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BOOK 120 PAGE 513

FILED FOR RECORD
SKAMANIA COUNTY, WASH
BY *Kidpinski & Lounie*

SEP 6 2 51 PM '90

*P. Lowry*REAL ESTATE CONTRACT
GARY H. GILSON

THIS CONTRACT, made and entered into this 10th day of July, 1990, between **RICHARD E. DAVIS** and **GAYLE DAVIS**, husband and wife, hereinafter called the "Sellers", and **CHANCEY R. DAVIS, SR.** and **AVIS DAVIS**, husband and wife, hereinafter called the "Purchasers".

WITNESSETH; That the Sellers agree to sell to the Purchasers and the Purchasers agree to purchase from the Sellers the following described real estate, with the appurtenances, in Skamania County, State of Washington:

Commencing at the Southwest corner of the North Half of the Northwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 17, Township 3 North, Range 8 East of the Willamette Meridian; thence East 30 feet along the South line of said subdivision; thence North parallel with the West line of said subdivision 30 feet to the True Point of Beginning; thence South 87°26'21" East 450 feet; thence North 1°29'55" East 300 feet; thence North 87°26'21" West parallel with the South line of said subdivision 480 feet to a point 30 feet East of the West line of said subdivision; thence South along the line parallel with and 30 feet East of said West line 300 feet to the True Point of Beginning.

ALSO KNOWN AS Lot 2 of Blake Short Plat, filed September 14th, 1983 in Book 3 of Short Plats, Page 54, under Auditor's File No. 96373, records of Skamania County, Washington.

SUBJECT TO that certain Real Estate Contract dated September 14, 1983 by and between Serena E. Blake, a single woman, as seller, and Richard E. Davis and Gayle Davis, husband and wife, as purchasers, recorded September 21, 1983 under Auditor's File No. 96414 in Book 82 at Page 704, records of Skamania County, Washington.

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is Forty-two Thousand Five Hundred Twenty and 96/100 Dollars (\$42,520.96), of which \$20,000.00 shall be paid on or before August 10th, 1990, and the balance of said purchase price shall be paid as follows:

a. \$354.27, or more at Purchasers' option, on or before the 14th day of July, 1990, and \$354.27 or more at Purchasers' option, on or before the 14th day of each succeeding calendar month thereafter until the balance of said purchase price shall have been fully paid.

b. The Purchasers further agree to pay interest on the diminishing balance of said purchase price at the rate of thirteen per cent (13%) per annum from the 10th day of July, 1990, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.

3. All payments to be made hereunder shall be made at Security Pacific Bank, White Salmon, Washington, Account No. 03410048-7, or at such other place as the Sellers may direct in writing.

Recorded *p*
Index *p*
Filed *p*
9-7-90
Noted

Glenda J. Kimmel, Skamania County Assessor
By: *GL* Parcel # 3-8-17-3-1200

SKAMANIA COUNTY TREASURER
Paul D. [Signature]

PAID

587.81

SEP 6 1990

13835 REAL ESTATE EXCISE TAX

4. As referred to in this contract, "date of closing" shall be July 10, 1990.

5. Purchasers may at their option pay the entire balance of the purchase price remaining due, or any part of such balance, at any time before maturity, without penalty and without notice to Sellers.

Closing Costs

6. Sellers' Closing Costs. Sellers shall pay the following closing costs:

- a. Real Estate Excise Sales Tax in the amount of \$544.27.
- b. Premium for the Purchasers' Policy of Title Insurance in the amount of \$313.50 (\$293.00 plus \$20.52 tax).
- c. Fee for recordation of their Real Estate Contract in the amount of \$15.00.
- d. Closing fee to Kielpinski & Lorne, P.C. in the amount of \$350.00.

Pro-Rated Items

8. The following shall be pro-rated as of the date of closing:

- a. 1990 Real Property Taxes
- b. Insurance, interest, mortgage insurance, water and other utilities constituting liens, if applicable.

