

34603

OREGON



Department of Veterans' Affairs

K-43486

Vol. 18540 / Page 18540

# CONTRACT OF SALE (Cash Equity)

Dated: September 10, 1991

BETWEEN:

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

as SELLER

AND:

Dave Lee CooleyFreda Dolores CooleyHusband and Wife

as BUYER(S)

For the sum of \$ 39,650.00 and on the terms and conditions set forth below, Seller agrees to sell and Buyer agrees to buy the following described real property (the "property"):

Lot 17, Block 30, FIFTH ADDITION TO KLAMATH RIVER ACRES, in the County of Klamath, State of Oregon

Together with the following described mobile home which is firmly affixed to the property:

1979 Liberty/Ridgway, Serial No. 14L10041XU, 28' x 66".

SECURITY ADDRESS: 11590 Redwing Loop, Keno, Or 97627  
Subject only to the following encumbrances:

- 1 Any improvement located upon the insured property, which constitutes a mobile home as defined by Chapter 801, Oregon Revised Statutes, is subject to registration and taxation as therein provided and as provided by Chapter 308, Oregon Revised Statutes.
- 2 Subject to rules and regulations of Fire Patrol District.
- 3 Conditions, restrictions as shown on the recorded plat of Fifth Addition to Klamath River Acres.

TAX STATEMENT - Until a change is requested, all tax statements shall be sent to:

Tax Account Number(s)

Key No. 622696Key No. 62602Dave Lee Cooley

(Name of Buyer)

1350 Lucretia Avenue

(Mailing Address)

San Jose, CA 95122

(City)

(State)

(Zip)

AFTER RECORDING, RETURN TO:

Oregon Department of Veterans' Affairs  
Processing Section  
700 Summer Street NE  
Salem, OR 97310-1201

C-22634

Contract Number

## RESERVATION OF MINERAL RIGHTS.

- ☒ Mineral rights are not being retained on this property.
- ☐ Mineral rights are being retained on this property.

The property secured by this Contract is ten acres or more in size, or is three acres or more in size and is located in Clatsop County or Columbia County, so the Division of State Lands is withholding all mineral rights for the State of Oregon, and the above legal description is amended to include the following reservation of mineral rights:

"Excepting and reserving to itself, its successors, and assigns all minerals, as defined in ORS 273.775(1), including soil, clay, stone, sand and gravel, and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for, exploring for, mining, extracting, storing, drilling for, and removing such minerals, materials, and geothermal resources. In the event use of the premises by a surface right owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from the State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the State's lessee conducts any of the above activities."

## SECTION 1. PURCHASE PRICE; PAYMENT

1.1 TOTAL PURCHASE PRICE. - Buyer agrees to pay Seller the sum of \$ 39,650.00 as the total purchase price ("purchase price") for the property.

1.2 BUYER'S EQUITY. - Buyer pays the sum of \$ 7,930.00 as a cash down payment to be applied to the Total Purchase Price for which the Seller acknowledges receipt.

1.3 REPAYMENT. - Buyer agrees to pay the remainder of the purchase price (\$ 31,720.00) to Seller in regular ☒ monthly ☐ annual payments ("regular payments") of not less than \$ 267.00 including interest, payable on the first day of each payment period, beginning 11-01-91 ~~at~~ and continuing until 10-01-2016 ~~or~~ when the entire balance then unpaid shall be due and payable.

The payment amounts necessary for principal, interest, taxes, and insurance (if applicable) shall be added together; and the aggregate amount shall be paid each payment period in a single payment to the Seller. Any deficiency in the amount of any such aggregate payment shall constitute a default under this Contract.

At such time as notified in writing by the Seller, Buyer agrees to participate in establishing a reserve account with Seller into which the portions of the payment necessary for taxes and insurance will be deposited. Seller agrees to give Buyer 30 days notice of such change, and to maintain such reserve deposit account as outlined under Section 2 of this Contract.

Upon payment of the total purchase price for the property as provided by this Contract and performance by Buyer of all other terms, conditions, and provisions of the Contract, Seller shall deliver to Buyer a Bargain and Sale Deed, unless otherwise agreed to by the Seller and the Buyer.

