

NUTZ 84850-DS

2009-006693

Klamath County, Oregon



00065954200900066930070077

05/12/2009 11:32:39 AM

Fee: \$51.00

Seller's Name and Address:

JOHN L. & DELORESE K. BROWNING

16910 SE Dunhill Loop

Damascus, OR 97089

Buyer's Name and Address:

GINA HOWARD

P. O. Box 462

Malin, OR 97632

After Recording Return to:

*Amertitle - Acct. Servicing Dept.
300 Klamath Ave, Klamath Falls, OR*

Until A Change is Requested

9/7/01

Send Tax Statements to:

BUYER

The true and actual
consideration stated in this
instrument is: \$ 67,500.00.

LAND SALE CONTRACT

THIS CONTRACT is made and entered into this *7th* day of *MAY*, 2009, by and between **JOHN L. BROWNING and DELORESE K. BROWNING**, Husband and Wife, hereinafter called "Seller", and **GINA HOWARD**, hereinafter called "Buyer" (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

W I T N E S S E T H:

Seller agrees to sell to Buyer and Buyer agrees to buy from Seller for the price and on the terms and conditions set forth hereafter all of the real property and improvements, all situate in the County of Klamath, State of Oregon, civilly described as 2207 E-Z Street, Malin, Oregon and more particularly described as follows, to wit:

Lot 6, Block 2 TRACT 1181 according to the official plat thereof on file with the Clerk of Klamath County, Oregon

SUBJECT TO contract and/or liens for irrigation and/or drainage, restrictions, easements, restrictions and rights-of-way of records, and those apparent on the land.

ALSO SUBJECT TO rights of the public in and to any portion of the herein described property lying within the boundaries of roads and highways.

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS,

5/12/09

IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007."

It is mutually agreed as follows:

1. **Possession:** Buyer shall be entitled to take possession of the real property pursuant to the within agreement as of the date of closing.

2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment.

3. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of **Sixty Seven Thousand Five Hundred and No/Dollars (\$67,500.00)** which such sum shall be payable as follows:

a. Buyer shall be required to pay an initial "Down Payment" in cash in the sum of **Two Thousand Five Hundred and No/dollars (2,500.00);** and

b. The remaining balance shall be payable in monthly payments of **Five Hundred Sixty Six and ten one-hundredths Dollars (\$566.10)**, such payment including interest at **Ten Percent (10.0%)** per annum on the unpaid balance; the first of such payments shall be payable upon or before the 12th day of June, 2009, with a further in like installment payment due on the same day of each and every month thereafter until **March 1, 2012, WHEN THE ENTIRE REMAINING BALANCE OF PRINCIPAL AND INTEREST SHALL BE FULLY DUE AND PAYABLE.** Buyer may make advance or excess payments, without penalty and if so made, such payments shall be applied first toward account interest, with the remainder to be applied toward the principal balance. No partial prepayment shall excuse the payment of installments next coming due.

4. **Late Payment Penalty:** In addition to any other remedy afforded Seller herein, Seller shall be entitled to receive payment in the amount of **Twenty Eight and Thirty Hundredths Dollars (\$28.30)**, (Five percent of the monthly payment due) in addition to the regularly scheduled payments set forth herein as

and for a late payment penalty, should Buyer fail to make any payment required to be made hereunder within fifteen (15) days of the day due. Seller shall be required to notify both Buyer and the escrow agent named herein (or its successor) of the accrual of such late payment charge, which such charge shall be accounted for only as an additional charge to Buyer and not as a credit to either interest or principal.

5. Payment of Liens and Taxes: Buyer shall pay promptly all indebtedness incurred by Buyer's acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date; provided, all such taxes, assessments and charges for the current year shall be prorated as of the date hereof, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered a proper receipt therefor.

6. Insurance: It is agreed that Buyer will keep any building or improvements on said property insured against loss or damage by fire or other casualty in an amount of not less than the full insurable value thereof with loss payable to the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession. Buyer shall furnish Seller proof of such insurance coverage.

7. Waste Prohibited: Buyer agrees that all improvements now located or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair.

8. Transfer of Title:

A. Seller shall, upon the execution hereof, make and execute in favor of Buyer a good and sufficient deed in statutory Special Warranty form conveying said property free and clear of all liens and encumbrances, except as provided hereinabove and shall place said documents, together with one of these agreements, in escrow at AmeriTitle, 300 Klamath Avenue, Klamath Falls, Oregon, and

shall enter into written escrow instructions in a form satisfactory to said escrow holder and the parties hereto, instructing said escrow holder that when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said escrow holder shall deliver said documents to Buyer, but in case of default by Buyer said escrow holder shall, on demand, surrender said documents to Seller.

