

134811

After Recording Return To:
Attn: Real Estate Services
Department of Transportation
P. O. Box 47338
Olympia, WA 98504-7338

BOOK 188 PAGE 136

FILED FOR RECORD
SKAMANIA COUNTY, WASH
BY State of WA, D.O.T.

APR 9 3 41 PM '99

J. Moser

AUCTION

GARY N. OLSON

REAL ESTATE EXCISE TAX

20127

APR - 9 1999

PAID Exempt

JW

Document Title: Real Estate Contract
Reference Number of Related Document:
Grantor(s): State of Washington, Department of Transportation
Grantee(s): Donald Bryden and Gigi L. Bryden
Legal Description: Lying within the SE 1/4 SE 1/4 Sec. 31, T. 2 N., R. 5 E., W.M.
Additional Legal Description is on Page One of Document
Assessor's Tax Parcel Number: 020531-4-0-1400

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
TRANSPORTATION BUILDING
OLYMPIA, WASHINGTON 98504

REAL ESTATE CONTRACT

SR 140, Washougal River Bridge Vic.

3rd party
insured, by
direct
financed
related

THIS CONTRACT, dated this 5th day of April, 1999, between STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, hereinafter called the "seller," and DONALD C. BRYDEN AND GIGI L. BRYDEN, husband and wife, hereinafter called the "purchasers."

WITNESSETH: That the seller agrees to sell to the purchasers and the purchasers agree to purchase from the seller the following described real estate in Skamania County, State of Washington:

That part of the hereinafter described Parcel "A" lying Southwesterly and Westerly of a line described as:

BEGINNING AT A POINT opposite Highway Engineer's Station 5+16.86 on the SR 140 Line Survey of SR 140, Washougal River Bridge Vic., and 30 feet Southwesterly therefrom; thence Southeasterly to a point opposite Highway Engineer's Station 11+23.56 on said SR 140 Line Survey and 50 feet Westerly therefrom; thence Southerly to a point opposite Highway Engineer's Station 14+91.33 on said SR 140 Line Survey and 66.22 feet Southwesterly therefrom and the END of this line description.

Parcel "A":

Lots 18 and 19, WASHOUGAL SUMMER HOME TRACTS, situated in Section 31, Township 2 North, Range 5 East, Willamette Meridian; EXCEPT the West 10 feet of said Lot 18.

Gary H. Martin, Skamania County Assessor

Date 4-9-99 Parcel # 2-531-4-1960

The specific details concerning all of which may be found on Sheet 1 of that certain plan entitled SR 140, Washougal River Bridge Vic., now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, bearing date of approval January 9 1981.

Subject to all existing encumbrances, including easements, restrictions, and reservations, if any.

On the following terms and conditions: The purchase price is SEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$7,800.00), of which SEVEN HUNDRED EIGHTY AND NO/100 DOLLARS (\$780.00) has been paid, the receipt thereof is hereby acknowledged, and the purchasers agree to pay the balance of said purchase price as follows:

ONE HUNDRED ELEVEN AND 17/100 DOLLARS (\$111.17) or more at purchasers' option, on or before the first day of January, 1999, and ONE HUNDRED ELEVEN AND 17/100 DOLLARS (\$111.17), or more at purchasers' option, on or before the first day of each succeeding month until the balance of said purchase price shall have been fully paid. The purchasers further agree to pay interest on the balance of said purchase price and the diminishing amounts thereof at the rate of 8.5 percent per annum from the first day of December, 1998, which interest shall be deducted from each monthly installment and the balance of each installment applied in reduction of principal. All payments to be made hereunder shall be made payable to the Department of Transportation, and sent to the Department of Transportation Property Management Program Manager, P. O. Box 47339, Olympia, Washington 98504-7339.

Notices of correspondence to be sent to the seller shall be mailed or delivered to the above address. Notices of correspondence to be sent to the purchasers shall be mailed or delivered to purchasers at the address set forth under purchasers' signatures on the "signature" page of this contract.

