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NTC 12645-L Vol. M83 Page 12856  
 CONTRACT OF SALE

THIS CONTRACT OF SALE, entered into this 3rd day of August, 1983, by and among SOUTH VALLEY STATE BANK, an Oregon corporation, and GARY T. WHITTLE, hereafter referred to as "Sellers", and ROBERT CORNWALL and FLORENCE CORNWALL, tenants by the entirety, hereafter referred to as "Purchaser".

1. **Agreement to Purchase:** Sellers hereby sell to purchasers and purchasers hereby purchases the following described real property located in Klamath County, Oregon:

Lots 13, 14, 15, 16, 17 and 18 in Block 5, SECOND HOT SPRINGS ADDITION to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

ALSO, Lot 21 and a portion of Lot 22 all in Block 5, SECOND HOT SPRINGS ADDITION to Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at a three-fourths inch iron pin on the most Easterly corner of said Lot 22, said point being on the intersection of Spring Street and Esplanade Avenue; thence South 25° 52' West along the Easterly line of said Lots 22 and 21 a distance of 67.80 feet to a one-half inch iron pin on the Southeast corner of said Lot 21; thence North 64° 03' West along the Southerly line of said Lot 21 a distance of 111.19 feet to a concrete nail on the Southwesterly corner of said Lot 21; thence North 29° 34' East along the Westerly line of said Lots 21 and 22 a distance of 44.22 feet to a point that is South 29° 34' West a distance of 85.78 feet from the one-half inch iron pin marking the most Northerly corner of said Lot 22, said point also being 1.0 feet Southeasterly measured at right angles from an existing steel fence; thence North 56° 56' East a distance of 76.18 feet to a point on the Northerly line of said Lot 22, said point being 1.4 feet Southeasterly, measured at right angles from an existing steel fence; thence South 33° 04' East along the Northerly line of said Lot 22 a distance of 80.57 feet to the point of beginning.

**SUBJECT TO:**

1. Note and Mortgage wherein sellers are the mortgagors and Shamrock Development Company, an Oregon Corporation is the mortgagee in the principal amount of ~~\$100,000.00~~ \$179,572.65
2. The usual printed exceptions contained in standard policies of title insurance as issued by reputable title companies in Klamath County, Oregon, and which do not affect the marketable value of the property.

2. **Purchase Price:** Purchasers agree to pay sellers as

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the purchase price for said real property the sum of TWO HUNDRED FORTY TWO THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$242,720.00) as follows:

a. Upon execution of this agreement	\$ 15,000.00
b. Underlying Note and Mortgage	179,572.65
c. The balance of the purchase price in the manner hereinafter provided	48,147.35
<b>TOTAL</b>	<u>\$242,720.00</u>

3. Payment on the amount of \$179,572.65: Purchasers acknowledges that the property is presently encumbered by a note and mortgage dated July 15, 1983 in the principal amount of \$179,572.65 wherein Shamrock Development Corporation is the mortgagee and the sellers are the mortgagors. Purchasers agree to pay sellers the sum of \$179,572.65 with interest thereon at the rate of 10% per annum commencing on the date of execution of this contract in monthly installments of not less than \$1,732.91. The monthly installment shall commence on the 1st day of September, 1983 with a similiar installment on 1st day of each and every month thereafter until the entire balance, principal and interest has been fully paid.

4. Payment of Balance of Purchase Price: Purchasers agree to pay the balance of the purchase price in the amount of \$48,147.35 in monthly installments of not less than ~~\$538.14~~ <sup>507.10</sup> with <sup>6TW</sup> ~~Ac~~ <sup>Ac</sup> interest thereon at the rate of twelve percent (12%) per annum from the date of execution of this contract until paid. The monthly installments shall commence on 1st day of September, 1983 with a

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similar installment on the 1st day of each and every month thereafter until on or before the 1st day of February, 1985 when purchasers agree to pay a lump sum installment in the amount of \$10,000.00 in addition to the monthly installments in the amount of ~~\$530.14~~ <sup>507.10</sup> ~~406.01~~ <sup>406.01</sup> ~~file this~~ <sup>Ac 6TW</sup>. The lump sum installment in the amount of \$10,000.00 shall be in addition to and not in lieu of any monthly installments. The lump sum installment in the amount of \$10,000.00 shall not excuse any monthly installments and shall be credited toward reduction of the principal.