B. The parties are aware that the property being conveyed is subject to the terms and provisions of the certain Trust Deed recorded in Volume M02, page 11039 records of Klamath County, Oregon (as assigned) wherein Sellers are Grantors. Payments received by seller under the within Land Sale Contract shall be utilized in part by sellers in an amount sufficient to maintain the said Trust Deed securing payment of Promissory Note on a current basis. In addition, Seller will, upon payment in full by Buyer pay the unpaid balance owing thereunder in full.

9. **Property Taken "As Is"**: Buyer certifies that this contract of purchase is accepted and executed on the basis of Buyer's own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability, that no attempt has been made to influence Buyer's judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement, with no express, implied, or other warranties by Seller.

10. **Consent to Assignment**: Buyer shall not assign this agreement, Buyer's rights thereunder, or in the property covered thereby without the written consent of Seller. In the event the within described property, any part thereof, any interest therein (whether legal or equitable) is sold, agreed to be sold, conveyed, assigned or alienated by the Buyer without having first obtained the written consent of the Seller, then, at the Seller's option, all obligations secured by this instrument, irrespective of the maturity date expressed herein, shall become immediately due and payable.

11. **Time of Essence**: It is understood and agreed between the parties that time is of the essence of this contract.

12. **Environmental Matters**: Seller represents that Seller is not aware of the existence on the property of any underground storage tanks (UST's) **currently** used for the storage of petroleum products.

13. **Default**: In case Buyer shall fail to make the payments aforesaid, or make them punctually and upon the strict terms and at the times above specified or fail to keep any of the terms or conditions of this agreement, then Seller, shall, at Seller's

option, have the following rights, in addition to other remedies provided under Oregon law:

a. To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

b. To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

c. To withdraw said deed and other documents from the escrow; and/or

d. To foreclose this contract by suit or by strict foreclosure in equity.

In any of such cases, all rights and interest created or then existing in favor of Buyer as against Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above described and all other rights acquired by Buyer hereunder shall revert to and revest in Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of 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. Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right, and nothing in this contract shall preclude appointment of the Seller as such receiver.

14. Abandonment: Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and Seller's security interest herein, and in the event possession is so taken by Seller, Seller shall not be deemed to have waived Seller's right to exercise any of the foregoing rights.

15. Attorney Fees: In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

16. **No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision thereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by 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.

17. **Binding on Successors:** This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing.

18. **Inclusion of Personal Property:** There is sold to Buyer pursuant to this agreement, and secured thereby, certain personal property including the following: electric range, dishwasher, disposal, Monitor heater and window treatments.

It is agreed between Buyer and Seller that any personal property or fixtures on the premises conveyed with this agreement are conveyed "AS IS WITH ALL FAULTS."

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

SELLER:

X

JOHN L. BROWNING

X

DELORESE K. BROWNING

BUYER:

GINA HOWARD

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named JOHN L. BROWNING and DELORESE K. BROWNING as SELLER and acknowledged the foregoing instrument to be their voluntary act and deed.

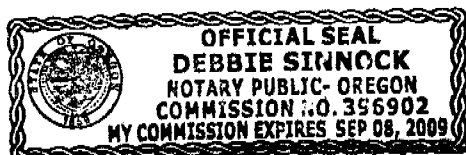
Before me this _____ day of _____, 2009.

NOTARY PUBLIC FOR OREGON

My Commission Expires _____

STATE OF OREGON, County of Klamath) ss.

Before me this 7th day of May, 2009,
PERSONALLY APPEARED the above-named GINA HOWARD as BUYER and acknowledged the foregoing instrument to be her voluntary act and deed.



NOTARY PUBLIC FOR OREGON

My Commission Expires 7/07

16. **No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision thereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by 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.



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SELLER:

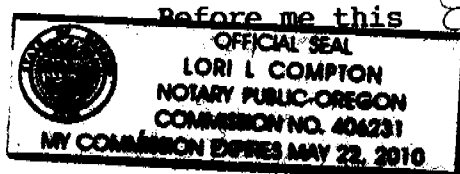

JOHN L. BROWNING

DELORESE K. BROWNING

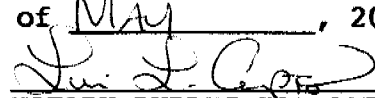
BUYER:


GINA HOWARD

CLACKAMAS
STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named JOHN L. BROWNING and DELORESE K. BROWNING as SELLER and acknowledged the foregoing instrument to be their voluntary act and deed.




NOTARY PUBLIC FOR OREGON
My Commission Expires May 22, 2010

STATE OF OREGON, County of Klamath) ss.

PERSONALLY APPEARED the above-named GINA HOWARD as BUYER and acknowledged the foregoing instrument to be her voluntary act and deed.

NOTARY PUBLIC FOR OREGON
My Commission Expires _____