9. The Purchasers assume and agree to pay before delinquency all taxes and assessments, including but not limited to any governmental improvement assessments or charges that may as between grantor and grantee hereafter become a lien on said real estate. Upon request by Sellers, Purchasers will show proof of said payments.

Inspection

10. The Purchasers agree that full inspection of said real estate has been made and that neither the Sellers nor their assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the Purchasers or Sellers or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract.

a. Purchasers are acquiring the property "as is" and Sellers make no representations or warranties except as to title as set forth herein. Without limiting the generality of the foregoing, Purchasers acknowledge that they have made their own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant they may retain. Purchasers may not rely upon any representation of any party whether or not such party purports to act on behalf of Sellers, unless the representation is expressly set forth therein or in a subsequent document executed by Sellers. All representations, warranties, understandings and agreements between Purchasers and Sellers are merged herein and shall not survive closing.

Taking

11. The Purchasers assume all risk hereafter placed on said real estate or of the taking of said real estate or any part thereof for public use and agree that any such taking shall not

constitute a failure of consideration. In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to the Sellers and applied as payment on the purchase price herein unless the Sellers agree in writing to allow the Purchasers to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking.

Timber

12. Purchasers shall not be entitled to cut or remove any timber from the property unless the following conditions are first satisfied:

- a. Purchasers shall give not less than fifteen (15) days prior written notice to Sellers that cutting is contemplated, which notice shall include an accurate legal description of the area which is to be cut, the amount of board feet, and market value of the timber proposed to be cut or removed;
- b. Purchasers shall not be entitled to cut any timber if, in the Sellers' sole opinion, such cutting would unreasonably diminish Sellers' security under this contract; and
- c. Purchasers shall not be entitled to cut any timber without the written consent of Sellers. Any denial by Sellers to cut timber shall also be in writing and state specifically the reasons therefore.
- d. If any timber is cut or removed, all proceeds of sale shall be paid directly to Sellers and applied towards the purchase price hereunder. The application of such proceeds shall not, however, excuse Purchasers from the payment of any installments or other payments required hereunder.

Insurance

13. The Purchasers agree to keep any improvements or future improvements located on the property insured against loss or damage by fire, windstorm, and all other casualties covered by "all risk" or extended coverage endorsements available in the State of Washington in an amount equal to the full insurable value thereof, on the initial and renewal policy dates, with a company acceptable to the Sellers and with loss payable first to Sellers as their interest may appear, and to pay all premiums for such insurance and deliver all policies and renewals thereof to the Sellers. All such policies shall provide that they cannot be amended or canceled without ten (10) days written notice to Sellers.

In the event of loss or damage to the property which is required to be insured hereunder, and except as otherwise required by any prior encumbrance and the then holder thereof, the insurance proceeds shall, at the option of the Purchasers, be used to repair, rebuild, or replace all improvements and personal property which may have been destroyed or damaged to the extent necessary to restore and replace them to substantially the same condition which existed immediately prior to the casualty, subject to such modifications as may then be required by law or to which the Sellers agree in writing. Immediately upon receipt, all insurance proceeds, together with any other sums required to complete the repairs and restorations, shall be placed in a construction disbursement account with an escrow agent or other person jointly designated by the Sellers and the Purchasers and shall be disbursed periodically in amounts corresponding to the percentage of completion of repairs; provided, however, that in the event this contract is forfeited, any portion of such replacement costs due as of the date of such forfeiture shall be immediately paid to the Sellers. No construction may be commenced until all sums required to pay the costs thereof have been deposited in the disbursement

account. The expenses of said disbursement account and the expenses of obtaining percentage completion certificates shall be paid by the Purchasers, and the Purchasers shall be responsible for depositing in the disbursement account the amounts necessary to pay all costs of repairs, reconstruction and replacements which are not covered by the insurance proceeds. In the event the Purchasers desire to construct improvements which are materially different from those so damaged or destroyed, they shall first obtain the Sellers' written consent. All repairs and replacements shall be commenced within sixty (60) days following the date the Purchasers elect to reconstruct and shall be continuously pursued with due diligence. Subject to the terms of any prior encumbrances, any casualty insurance proceeds which are not used to pay for repairs or replacements permitted by the terms of this paragraph shall be paid to the Sellers and applied against the principal balance last due hereunder.