1.4 PREPAYMENTS. - Buyer may prepay all or any portion of the principal balance due on the Contract at any time without penalty.

1.5 PLACE OF PAYMENT. - All payments to Seller shall be made to the Oregon Department of Veterans' Affairs at 700 Summer Street, Northeast, Salem, Oregon 97310-1201, unless Seller gives written notice to Buyer to make payments at some other place.

1.6 INTEREST. - All deferred balances of the purchase price shall bear interest at the rate of 9.0 percent per annum from the date of this Contract until paid. The Seller may periodically adjust the regular payment on this Contract to an amount that will cause the Contract to be paid in full on the due date of the last scheduled payment. Interest will be included in each of the above regular payments. The annual interest rate during the term of this Contract is variable; it cannot increase by more than 1 percent, except to maintain the solvency of the Oregon Department of Veterans' Affairs. The Seller may periodically change the interest rate by administrative rule, pursuant to the provisions of ORS 407.375(5). Any change in the interest rate may change the amount of the regular payment.

1.7 PROPERTY TAXES. - Buyer agrees to pay to the Seller (in addition to the regular payments of principal and interest) a sum, as estimated by the Seller, of the property taxes and special assessments next due and payable on the property covered by this Contract. Buyer shall also pay to Seller on demand, any additional amounts which may be necessary for payment of the taxes or assessments.

1.8 LOAN CANCELLATION LIFE INSURANCE. - Loan Cancellation Life Insurance is an optional program. If the Buyer applies and is accepted for this insurance, the Buyer agrees to pay the estimated premium to the Seller with their regular payment as it becomes due. The insurance contract may provide that loan cancellation life insurance will be canceled after payments on the Contract become four months past due.

**1.9 RIGHT OF REDEMPTION.** - This Contract is subject to the right of redemption arising from a Decree of Foreclosure in Case Number NA in the Circuit Court of the State of Oregon, for the County of NA. The redemption period ends in accordance with ORS 23.560. In the case of a redemption, Seller shall refund Buyer the purchase price, less the balance due, plus interest at the rate of NA percent per annum. The amount refunded will be reduced by \$ NA per month, as a reasonable rental for the use of the property.

If the property being purchased under this Contract is reclaimed, Buyer agrees that money spent for remodeling or additions may not be recoverable. Buyer further understands that repairs should only be made to the property to make sure that the property is safe, sound, and sanitary until the redemption period has expired.

## **SECTION 2. RESERVE ACCOUNTS**

At least once each year the Seller will analyze the reserve account balance in relation to the projected payments to be received into the account and paid from the account.

**2.1 EXCESS FUNDS IN ACCOUNT.** - On any amount in the reserve account over \$25 in excess of projected needs, Seller will give the Buyer a written option of having the excess funds:

- a. Applied to the principal balance of the Contract, or
- b. Returned by check to the Buyer, or
- c. Retained in the reserve account to accrue for future needs.

Failure of the Buyer to respond with an election of one of the options within 15 days will result in the Seller selecting option "c" to retain the excess funds in the reserve account.

**2.2 SHORTAGE IN ACCOUNT.** - In the event Seller determines that amounts in the account are insufficient to pay projected needs, upon written request from the Seller, Buyer will pay the necessary amount to Seller within 15 days. Failure to pay the required amount within the time allowed constitutes a default under Section 8 of this Contract.

**2.3 INTEREST.** - Seller agrees to pay interest on the balance in the reserve account as provided in ORS 86.245.

## **SECTION 3. OCCUPANCY.**

☒ Buyer will not be occupying the property and this Section does not apply.

☐ Buyer will be occupying the property as his/her principal primary residence.

**3.1 FAILURE TO OCCUPY.** - In the event Buyer fails to occupy the property as his/her principal primary residence within 60 days after closing or to continuously occupy the property as his principal primary residence for a period of not less than 365 days from the date of closing or initial occupancy, whichever is later, Seller may require payment of an additional cash down payment in the amount of \$ NA within 30 days from the date of notification. The additional down payment will be the amount the Buyer would have been required to pay if the property had been purchased as nonowner-occupied, less the amount of down payment paid at closing.