Upon payment of the lump sum installment in the amount of \$10,000.00 on or before the 1st day of February, 1985, the parties acknowledge that the monthly installments shall be reduced on the balance owing pursuant to this paragraph. Commencing on the 1st day of the month following payment of the \$10,000.00 installment purchasers agree to make monthly installments of not less than Four hundred Twenty Dollars and Four cents ~~(\$420.04)~~ <sup>406.01</sup> ~~file this~~ <sup>Ac 6TW</sup> until on or before the 1st day of July, 1990 when the entire balance, principal and interest shall become fully due and payable.

5. Additional Monthly Payments: In addition to the monthly installments referenced in paragraph 3 and paragraph 4 purchasers agree to pay sellers 20% of the gross rental income collected over and above the gross amount of rental income collected as of the date this contract is executed. The parties agree that the gross amount of rental income as of the date this contract is executed is in the amount of \$ 3,122.00. Purchasers agree to

pay sellers 20% of the gross rental income collected over and above the gross rental amount being collected as of the date this contract is executed. Purchasers agree to provide sellers with an income statement setting forth the gross rental income commencing December 1, 1984 and continuing over the term of this contract. The additional payment in the amount of 20% of additional gross rental income shall be credited toward reduction of the remaining principal owing. In the event the gross rental income is reduced the 20% additional payment shall also be reduced. However, in any event the purchasers shall never pay less than the monthly installment as specified in Paragraph 4.

6. Right of Prepayment: Purchaser shall have the right to make additional payments of principal and interest at any time without penalty.

7. Title and Possession: The title to the real property shall remain in sellers until the purchase price and interest have been paid. Purchaser shall be entitled to possession of the property on the close of escrow and so long thereafter as she is not in default in the performance of this contract.

8. Real Property Taxes and Assessments: Real property taxes for the current fiscal year shall be prorated between the parties as of the close of escrow. Purchaser agrees to pay all future taxes and assessments levied or assessed against the property promptly as the same become due and payable.

9. Fire Insurance: Purchaser agrees to keep the

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improvements located upon the above described real property insured to their full insurable value in an amount not less than \$240,000.00 and shall give sellers evidence that said insurance is in full force and effect. There shall be affixed to the policy of insurance a loss payable clause showing the interest of purchasers and sellers under this agreement. The policy shall carry a further endorsement requiring notice to be given to sellers not less than thirty (30) days prior to cancellation or termination of any coverage.

10. Collection Escrow and Collection Escrow  
Instructions: Sellers shall deposit in escrow with the collection escrow agent the following:

- a. A Warranty Deed conveying the above described property to purchasers subject to the exceptions set forth above;
- b. A copy of this contract;
- c. The title insurance policy insuring purchaser's interest in the property.

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The purchasers shall make total monthly installments in an amount not less than ~~\$2,263.05~~ *2240.00 before lump sum \$2,138.93 after lump sum* plus the escrow agent's collection fee, if any. The collection escrow agent is hereby instructed to first credit the underlying mortgage in the amount of \$1,732.91 and to credit the balance toward purchaser's obligation to sellers.

The parties agree to execute such standard escrow instructions as the collection escrow agent may require as a condition to acceptance of said escrow, and each party shall pay one-half (1/2) the escrow fee involved.

If purchasers fails to make any installments before the expiration of thirty (30) days following the installment due date, the escrow agent is authorized to surrender to sellers upon demand, and without notice to purchaser, all the documents specified in the preceding paragraph, thereby terminating the escrow.

11. Title Insurance: Sellers shall forthwith furnish to purchasers a purchaser's policy of title insurance in the amount of \$242,000.00 showing title to the property to be marketable save and except for the usual printed exceptions contained in policies of title insurance issued by Mountain Title Insurance Company and the exceptions set forth herein.

12. Restrictions on Transfer: This contract is personal to the purchasers and not assignable. In executing this contract the sellers have relied on purchaser's credit, purchaser's interest in the real property, and financial market conditions existing at the time this contract is executed. If the purchasers transfers, sells, assigns, or conveys any interest in this contract or the real property, then the sellers at their option may accelerate the entire balance and this contract shall become immediately due and payable. This paragraph shall not prevent purchasers from transferring, assigning, or conveying their interest in the property in the event they satisfy sellers' equity herein or in the event purchasers receive sellers' written permission.

