

44019

DEPARTMENT OF VETERANS' AFFAIRS

Vol. 181 Page 20728

NTC-28337  
**CONTRACT OF SALE**

DATED: December 14, 1984

BETWEEN:

The State of Oregon  
 by and through the  
 Director of Veterans' Affairs

SELLER

AND:

KENNETH R. DAVISDENISE I. DAVISHusband and Wife

BUYER(S)

On the terms and conditions set forth below, Seller agrees to sell and Buyer agrees to buy the following described real property (the "property"):

All that portion of Lot 53 lying Northwesterly of the Enterprise Irrigation District Canal of FAIR ACRES SUBDIVISION NO. 1, in the County of Klamath, State of Oregon, EXCEPTING THEREFROM the Southerly 45 feet 10 inches thereof.

Subject only to the following encumbrances:

As described in the attached Exhibit "A" and by reference made a part hereof:

**TAX STATEMENT**

Until a change is requested, all tax statements shall be sent to: Department of Veterans' Affairs  
 Tax Division C - 03913  
 Oregon Veterans Building  
 700 Summer Street, NE  
 Salem, Oregon 97310-1201

**SECTION 1. PURCHASE PRICE; PAYMENT**

1.1 **TOTAL PURCHASE PRICE** Buyer agrees to pay Seller the sum of \$ 48,000.00 as the total purchase price for the property.

1.2 **PAYMENT OF TOTAL PURCHASE PRICE** The total purchase price shall be paid as follows:

Seller acknowledges receipt of the sum of \$ 2,400.00 from Buyer as down payment on the purchase price.

Buyer shall be given credit for \$ 0 which amount constitutes the fair market value of improvements to be completed by the Buyer. These improvements shall be made to satisfy the provisions of ORS 407.375(3). The improvement shall be in accordance with the Property Improvement Agreement, Form 590-M, signed this date:

The balance due on the Contract of \$ 45,600.00 shall be paid in payments beginning on the first day of

January

1985

The initial payments shall be \$ 383.00

each, including interest. In addition to that amount, Buyer shall pay an amount estimated by Seller to be sufficient to pay taxes when due. Buyer also shall pay to Seller on demand any additional amounts which may be necessary for payment of the taxes or assessments.

The total monthly payments on this Contract shall change if the interest rate changes or if the taxes and assessments change. The money paid by Buyer to Seller for the payment of taxes and assessments will not be held in reserve by Seller. When Buyer pays Seller for taxes and assessments, that payment will be subtracted from the balance due on the Contract. When Seller pays the taxes or assessments, that amount will be added to the balance due on the Contract.

1.3 **TERM OF CONTRACT** This is a 25 year Contract and the final payment is due December 1, 2009 (month, day, year)

1.4 **INTEREST RATE** The annual interest rate during the term of this Contract is variable; it cannot increase by more than one (1) percent except to maintain the solvency of the Department of Veterans Affairs. The Seller may periodically change the interest rate by Administrative Rule pursuant to the provisions of ORS 407.375 (4). The initial annual interest rate shall be 9.0 percent per annum.

1.5 **PRE PAYMENTS** Buyer may prepay all or any portion of the balance due on the Contract at any time without penalty.

1.6 **PLACE OF PAYMENTS** All payments to Seller shall be made to Department of Veterans Affairs at 700 Summer Street, N.E., Salem, Oregon 97310-1201, unless Seller gives written notice to Buyer to make payments at some other place.

1.7 **WARRANTY DEED** Upon payment of the total purchase price for the property as provided for by this Contract and performance by Buyer of all other terms, conditions, and provisions of the Contract, Seller shall deliver to Buyer a Warranty Deed. Such Warranty Deed shall warrant marketable title, except for those liens and encumbrances referred to on page one of this Contract and those placed upon the property or suffered by Buyer after the date of this Contract.

**SECTION 2. POSSESSION; MAINTENANCE**

2.1 **POSSESSION** Buyer shall be entitled to possession of the property from and after the date of this Contract. It is understood and agreed, however, that Buyer will permit Seller and its agents to enter the property at reasonable times to inspect the property. Buyer shall not permit the premises to be vacant for more than thirty (30) consecutive days.