Failure to pay the additional down payment within 30 days of notification will constitute a default under Section 8 of this Contract.

**3.2 APPLICATION OF PROCEEDS.** - In the event that the Buyer fails to occupy the property and pays the Seller the required additional cash down payment, Seller shall apply the payment made by the Buyer to the principal balance of the Contract. The payment will only be considered as an additional down payment, and will in no way be considered a prepayment of any regular payment nor cause the account to be "paid ahead." Following payment of the required additional down payment, Seller will reamortize the remaining principal balance and adjust the principal and interest portion of the regular payment accordingly.

## **SECTION 4. POSSESSION; MAINTENANCE**

**4.1 POSSESSION.** - Buyer shall be entitled to possession of the property from and after the date of this Contract. It is understood and agreed 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 30 consecutive days without prior written approval of Seller.

**4.2 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. Except for domestic purposes, Buyer shall not permit the cutting or removal of any trees, nor removal of any sand and gravel, without prior written consent of Seller.

**4.3 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 Contract. Buyer shall promptly make all required repairs, alterations, and additions. Buyer may contest in good faith any such requirements and withhold compliance during any legal proceeding, including appropriate appeals, so long as Seller's interest in the property is not jeopardized.

## **SECTION 5. INSURANCE**

**5.1 PROPERTY DAMAGE INSURANCE.** - Buyer shall keep the improvements now existing or hereafter erected on the property insured against loss by fire; hazards included within the term "extended coverage"; floods, where applicable; and such other hazards as Seller may require. Buyer shall keep the required insurance in such amounts and for such periods as Seller may require, provided that Seller shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Contract.

The insurance carrier providing the insurance shall be chosen by Buyer subject to approval by Seller, provided that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Buyer making payment, when due, directly to the insurance carrier; or, at Seller's option Buyer shall pay Seller an amount, determined as follows, with their regular payment as it becomes due, and Seller shall pay said premiums:

- a. When regular payments are due monthly, a sum equal to one-twelfth of the yearly insurance premium; or,
- b. When regular payments are due annually, an amount equal to one year's insurance premium.

If Buyer fails to obtain the required insurance coverage or fails to provide Seller with proof of insurance, Seller may procure insurance coverage to protect Seller's interest in the property and add the cost to the balance due under this Contract.

All insurance policies and renewals shall be in a form acceptable to Seller, and shall include a standard mortgage clause in favor of Seller. Seller shall have the right to hold the policies and renewals, and Buyer shall promptly furnish to Seller all renewal notices and all receipts of paid premiums.

**5.2 EVENT OF LOSS.** - In the event of loss, Buyer shall give prompt notice to the insurance carrier and Seller; Seller may make proof of loss if not promptly made by the Buyer. Insurance proceeds shall be paid directly to the Seller, which may deal directly with any insurance company. If Seller by reason of such insurance receives any money for loss or damage, such amounts may be, at the option of Seller, either:

- a. Retained and applied by Seller toward payment of all or part of the indebtedness secured by this Contract in such order as Seller may determine, without regard to whether or not the security of the Seller is impaired; or,
- b. Paid over wholly or in part to the Buyer upon such conditions as Seller may determine for the repair of buildings or improvements located on the property or for the erections of new buildings or improvements in their place, or for any other purpose or object satisfactory to Seller.

Unless Seller and Buyer otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the regular payments or change the amount of such payments.

If, in the event of a contract foreclosure or judicial foreclosure the property is acquired by Seller, all right, title, and interest of Buyer in and to any insurance policies and in and to the proceeds thereof (to the extent of the sum secured by this Contract immediately prior to such acquisition) resulting from damage to the property prior to the acquisition, shall pass to the Seller.

## **SECTION 6. EMINENT DOMAIN**

If a condemning authority takes all or any portion of the property, Buyer and Seller shall share in the condemnation proceeds in proportion to the values of their respective interest in the property. Sale of the property in lieu of condemnation shall be treated as a taking of the property.

