\_\_ ss.

Personally appeared the above named  
Paul A. Montgomery, David V. Davis and Kimberly A. Davis

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

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: *C. Potzko*  
(OFFICIAL SEAL)  
Notary Public for Oregon  
My commission expires 11-2-82

Notary Public for Oregon (SEAL)  
My commission expires: \_\_\_\_\_

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)

Loan No. 8969, which Buyers herein do not assume and agree to pay, and Seller further covenants and with Buyers 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 Contract upon payment in full of this Contract.

3. Unrecorded Contract, including the terms and provisions thereof, and such other exceptions as may appear necessary upon the recording thereof

Dated : September 7, 1974  
Vendor : Patricia Peterson  
Vendee : Phyllis M. Douda

as disclosed by the following assignment:  
The vendee's interest in said Contract was assigned by instrument  
Dated : August 19, 1977  
Recorded : August 23, 1977 Book: M-77 Page: 15470

To : Paul A. Montgomery, which Buyers herein do not assume and agree to pay, and Seller further covenants to and with Buyers 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 in full of this Contract.

Buyers herein specifically agree to pay the full Contract balance to Seller ten (10) years from the date of this Contract which is April 17, 1991.

continued from front of Contract...

The balance of Twenty Five Thousand One Hundred Five and 24/100ths (\$25,105.24) Dollars to be paid to Seller by Buyers herein in monthly installments of not less than \$242.70, said payments shall include interest at the rate of 10%. The first installment to be paid on the 17<sup>th</sup> day of May, 1981, and a further installment on the 17<sup>th</sup> day of each month thereafter until the full balance and interest are paid in full.

FORM No. 159—ACKNOWLEDGMENT BY ATTORNEY-IN-FACT.

STATE OF OREGON,

County of Klamath } ss.

On this the 17<sup>th</sup> day of April, 1981, personally appeared Richard T. Dudy who, being duly sworn (or affirmed), did say that he is the attorney in fact for Paul A. Montgomery and that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be the act and deed of said principal.

Before me:

Susan C. Patte  
(Signature)

My Commission expires 11-2-82  
(Title of Officer)



STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of \_\_\_\_\_  
this 21st day of April A.D. 19 81 at 11:12 o'clock A.M., and  
duly recorded in Vol. M81, of Deeds on Page 7129.

EVELYN BIEHN, County Clerk

By Susan C. Patte

Fee \$10.50