2.2 **MAINTENANCE** Buyer shall keep all buildings, other improvements, and landscape now existing, or which shall be placed on the property, in good condition and repair. Buyer shall not permit any waste or removal of the improvements, nor make any substantial improvements or alterations without the prior written consent of Seller. Except for domestic use, Buyer shall not permit the cutting or removal of any trees, nor removal of any sand and gravel, without prior written consent of Seller.

2.3 **COMPLIANCE WITH LAWS** Buyer shall promptly comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the property. In this compliance, Buyer shall promptly make all required repairs, alterations, and additions. Buyer may contest in good faith any such requirements and withhold compliance during any proceeding, including appropriate appeals, so long as Seller's interest in the property is not jeopardized.

**SECTION 3. INSURANCE**

3.1 **PROPERTY DAMAGE INSURANCE** Buyer shall get and keep policies of fire insurance with standard extended coverage endorsements (and any other endorsements required by Seller) on an actual cash value basis covering all improvements on the property. Such insurance shall be in an amount sufficient to avoid application of any co-insurance clause. Insurance shall be made with loss payable to Seller and Buyer, as their respective interests may appear. In the event of loss, Buyer shall give immediate notice to Seller. Seller may make proof of loss if Buyer fails to do so within fifteen (15) days of the loss. If Buyer fails to keep insurance in force, Seller may obtain insurance and add the cost to the balance due on the Contract. The insurance cost shall be payable to Seller on demand.

3.2 **APPLICATION OF PROCEEDS** All proceeds of any insurance on the property shall be held by Seller. If Buyer chooses to restore the property, Buyer shall repair or replace the damaged or destroyed portion of the property in a manner satisfactory to Seller upon satisfactory proof of restoration. Seller shall pay or reimburse Buyer from the insurance proceeds for the reasonable cost of repair or restoration. If Buyer chooses not to restore the property, Seller shall keep a sufficient amount of the proceeds to pay all amounts due under this Contract, and shall pay the balance of the insurance proceeds to Buyer. Any proceeds which have not been paid out within 180 days after their receipt, and which Buyer has not committed to the repair or restoration of the property, shall be used to pay first and second interest and then the principal balance due on the Contract.

**SECTION 4. EMINENT DOMAIN**

If a condemning authority takes all or any portion of the property, Buyer and Seller shall share in the condemnation proceeds, proportionate to the value of their respective interests in the property. If the property is condemned, the condemnation shall be treated as a taking of the property.

**SECTION 5. SECURITY AGREEMENT**

This instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to all debts and property included within the description of the property. Upon request of Seller, Buyer shall execute any necessary financing statements in the form required by the Uniform Commercial Code and shall file the statements at Buyer's expense. Without further authorization from Buyer, Seller may at any time file copies of the Contract as financing statements. Upon default under the terms of this Contract, Buyer shall, within three (3) days of receipt of written demand from Seller, assemble the personal effects and make them available to Seller.

**SECTION 6. DEFAULT**

6.1 **EVENTS OF DEFAULT** Time is of the essence of this Contract. A default shall occur under any of the following circumstances:

- a) Failure of Buyer to make any payment when payment is due, no notice of default and no opportunity to cure shall be required, including any twelve (12) month period. Seller has already sent three (3) notices to Buyer concerning non-payment or late payment under this Contract.
- b) Failure of Buyer to perform any other obligation in this Contract in addition to payment. Buyer must perform obligation within thirty (30) days after receiving Notice of Default from Seller. Such Notice shall specify the nature of the default.

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## 6.2 REMEDIES ON DEFAULT. In the event of a default, Seller may take any one or more of the following steps:

- (a) Declare the entire balance due on the Contract, including interest, immediately due and payable.
- (b) Foreclose this Contract by suit in equity.
- (c) Specifically enforce the terms of this Contract by suit in equity.
- (d) Exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code. Seller may exercise these rights and remedies with respect to any part of the property which constitutes personal property in which Seller has a security interest.
- (e) Choose to impose a late charge. The charge will not exceed five (5) cents per dollar of the payment in the event Buyer fails to make any payment within 10 days after it is due.
- (f) Declare this Contract to be void thirty (30) or more days after Seller gives written notice to Buyer of Seller's intent to do so, unless the performance then due under this Contract is tendered or accomplished prior to the time stated. At the end of the thirty (30) days, all of Buyer's rights under this Contract shall cease without further act by Seller. Seller shall then be entitled to immediate possession of the property. All payments previously made to Seller by Buyer may be kept by Seller as reasonable rental of the property up to the time of default.
- (g) Appoint a receiver. Seller shall be entitled to the appointment of a receiver as a matter of right. It does not matter whether or not the apparent value of the property exceeds the amount of the balance due on the Contract. Any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the property, the receiver may:
  - (i) Use, operate, manage, control, and conduct business on the property and make necessary expenditures for all maintenance and improvements that in the receiver's judgment are proper.
  - (ii) Collect all rents, revenues, income, issues, and profits from the property and apply such sums to the necessary expenses of use, operation, and management.
  - (iii) Complete any construction in progress on the property, at Seller's option. To complete that construction, receiver may pay all bills, borrow funds, employ contractors, and make any changes in plans and specifications that Seller deems appropriate. If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow from Seller or otherwise; such sums as receiver deems necessary. These sums shall be used for the purposes stated in this paragraph. Repayment of such sums shall be secured by this Contract. Amounts borrowed from or advanced by Seller shall bear interest at the same rate as the balance on this Contract. Interest shall be charged from the date the amount is borrowed or advanced until the amount is repaid. Any amount borrowed shall be paid by Buyer on demand.
- (h) Elect to collect all rents, revenues, income, issues, and profits (the "Income") from the property, whether due now or later. Prior to default, Buyer may operate and manage the property and collect the Income from the property. In the event of default and at any time hereafter, Seller may revoke Buyer's right to collect the Income from the property. Seller may collect the Income either through itself or a receiver. Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Buyer irrevocably designates Seller as Buyer's attorney-in-fact and gives Seller permission to endorse rent or fee checks in Buyer's name. Buyer also gives Seller permission to negotiate and collect such rents or fees. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the expenses of renting or collection and the balance (if any) to payment of sums due from Buyer to Seller under this Contract.

## 6.3 REMEDIES NONEXCLUSIVE. The remedies provided above shall not exclude any other remedies provided by law. They are in addition to any other such remedies.

### SECTION 7. SELLER'S RIGHT TO CURE

If Buyer fails to perform any obligation required of it under this Contract, Seller may, without notice, take any steps necessary to remedy such failure. Buyer shall reimburse Seller for all amounts expended in so doing on demand. Such action by Seller shall not constitute a waiver of the default or any other right or remedy which Seller may have on account of Buyer's default.

### SECTION 8. WAIVER

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision. If a party waives a breach of any provision of this Contract, the waiver applies only to that specific breach. It does not apply to the provision itself.

### SECTION 9. INDEMNIFICATION

Buyer shall forever defend, indemnify, and hold Seller harmless from any claim, loss, or liability arising out of or in any way connected with Buyer's possession or use of the property, Buyer's conduct with respect to the property, or any condition of the property. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Buyer agrees to defend Seller, Buyer shall upon notice from Seller vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to Seller.

### SECTION 10. SUCCESSOR INTERESTS

This Contract shall be binding upon and for the benefit of the parties, their successors, and assigns. But no interest of Buyer shall be assigned, subcontracted, or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller. Consent by Seller to one transfer shall not constitute consent to other transfers, or waiver of this section.

As a condition to such consent, Seller may increase the interest rate under this Contract from the date of the transfer. Any increase in the interest rate under this Contract shall entitle the Seller to increase monthly payments. Monthly payments may be increased to the extent necessary to amortize the balance due within the time provided for in Section 1.1.3 in this Contract. Any attempted assignment, subordination, or other transfer shall be void and ineffective to the extent it purports to assign, subdivide, or otherwise modify or consent to any and all extensions and modifications of this Contract granted by Seller. Any transfer pursuant to this paragraph shall be void to the extent it purports to assign, subdivide, or otherwise modify or consent to any and all extensions and modifications of this Contract. Any such later claim or modification shall be void and shall release the transferee from the obligations of any person at any time obligated under this Contract.

### SECTION 11. TRANSFER FEE

If any interest of the Buyer under this Contract is assigned, subcontracted, or otherwise transferred, a fee to cover administrative costs will be immediately due and payable to Seller. The amount of the fee shall be prescribed by Seller's duly adopted Oregon Administrative Rule 274.20.440.