If (a) the Purchasers do not elect to repair the damage, or (b) the Sellers' consent to different improvements is not waived or given, or (c) the Purchasers do not deposit into the disbursement account all sums in excess of available insurance proceeds required for reconstruction by the date construction is required to commence, or (d) construction is not commenced when required or not continuously pursued (subject to delays beyond the reasonable control of the Purchasers, the Sellers may require that all casualty insurance proceeds be immediately paid to the Sellers or to the holder of a prior encumbrance having a valid claim thereto which is prior to the Sellers'. The Purchasers shall make the elections provided for in this paragraph within sixty (60) days following the date of the casualty, and the Sellers shall respond in writing to a written request to construct materially different improvements within twenty (20) days after said request. Any failure of the Purchasers to timely make any such election shall enable the Sellers to apply the insurance proceeds against the principal last due under this contract, and any failure of the Sellers to timely respond to any such request shall be deemed an approval thereof.

Damage to or destruction of the property or any portion thereof shall not constitute a failure of consideration or provide a basis for the rescission of this contract, nor shall such circumstances relieve the Purchasers of their obligation to pay the remaining installment amounts when due. In the event of any failure of the Purchasers to obtain or timely pay any premiums for any insurance required by this paragraph, the Sellers may require the Purchasers to deposit with each installment amount an amount reasonably estimated by the Sellers to be necessary to discharge the next ensuing premiums for said policies, said estimates to be adjusted by the Sellers upon receipt of the premium invoices to reflect the actual amount of such liabilities. The payments so made which have not been applied against such liabilities shall be returned to the Purchasers with the delivery of a statutory warranty fulfillment deed to the Purchasers at such time as the purchase price and interest requested hereunder has been paid in full. The Sellers shall not be liable for interest on said deposits. If not retained in an escrow or collection account, said funds shall be maintained by the Sellers in a segregated account and expended for no other purpose, with interest thereon, if any, being added to the sums so held.

Title Insurance

14. The Sellers have delivered, or agree to deliver within fifteen (15) days of the date of closing a Purchasers' policy of title insurance in standard form, or a commitment therefor, issued by Skamania County Title Insurance Company, insuring the Purchasers to the full amount of said purchase price against loss or damage by reason of defect in Sellers' title to said real estate as of the date of closing and containing no exceptions other than the following:

- a. Printed general exceptions appearing in said policy form;

- b. Liens or encumbrances which by the terms of this contract the Purchasers are to assume, or as to which the conveyance hereunder is to be made subject; and
- c. Agreement regarding water pipelines from a spring including the terms and provisions thereof, as contained in Deed from Bankers Investment Company to Anna V. Sprinkle, recorded May 27, 1915 in Book P, Page 272, Skamania County Deed Records;

none of which for the purpose of this paragraph 13 shall be deemed defects in Sellers' title.

15. Sellers agree to make payments on that certain Real Estate Contract dated September 14, 1983, by and between Serena E. Blake, a single woman, as Seller, and Richard E. Davis and Gayle Davis, husband and wife, as Purchasers, in accordance with the terms thereof, and upon default the Purchasers shall have the right to make any payments necessary to remove the default, and any payments so made shall be applied to the payments next falling due the Sellers under this contract.

Deed

16. The Sellers agree, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to Purchasers a statutory warranty fulfillment deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the Sellers, and subject to the exceptions noted in Paragraph 13 a, b, c, & d hereof.

Possession

17. Unless a different date is provided for herein, the Purchasers shall be entitled to possession of said real estate on date of closing and to retain possession so long as Purchasers are not in default hereunder. The Purchasers covenant to keep any improvements on said real estate in good repair and not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The Purchasers covenant to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date Purchasers are entitled to possession.