Subject to the requirements of any applicable statute, any notices required or permitted by law or under this contract shall be in writing and shall be personally delivered or sent by first class certified or registered mail, return receipt requested, with postage prepaid, to the parties' addresses set forth hereinabove. Either party may change such address for notice, and seller may change the address for payments by designating the same to the other party hereto in the manner hereinabove set forth. All notices which are so addressed and paid for shall be deemed effective when personally delivered or, if mailed, on the date of the deposit thereof in the U.S. mail and irrespective of actual receipt of such notice by the addressee.

There will be a penalty charge of 4 percent of the monthly payment or \$3.00 whichever is the greater amount if the payment is more than 15 days delinquent. Also, there shall be a charge for any check returned uncollectible, as provided in WAC 468-20-900.

The purchasers may enter into possession December 1, 1998.

Except as may be otherwise provided in any written agreement between the parties hereto which is intended to survive the execution of this contract, the purchasers hereby accept the property in the condition existing on the date of this contract and confirm that neither the seller nor any agent or representative of the seller has given or made any warranty or representation whatsoever concerning the physical condition thereof or the uses or purposes to which the same may now or hereafter be placed.

The purchasers assume all risk of the taking of any part of the property for a public use, and agree that any such taking shall not constitute a failure of consideration, but all monies received by the seller by reason thereof shall be applied as a payment on account of the purchase price, less any sums which the seller may be required to expend in procuring such monies.

The seller agrees, upon full compliance by the purchasers with its agreements herein, to execute and deliver to the purchasers a Quitclaim Deed to the property, excepting any part which may have been condemned, free of encumbrances except those existing at the date hereof, and any that may accrue hereafter through any person other than the seller.

The purchasers shall, at their own cost and expense, keep any improvements now or hereafter located on subject land insured against loss or damage by fire, windstorm, and all other casualties covered by "all risk" endorsements available in the State of Washington and with such additional coverage or endorsements as the seller may reasonably require from time to time. The insurance shall be in an amount not less than the greater of (a) the amount of coverage necessary to avoid the insured being treated as a coinsurer, or (b) One Hundred Fifteen Percent (115%) of the then unpaid principal balance of the purchase price for the property. The insurance policy shall expressly include the seller as a named insured and shall contain a waiver of subrogation clause. In the event of loss or damage to the property, the insurance proceeds shall be promptly used to repair, rebuild, or replace all improvements which have been destroyed or damaged, in accordance with a construction contract and plans and specifications therefor, if acceptable to the seller or, at seller's election, if the purchasers elect not to so repair or reconstruct, the insurance proceeds shall be applied against the unpaid principal balance due and owing. The parties agree to make elections provided for in this paragraph thirty (30) days following written request to do so. Damage to or destruction of the property or any portion thereof shall not constitute a failure of consideration or provide a basis for rescission of the contract nor shall such circumstances relieve the purchasers of obligations to pay the remaining installments due hereunder.

Additionally, the purchasers agree, throughout the term of this contract and at purchasers' sole expense, to keep the property and any improvements thereon continuously insured against claims for personal injury and property damage under a policy or policies of general public liability insurance with limits of at least \$300,000 for bodily injury to one or more persons and for property damage. The seller shall not be liable for any injury to persons or property on the premises from any cause whatsoever, and the purchasers shall defend the seller and hold the seller free and harmless from any and all claims arising out of the use and occupancy of the premises. The seller may, not more frequently than at three (3) year intervals, require that the above general public liability coverage be amended in such reasonable amounts as may be specified by the seller.

All insurance policies referred to hereinabove must be written by an insurer holding a Certificate of Authority issued by the Washington State Insurance Commissioner or procured through a licensed surplus line broker. A copy of each policy, including all endorsements thereto, shall be provided to the seller when issued. Such policies shall not be cancellable except on 30 days notice to the seller.

Purchasers, their successors or assigns, will protect, save, and hold harmless the Washington State Department of Transportation, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the purchasers, their assigns, agents, contractors, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this contract. The purchasers further agree to defend the Washington State Department of Transportation, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this contract. This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Washington State Department of Transportation or its authorized agents or employees; Provided that, if the claims or damages are caused by or result from the concurrent negligence of (a) the seller, its agents or employees, and (b) the purchasers, their agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the purchasers, their agents or employees.