### SECTION 12. NOTICE

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or ten (10) days after being deposited in the U.S. mail, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

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**SECTION 13. COSTS AND ATTORNEY FEES**

Events may occur that would cause Seller or Buyer to take some action, judicial or otherwise, to enforce or interpret terms of this Contract. Should such actions be taken, the prevailing party shall be entitled to recover from the other party all expenses reasonably incurred in taking such action. Such expenses shall include, but are not limited to the following costs:

- Cost of searching records
- Cost of title reports
- Cost of surveyors' reports
- Cost of foreclosure reports
- Cost of attorney fees

whether incurred in a suit or action, in an appeal from a judgement or decree thereon, or in connection with any judicial action.

**SECTION 14. SURVIVAL OF COVENANTS**

Any covenants, the full performance of which is not required prior to the closing or final payment of the purchase price, shall survive the closing and the final payment of the purchase price. Such covenants shall be fully enforceable thereafter in accordance with their terms.

**SECTION 15. GOVERNING LAW; SEVERABILITY.**

This Contract shall be governed by the laws of the State of Oregon. In the event that any provision or clause of this Contract conflicts with applicable law, such conflict shall not affect any other provision, and, to this end, the provisions of this Contract are severable.

**SECTION 16. REPRESENTATIONS; CONDITION OF PROPERTY**

Buyer accepts the land, buildings, improvements, and all other aspects of the property, and any personal property sold under this Contract, in their present condition, AS IS. Present condition includes latent defects, without any representations or warranties, expressed or implied, unless they are expressly set forth in this Contract or are in writing signed by Seller. Buyer agrees that Buyer has ascertained, from sources other than Seller, the applicable zoning, building, housing, and other regulatory ordinances and laws. Buyer also agrees to accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property. Buyer agrees that Seller has made no representations with respect to such laws or ordinances.

THIS INSTRUMENT DOES NOT GUARANTEE THAT ANY PARTICULAR USE MAY BE MADE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT. A BUYER SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the property. The document supersedes and replaces all prior or existing written and oral agreements including any sale or earnest money agreement between the parties or their representatives relating to the property.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate as of the first day and year above written.

**BUYER(S):**

*Kenneth R. Davis*  
Kenneth R. Davis 12-4-14

*Denise I. Davis*  
Denise I. Davis 12-4-14

STATE OF OREGON

County of Multnomah ) ss

20732

September 1 19 84

Personally appeared the above named Kenneth E. Davis and Denise J. Davis  
and acknowledged the foregoing Contract to be his (their) voluntary act and deed.

Before me

Kathleen A. Peterson

My Commission Expires

Notary Public For Oregon

SELLER:

Director of Veterans' Affairs

By

Gwen Ulrey

Manager, Loan Processing Center

Title

STATE OF OREGON

County of Deschutes ) ss

November 20 19 84

Personally appeared the above named Gwen Ulrey

and, being first duly sworn, did say that he (she) is duly authorized to sign the foregoing Contract on behalf of the Department of Veterans' Affairs by authority of its Director.

Before me

[Signature]

My Commission Expires: 08-29-86

Notary Public For Oregon

CONTRACT OF SALE

FOR COUNTY RECORDING INFORMATION ONLY

AFTER RECORDING, RETURN TO:

DEPARTMENT OF VETERANS' AFFAIRS  
155 NE REVERE AVENUE  
BEND, OREGON 97701

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Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals, of Enterprise Irrigation District.

Regulations, including levies, liens, assessments, rights of way and easements of the South Suburban Sanitary District, and as per Ordinance No. 29, recorded May 24, 1983 in Book M-83 at page 8062.

Covenants, easements and restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms thereof,  
Recorded : May 25, 1942 Book: 147 Page: 369

An easement created by instrument, including the terms and provisions thereof,  
Recorded : February 12, 1980 Book: M-80 Page: 2813  
In favor of : City of Klamath Falls  
For : Sewer line across North 15 feet

An easement created by instrument, including the terms and provisions thereof,  
Recorded : February 14, 1983 Book: M-83 Page: 2367  
In favor of : Larry J. and Marilyn D. Meadows

STATE OF OREGON, )  
County of Klamath )  
Filed for record at request of

on this 22nd day of February A.D. 1983  
at 2:00 o'clock P. M. and do  
recorded in the 1983 1 1  
Page 2367

EVELYN BEHN, Clerk

By Pam Smith Deputy

Fee 22.00