Notwithstanding the foregoing, Purchasers acknowledge that the Southeast portion of the premises are presently leased to Lori Manning through October 15, 1990, that she has prepaid the rent through said date, and that she is entitled to continue her present use and occupancy of the Southeast portion of the premises without interference of any nature whatsoever and without payment of additional rent through said date.

Use of Premises

18. Purchasers covenant and agree to make or permit no unlawful, offensive or improper use of the premises or any part thereof.

Assignment

19. The rights hereby granted are personal to the Purchasers and Sellers' reliance upon Purchasers' ability and integrity is a part of the consideration for this contract. Neither this contract nor any interest therein, nor the possession of the property, may be assigned or transferred by Purchasers, nor shall Purchasers make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of Sellers.

Default

20. In case the Purchasers fail to make any payment herein provided, the Sellers may make such payment, and any amounts so paid by Sellers, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by Purchasers on Sellers' demand, all without prejudice to any other right the Sellers might have by reason of such default.

21. Time and the covenants of Purchasers are of the essence of this contract, and it is agreed that in case the Purchasers shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the Sellers may at their option exercise any of the following alternative remedies upon giving Purchasers thirty (30) days written notice specifying the default and the remedy to be exercised should Purchasers fail to secure all defaults at the expiration of the 30-day period:

- a. **Suit for Delinquencies.** Sellers may institute suit for any installments or other sums then due and payable under this agreement together with any sums advanced by Sellers for and the amount of any delinquencies for items such as water assessments, taxes, insurance, payments and underlying obligations and lienable items, together with interest thereon at the rate of 12% per annum from the date each such payment was advanced or due, as the case may be.
- b. **Forfeiture and Repossession.** The Sellers may cancel and render void all rights, title and interests of the Purchasers and their successors in this contract and in the property (including all of Purchasers' then existing rights, interests and estates therein and improvements thereon) by giving a Notice of Intent to Forfeit pursuant to RCW 61.30.040-070, and said cancellation and forfeiture shall become effective if the default therein specified has not been fully cured within ninety (90) days thereafter and the Sellers records a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract, the Sellers may retain all payments made hereunder by the Purchasers and may take possession of the property ten (10) days following the date this contract is forfeited and summarily eject the Purchasers and any person or persons having possession of the said property by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Purchasers or any person or persons claiming by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture remain in possession of the property more than ten (10) days after such forfeiture, the Purchasers, or such person or persons, shall be deemed tenants at will of the Sellers and the Sellers shall be entitled to institute an action for summary possession of the property, and may recover from the Purchasers or such person or persons in any such proceeding the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including the Sellers' reasonable attorneys' fees.
- c. **Specific Performance.** Sellers may institute suit to specifically enforce any of the Purchasers' covenants hereunder.
- d. **Property Rental.** In the event this contract is forfeited as herein provided, or in any other manner permitted by law, or by mutual agreement of the

Purchasers and Sellers, and the Purchasers shall thereafter remain in possession of the property beyond any period otherwise permitted by law, the Purchasers agree that they will occupy the property as a tenant at will, and the Purchasers shall be obligated to pay, and hereby promise to pay, during the period of such tenancy at will, a fair market rental in the amount then agreed to by the parties or, in the absence of such agreement or until such agreement is reached, an amount equal to two (2) times the installment amount as and when provided for in the specific terms hereof, and the Sellers shall have, in addition to all other remedies for the collection of rentals and the recovery of possession that are available to landlords under the laws of the State of Washington, the right to institute an action for summary possession of the property as provided by law.