## **SECTION 7. SECURITY AGREEMENT**

This instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to any personal 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 statement at Buyer's expense. Without further authorization from Buyer, Seller may at any time file copies of this Contract as financing statements either with the Secretary of State or the County Clerk's Real Estate Records. Upon default under the terms of this Contract, Buyer shall, within three days of receipt of written demand from Seller, assemble the personal property and make it available to Seller. Seller reserves and Buyer grants to Seller a security interest in any standing timber or timber to be cut located upon the property.

## **SECTION 8. DEFAULT**

**8.1 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 if during any 12-month period Seller has already sent three notices to Buyer concerning nonpayment or late payment under this Contract.

- b. Failure of Buyer to perform any other obligation in this Contract within 30 days after receiving Notice of Default from Seller. The Notice shall specify the nature of the default. No notice of default and no opportunity to cure shall be required if during any 12-month period Seller has already sent three notices concerning the same event of default.

**8.2 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 cents per dollar of the payment in the event Buyer fails to make any payment within ten days after it is due.
- f. After complying with the notice requirements and right to cure the default contained in 1985 Oregon Laws, chapter 718, Seller may declare this Contract forfeited and retain the amount of the payments previously made under this Contract. Upon recordation of the affidavit required by Oregon law, this Contract shall be extinguished and canceled, and Buyer shall have no further right, title, or interest in and to the property or to any return or compensation for payments previously made under this Contract, as though this Contract and such payments had never been made. In such event, Buyer agrees to surrender the property to Seller. If Buyer fails to do so, Seller may elect to treat Buyer as a tenant holding over unlawfully after the expiration of a lease, and Buyer may be ousted and removed as such, without affecting Seller's right to pursue other rights and remedies contained in this Contract or permitted by law.
- 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 user fees directly to Seller. If the income is collected by the 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.

**8.3 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 9. SELLER'S RIGHT TO CURE**

If Buyer fails to perform any obligation required of him/her under this Contract, Seller may, without notice, take any steps necessary to remedy such failure. Buyer shall immediately reimburse Seller for all amounts expended in so doing on demand plus interest at the Contract rate. 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 10. 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 11. 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 waivers 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 the regular payments. Regular payments may be increased to the amount necessary to retire the obligation within the time provided for in Section 1.3 in this Contract. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller. Buyer hereby waives notice of and consent to any and all extensions and modifications of this Contract granted by Seller. Any other person at any time obligated for the performance of the terms of this Contract also hereby waives such notice and consent. Any such extensions or modifications will not in any way release, discharge, or otherwise affect the liability of any person at any time obligated under this Contract.

**SECTION 12. 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 13. NOTICE**

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or ten 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.

**SECTION 14. 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 judgment or decree therein, or in connection with nonjudicial action.

**SECTION 15. 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 16. 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 17. REPRESENTATIONS; CONDITIONS OF PROPERTY**

Buyer accepts the land, buildings, improvements, 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.



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Buyer agrees that Buyer has ascertained, from source 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 WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

This Contract is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the property. This Contract 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 date listed above written.

BUYER(s):

Dave Lee Cooley  
Signature of Buyer  
DAVE LEE COOLEY

Date Signed

Freda Dolores Cooley  
FREDA DOLORES COOLEY

Date Signed

Date Signed

STATE OF OREGON

County of

Klamath

On September 11, 1991

personally appeared the above named Dave Lee Cooley and Freda Dolores Cooley and acknowledged the foregoing Contract to be his/her (their) voluntary act and deed.

Before me:

My Commission Expires: 12-19-92

SELLER:

STATE OF OREGON

County of

MARION

Director of Oregon Department of Veterans' Affairs

By

Bill La Mar  
BILL LA MAR

Signature of ODVA Representative

Date Signed

ASST. UNDERWRITING MANAGER

Title of ODVA Representative

On September 10, 1991

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

Before me:

My Commission Expires: 11-22-92

DS/CR/

FOR COUNTY RECORDING INFORMATION ONLY

STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of Klamath County Title Co. the 13th day of Sept. A.D., 1991 at 4:03 o'clock P.M., and duly recorded in Vol. M91 of Mortgages on Page 18540

By Evelyn Biehn County ClerkBy Danuel M. Williams

FEE \$38.00

C-22634

Contract Number