In addition to the payments hereinabove provided for, the purchasers shall pay before delinquency all real and personal property taxes, all general and special assessments, and all other charges of whatsoever kind or nature levied or assessed by any lawful authority upon or against the property or the use thereof to the extent the same or any installments thereof are attributable to the period following the date of this contract. The prorated portion of said taxes, assessments, and charges which are attributed to any period prior to the date of this contract, excluding taxes for such period assessed because of the reclassification of the use of the property by the purchasers or any successor of the purchasers, shall be paid before delinquency by seller. Said periods shall be determined by reference to the year in which the taxes, assessments, and charges are required to be paid. The provisions of this paragraph to the contrary notwithstanding, either party shall have the right to contest in good faith any tax or assessment which may have been or is hereafter levied against the property or any portion thereof so long as no portion of the property is threatened with any tax forfeiture or sale as the result of such contest. So long as such contest is pursued in good faith, the nonpayment of the amounts in dispute shall not constitute a default under this contract or afford the seller the right to require tax reserve payments.

The purchasers shall not remove any timber, trees, gravel, or other earth materials without written permission from the seller. The seller will not act unreasonably in granting permission for removal of trees and other material when necessary for buildings, roads, and proper uses of the land. The market value of the material removed less a reasonable amount for removing and selling costs will be applied on the principal balance of the contract.

Time is specifically declared to be of the essence of this contract and of all acts required to be done and performed by the parties hereto, including, but not limited to, the property tender of each of the sums required by the terms hereof to be paid.

The purchasers shall be in default under this contract if they (a) fail to observe or perform any term, covenant, or condition herein set forth, or (b) fail or neglect to make any payment of principal or interest or any other amount required to be discharged by the purchasers precisely when obligated to do so, or (c) become or are declared insolvent or make an assignment for the benefit of creditors, or file any debtor's petition or any petition is filed against purchasers under any bankruptcy, wage earner's reorganization or similar act, or (d) permit the property or any party thereof or purchasers' interest therein to be attached or in any manner restrained or impounded by process of any court, or (e) abandon the property, if improved, for more than thirty (30) consecutive days (unless the property is otherwise occupied), or (f) convey the property or a portion thereof without any prior written consent required herein of the seller.

In the event the purchasers default under this contract, the seller may, at its election, take the following courses of action:

a) Suit For Delinquencies. The seller may institute suit for any installment amounts or other sums due and payable under this contract as of the date of the judgment and any sums which have been advanced by seller as of said date pursuant to the provisions of this contract, together with interest on all of said amounts at the interest rate of this contract from the date each such amount was advanced or due, as the case may be, to and including the date of collection;

b) Acceleration. Upon giving the purchasers not less than fifteen (15) days written notice of its intent to do so (within which time any monetary default may be cured without regard to the

acceleration), and if the default is in the nature of a failure to timely pay any principal, interest, insurance premium, tax, or other sum of money required to be paid herein or any failure to obtain any consent of the seller herein required for a conveyance of the purchasers' title to the property, or if the purchasers commit waste on the property, the seller may declare the entire unpaid balance of the purchase price and all interest then due thereon to be immediately due and payable and institute suit to collect such amounts, together with any sums advanced by the seller pursuant to the provisions of this contract, and together with interest on all of said sums at the interest rate of this contract from the due date or date of each such advance to and including the date of collection;

c) Forfeiture and Repossession. The seller may cancel and render void all rights, titles, and interests of the purchasers and their successors in this contract and in the property (including all of purchasers' then existing rights, interest, and estates therein and timber, crops, 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 seller records a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract, the seller 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 property by, through, or under the purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. If 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 seller and the seller 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 proceedings the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including the seller's reasonable attorneys' fees;

The purchasers agree that the seller may condition the acceptance of any delinquent payments on the payment of an additional sum to cover the reasonable costs of any work on forfeiture proceedings which may have been undertaken by the seller and agrees to pay such additional sums.

d) Specific Performance. The seller may institute suit to specifically enforce any of the purchasers' covenants hereunder, and the same may include redress by mandatory or prohibitive injunction.

e) Judicial Foreclosure. The seller may institute suit to foreclose this contract, which suit may include a provision for a deficiency judgment against purchasers and their successors or assigns.