22. a. In the event Sellers should default in any of their obligations under this contract and such default continues for fifteen (15) days after the Purchasers give the Sellers written notice specifying the nature thereof and the acts required to cure the same, the Purchasers shall have the right to specifically enforce this contract, institute suit for their damages caused by such default, or pursue any other remedy which may be available to Purchasers at law or in equity.

b. The waiver of Sellers to elect to pursue any of the above remedies at any time upon a breach of any of the terms of this contract by the Purchasers shall be deemed only an indulgence by the Sellers with regard to that particular breach and shall not be construed, in any manner whatsoever, to be a waiver of any right of Sellers to pursue any of the above remedies for the same or a different breach at a subsequent time; election of the Sellers to utilize any particular remedy to enforce a breach of this contract shall not preclude Sellers from electing to use an alternate remedy to enforce a subsequent breach. The remedies stated herein are cumulative and not mutually exclusive. Any delay or failure of Sellers to take action upon default shall not be construed as a waiver of said default. If Sellers are required to institute legal action to enforce any of the remedies indicated, Purchasers agree to pay Sellers' costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

Notice

23. Any notice, declaration, demand, consent or communication to be given by any party to this contract to any other party shall be in writing and transmitted to the other party by either personally delivering the notice or by certified or registered mail, return receipt requested, addressed as follows:

To Purchasers:	<u>Chancey R. Davis, Sr. & Avis Davis</u> <u>P. O. Box 454</u> <u>Carson, WA 98610</u>
To Sellers:	<u>Richard E. & Gayle Davis</u> <u>933 Little Black Tail Road</u> <u>Careywood, Idaho 83809</u>

Either party may change its address by giving written notice to the other party in the manner provided above, provided that in no event shall Sellers be required to send any notice to more than two (2) addresses. The mailing and registering or certifying of any such notice as herein provided shall be sufficient service thereof. Service shall be complete when such notice is registered or certified and placed in the United States mail as shown by the cancellation stamp or postage meter stamp, as the case may be.

Costs and Attorneys' Fees

24. If either party shall be in default under this contract, the nondefaulting party shall have the right, at the defaulting party's expense, to retain an attorney to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this contract. The defaulting party hereby promises to pay all costs and expenses so incurred by the nondefaulting party, including, without limitation, court costs, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation). In the event either party hereto institutes any action to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for its court costs and reasonable attorneys' fees, including such costs and fees as are incurred on appeal. All reimbursements required by this paragraph shall be due and payable on demand, may be offset against any sum owed to the party so liable in order of maturity, and shall bear interest at the default rate from the date of demand to and including the date of collection or the due date of any sum against which the same is offset.

Succession

25. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

Governing Law

26. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

Use of Pronouns

27. Unless the context requires otherwise, references to the singular shall include the plural and references to the plural shall include the singular. Unless some other meaning or intent is apparent from the context, masculine, feminine and neuter pronouns are used interchangeably herein.

Representation of Parties

28. Both Purchasers and Sellers understand that although the law firm of Kielpinski & Lorne, P.C. is providing legal services to close the real property transaction specified in the Real Estate Contract, said law firm represents the Sellers and only the Sellers.

Entire Agreement

29. This Agreement supersedes any prior agreement and contains the entire agreement of the parties as to the matter covered. No other agreement, statement or promise made by any party or to any employee or agent of any party shall be binding unless made in writing and signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

SELLERS:

Richard E. Davis
RICHARD E. DAVIS

Gayle Davis
GAYLE DAVIS

PURCHASERS:

Chancey R. Davis, Sr.
CHANCEY R. DAVIS, SR.

Avis L. Davis
AVIS DAVIS

STATE OF IDAHO)
County of Kootenai) ss

On this day personally appeared before me Richard E. Davis and Gayle Davis, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14th day of July, 1990.

[Signature]
Notary Public in and for the State of Washington, residing at Idaho
Commission expires 6-13-93

STATE OF WASHINGTON)
County of Skamania) ss

On this day personally appeared before me Chancey R. Davis, Sr. and Avis Davis, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 10th day of July, 1990.

[Signature]
Notary Public in and for the State of Washington, residing at Idaho
Commission expires 6-13-93