13. Covenants of Purchasers: Purchasers agree:

a. They will keep the property free and clear of all liens

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and encumbrances;

- b. They will not commit nor suffer any waste or damages to be committed to said premises;
- c. They will maintain the improvements upon said premises in as good condition and repair as they are now in;
- d. They will not sell, assign or transfer any interest in this contract of in or to said property without first obtaining the written consent of seller.

14. Time of Essence: Time is of the essence of this contract.

15. Default: In the event the purchasers fails to make any of the installments herein provided or to perform any of the other terms or conditions of this contract on her part to be kept and performed, then sellers at their option, shall have the right to declare the entire balance of the purchase price immediately due and payable and exercise any of the following rights or remedies:

- a. Retake possession of said property, in which event any payments made by purchasers shall be considered as rental for said property and as liquidated damages for the breach of this agreement;
- b. Bring suit to foreclose this agreement in the manner provided by law;
- c. Sue purchasers for the balance of the purchase price then due;
- d. Exercise any other right or remedy which may be available to them either in law or in equity.

16. Notice of Default: Before declaring any default for failure to pay any installments, sellers shall notify purchasers by United States certified mail addressed to purchasers at 1435

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Esplanade, Klamath Falls, Oregon, 97601 and purchasers shall have ten (10) days following the date of mailing in which to pay any delinquent installment.

Before declaring any default for failure to perform any covenant or condition of this contract (except for failure to make the monthly installment or lump sum payment as provided herein) sellers shall notify purchasers by United States Certified mail in which notice they shall specify the respects in which they claim this contract is in default and purchasers shall have thirty (30) days following the date of mailing of such notice in which to remove any such claimed default, if any in fact exists, and to reinstate this contract.

17. Forfeiture by Reason of Default in Paying Monthly Installments or Lump Sum Installment: Purchasers acknowledge that they are responsible for paying the balance on the down payment in the amount of \$10,000.00 on or before the 1st day of February, 1985. Purchasers further acknowledge that sellers, as a courtesy to the purchasers have allowed them to take possession of the property with a minimal down payment in the amount of \$15,000.00. In consideration of sellers agreement to allow purchasers to take possession with a minimal down payment purchasers agree to execute a warranty deed relinquishing and forfeiting their interest in the real property. The warranty deed shall be escrowed with John R. Hanson, Attorney at Law whose address is 244 South Grape, Medford, Oregon. In the event purchasers fail to make the lump sum

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installments in the amount of \$10,000.00 on or before the 1st day of February 1985 seller shall be entitled to immediate possession of the real property and shall be entitled to record the warranty deed relinquishing purchasers interest in the property of records. Purchasers acknowledge that in the event they fail to pay the monthly installments or fail to pay the lump sum installment that they shall forfeit any and all interest in the payments or in the real property. Prior to declaring a forfeiture and recording the warranty deed the sellers agree to notify the purchasers by United States certified mail addressed to purchasers at 1435 Esplanade, Klamath Falls, Oregon 97601 and purchasers shall have ten (10) days following the date of mailing in which to pay any delinquent installments.

In the event purchasers fail to pay any delinquent installment on or before the 10th day following the date of mailing the purchasers hereby instruct John R. Hanson to record the warranty deed forfeiting their interest in the real property. In addition, purchasers agree to indemnify and hold John R. Hanson harmless from any and all liability resutling from his recording of the warranty deed. In the event the purchasers pay all monthly installments and pay the lump sum installment in the amount of \$10,000.00 on or before the 1st day of February, 1985 and in the event the purchasers are not in default for failure to perform any covenant or condition of this contract the sellers agree to return the warranty deed to purchaers on or after February 1, 1985 and sellers further agree

that this paragraph will be of no further force or effect.