The remedies stated herein are cumulative and not mutually exclusive and the seller or the purchasers may pursue any other or further remedies to enforce their respective rights under this contract; provided, however, except as provided in this contract with respect to the purchasers' transfer of the property, the seller shall not have the right to accelerate the remaining balance of the purchase price in the event the seller elects to forfeit the purchasers' interest in the property and such forfeiture is being enforced or is completed. In any action or proceeding to recover any sum or to enforce any remedy provided for herein, no defense of adequacy of security or that resort must first be taken against any particular security or any other person shall be asserted, and the purchasers hereby expressly waive any legal or equitable rights that the purchasers may have with respect to marshaling of assets. The seller shall

not be required to tender its deed or bill of sale as a condition precedent to the enforcement of any remedy hereunder. In the event any check is tendered which is not honored upon first presentation because of any stop payment directive or insufficient funds, the payee's rights shall be reinstated as if such check had not been delivered. No waiver of any rights of either party under this contract shall be effective unless specifically evidenced in a written agreement executed by the waiving party. Any forbearance, including, without limitation, a party's acceptance of any payment after the due date or any extension thereof, shall not be considered a waiver of such party's rights to pursue any remedy hereunder for any other existing or subsequent defaults of the same or a different nature or for breach of any other term, covenant, or condition thereof.

In the event the seller defaults under this contract and such default continues for fifteen (15) days after the purchasers gives the seller 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 purchasers' damages caused by such default, or pursue any other remedy which may be available to the purchasers at law or in equity.

If either party to this contract shall fail to timely pay and discharge any payments or sums for which purchasers have agreed to be responsible herein and said failure constitutes a default under this contract, or shall be any other act or neglect violate the terms and any conditions of this contract or of any prior encumbrance, the other party hereto may pay, effect, or discharge such sums as are necessary to cure such default upon giving the party required to make such payments not less than fifteen (15) days' prior written notice (except in any instance in which the purchasers fail to obtain or maintain any insurance required herein or when immediate payment is required to avoid immediate hazards to persons or property or any foreclosure of or a similar action against or affecting any portion of the property, in which cases such notice may be given concurrently with or immediately following such payment). The party making such payment may recover from the defaulting party, upon demand, or through offsetting the same against existing or future debts, the full cost and expense of so doing, including purchasers' reasonable attorney's fees and together with interest on said expenditures and fees at the interest rate of this contract from the date of expenditure to and including the date of collection or the due date of any sum against which such offset is effected.

If either party shall be in default under this contract, the defaulting party hereby promises to pay all costs and expenses incurred by the nondefaulting party, including without limitation, arbitration and court costs, collection agency charges, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation), and the failure of the defaulting party to promptly pay the same shall in itself constitute a further and additional default. In the event either party hereto institutes any action (including arbitration) 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 that 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 interest rate of this contract 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.

The purchasers as part consideration herein do hereby agree to comply with all civil rights and anti-discrimination requirements of RCW Chapter 49.60, as to the lands herein described.

Purchasers shall not have the right to assign this contract without the prior written approval of the seller. The seller will not act unreasonably in withholding approval of assignment. The purchasers will provide the seller with a current credit report on the proposed assignee, prepared by a licensed credit reporting agency. There will be a reasonable charge for processing an assignment.