18. **Receivership:** In addition to the other remedies specified in this contract in the event the purchasers fail to make any of the installments herein provided or to perform any of the other terms or conditions of this contract on their part to be kept and performed the sellers shall be entitled to the appointment of a receiver as a matter of right and any receiver may serve without bond. Employment by sellers shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the property the receiver may:

- a. Use, operate, manage, control and conduct business on the property and make the expenditures for all maintenance and improvements as in his judgment are proper;
- b. Collect all rents, revenues, income, and profits from the property and apply such sums to the expenses of use, operation and management;
- c. Purchasers hereby assign to sellers all rents, revenues, income, issues and profits from the property, whether or now hereafter due. In the event of default and at any time thereafter the seller may either itself or through a receiver collect the same. To facilitate collection the sellers may notify any tenant or other user to make payments of rent or use fees directly to sellers. If the income is collected by sellers then the purchasers irrevocably designate sellers as purchasers attorney-in-fact to endorse instruments received and payment thereof in the name of purchasers and to negotiate the same and to collect the proceeds. Payment by tenants or other users to sellers in response to sellers demand shall satisfaction the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Sellers shall apply the income first to the expenses of renting or collection and the balance, if any to payment of the sums due from purchasers to sellers under this contract.

19. Remedies Nonexclusive: The remedies provided in this contract shall be nonexclusive and shall be in addition to any other remedies provided by law.

20. Parking Lot: Purchasers acknowledge that the parking lot also serves the adjacent real property as Lot 19 and 20, Block 5, Second Addition to Hot Springs in the City of Klamath Falls, according to the Official Plat thereof on file in the office of the County Clerk of Klamath County, Oregon. Purchasers acknowledge that the owners of the above described real property shall be entitled to use the parking lot being transferred pursuant to the terms and conditions of this contract.

21. Waiver of Performance: Purchaser agrees that the failure by sellers at any time to require performance by purchasers of any provision hereof shall in no way affect her right hereunder to enforce the same, nor shall any waiver by sellers 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.

22. Attorneys' Fees: In the event it is necessary for the sellers to retain an attorney in order to enforce or establish any rights or remedies under this agreement the purchasers agree to pay the sellers reasonable attorneys' fees regardless of whether or not any suit or action is instituted or commenced. In addition, in the event that suit or action is filed by either of the parties to enforce or establish any rights or remedies under this contract, the party prevailing in such suit or action shall be entitled to recover

such additional sums from the other party as the court may deem reasonable as attorneys' fees in any such suit or action or any appeal therefrom.

23. Warranties and Representations: Purchaser acknowledges that they purchased said property and executed this contract on the basis of their own examination and personal knowledge of the property and their opinion of the value thereof. They acknowledge that they are purchasing the property in "AS IS" condition. They further acknowledge that sellers have not, either directly or through any agent or representative, made any representations as to the condition or repair of the property or as to any other matters concerning the same. They acknowledge that there have been none nor have they relied on any representations, warranties or verbal statements of any kind except as set forth herein.

24. Legal Representation: The law firm Black & Hanson represent the sellers only. If the purchasers desires legal assistance, she is encouraged to seek an attorney of her choice.

25. Tax Statements: Unless a change is requested, all tax statements shall be sent to the following address:

26. Prior Agreements: This document is the entire, final and complete agreement of the parties pertaining to the sale, purchase and exchange of the properties and supersedes and replaces

all prior or existing written and oral agreements between the parties or their respective representatives.

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27. Memorandum of Agreement: The parties contemporaneously herewith have executed a memorandum of agreement for purposes of recordation in Jackson County, Oregon and seller covenants and agrees to record the same within fifteen (15) days from the date of execution hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first hereinabove written.

South Valley State Bank

By Allen D. Pugh ITS PRESIDENT

Gary T. Whittle  
Gary T. Whittle

Robert Cornwall Sellers  
Robert Cornwall

Florence T. Cornwall  
Florence Cornwall

Purchasers

Gary T. Whittle for  
Sancho J. Whittle

H. ATTORNEY IN FACT  
STATE OF OREGON,  
County of Klamath )

Filed for record at request of

TAXES:  
Robert Cornwall  
2556 Betty Way  
West Sacramento, Calif.

Return:  
MTC

13 - CONTRACT OF SALE

on this 4th day of AUG A.D. 1983  
at 10:43 o'clock A M, and duly  
recorded in Vol. M83 of DEEDS  
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EVELYN BIEHN, County Clerk

By Ann Biehn Deputy

Fee 52.00