If the purchasers' title to the property or any portion thereof is conveyed to any person, the seller may, at its option: a) following any required notice, declare the entire remaining balance of the purchase price and all accrued and unpaid interest thereon immediately due and payable, or b) adjust the interest rate on this contract, effective as of the date of the transfer. The seller may elect one of the said options by written notice to the purchasers within fifteen (15) days after being advised in writing of the sale and the transferee, and if such election is not made within that period, the above rights for the transaction so described shall be deemed waived. For the purposes of this contract, a "conveyance" of the "purchasers' title" shall include a transfer by a real estate contract, vendee's assignment, deed, forfeiture, foreclosure, sheriff's sale, trustee's sale, deed in lieu of any such involuntary sale, lease with purchase option or for a term in excess of three (3) years (including extension options), and, if the purchaser is a corporation or partnership, a voluntary or involuntary transfer or series of transfers of any shares or partnership interests which results in a change of fifty percent (50%) or more of the voting control of such entity (from the composition thereof as of the date of this contract). A "conveyance" of the "purchasers' title" shall not include (i) a lease or other transfer of possession of the property for three (3) years or less without options to purchase the property or any interest therein; (ii) a transfer to a purchasers' spouse or children; (iii) a transfer by devise, descent, or operation of law resulting from the death of any purchasers; (iv) a transfer into an inter vivos trust in which a purchaser is and will remain beneficiary or the purchasers are and will remain beneficiaries, and which does not relate to a transfer of rights of occupancy in the property; or (v) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or property settlement agreement in which a spouse of any purchaser retains or acquires the property. No transfer of the property or any portion thereof shall release the transferring person from liability on this contract unless such release is expressly acknowledged by the seller in writing.

In the event any portion of this contract should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this contract are thereby defeated. The intention of the seller is to charge the purchasers a lawful rate of interest, and in the event it is determined by any court of competent jurisdiction that any rate herein provided for exceeds the maximum permitted by law for transaction of the character evidenced by these presents, the amounts so determined to be above the legal rate shall be applied against the last installments of principal due hereunder or, if such principal has been paid, or otherwise at the discretion of the then holder of this contract, said excess shall be refunded to the purchasers on demand without interest, and the interest rates specified hereunder shall be reduced to the maximum rate then permitted by law for the type of transaction to which this contract pertains.

The purchasers shall pay for the cost of all electric, power, gas, sewer, water, telephone, cable television, refuse disposal service, and any and all other utilities furnished to or used or consumed in, on, or about the property by the purchasers or by any person following the date of this contract, and purchasers shall contract for the same solely in purchasers' own name. Any such services used prior to the date hereof by any person other than the purchasers shall be the responsibility of the seller.

The parties to this contract execute the same solely as a seller and a buyer. No partnership, joint venture, or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants, and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this contract. Any married person executing this contract hereby pledges his or her separate property and such person's and his or her spouse's marital communities in satisfaction hereof.

Subject to the restrictions contained herein, the rights and obligations of the seller and the purchasers shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors in trust and assigns; provided, however, no person to whom this contract is pledged or assigned for security purposes by either party hereto shall, in the absence of an express, written assumption by such party, be liable for the performance of any covenant herein. Any assignee of any interest in this contract, or any holder of any interest in the property, shall have the right to cure any default in the manner permitted and between the time periods required of the defaulting party, but except as otherwise required by law, no notices in addition to those provided for in this contract need be given.

This contract shall be governed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought to interpret or enforce any provision of this contract shall be laid in the county in which the real property is situated. All sums herein referred to shall be calculated by and payable in the lawful currency of the United States.

This contract contains the entire agreement of the parties hereto and, except for any agreements or warranties otherwise stated in writing to survive the execution and delivery of this contract, supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither the seller nor the purchasers shall be liable to the other for any representations made by any person concerning the property or regarding the terms of this contract, except to the extent that the same are expressed in this instrument. This contract may be amended only by written instrument executed by the seller and the purchasers subsequent to the date hereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date of their respective signatures, as set forth below.

Purchasers have read, understand and agree to the terms set forth herein.

Executed by the purchasers at
WAS 4000 AC, Washington
 this 9th day of DEC, 1998

Executed by the seller this 5th
 day of April, 1999

STATE OF WASHINGTON
 DEPARTMENT OF TRANSPORTATION

Joachim Pestinger for
 Joachim Pestinger, SPJWA
 Director, Real Estate Services

Greg L. Borden
D. Hunsfer
Purchasers

10721 Washington Blvd
Wash DC, WA 20041

Purchasers' Address

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss

I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 5th day of April, 1999, before me personally appeared Joachim Pestinger, to me known to be the duly appointed Director, Real Estate Services, for the State of Washington, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Wendy J. Johnson
Notary Public in and for the
State of Washington
Residing at Olympia, Washington
My Commission Expires January 15, 2000