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Jim

J. ANTHONY GIACOMINI
ATTORNEY AT LAW
125 N. 6TH STREET
KLAMATH FALLS, OREGON

28-44-72

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Vol. 73 Page 4831

75628

Contract of Sale Vol. 73 Page 5867

This Agreement, Made this 10th day of April, 1973

between PAULINE S. CONNER, also known as Pauline S. Pound,

hereinafter called Vendor, and JAMES R. HARMONING and JERRY R. HAILEY, copartners
doing business as Arctic Air Heating,

hereinafter called Purchaser, whose address is 2009 South Sixth Street, Klamath Falls,
Oregon

WITNESSETH: Vendor agrees to sell to Purchaser and Purchaser hereby agrees, to buy from Vendor, at the price and on the terms, covenants, conditions and provisions hereinafter contained, all of the following described property situate in the County of Klamath, State of Oregon, more particularly described as follows, to-wit:

Lot 9 in Block 203 in MILLS SECOND ADDITION TO THE CITY OF KLAMATH FALLS, less portion heretofore conveyed to State of Oregon for highway purposes;

ALSO: Commencing at the Southeast corner of Lot 7 in Block 203 of MILLS SECOND ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, and running thence Northerly along the East line of said lot a distance of 34 feet to a point; thence Westerly parallel with the South line of said lot a distance of 40 feet; thence Southerly a distance of 34 feet to the South line of said lot; thence East a distance of 40 feet to the point of beginning;

Subject to easements and rights of way of record and apparent thereon.

The purchase price of the property which Purchaser agrees to pay is the sum of \$12,500.00, payable as follows:

- a) \$400.00 which has been previously paid as earnest money;
- b) \$3,000.00 which is paid upon execution hereof;
- c) \$9,100.00 which shall be paid in monthly installments of not less than \$182.35 including interest at the rate of 7.5% per annum on declining balances. The first of such installment to be paid on the 10th day of May, 1973, and a like installment to be paid on the 10th day of May, 1978. Purchaser shall pay the entire balance of the deferred balance, inclusive of principal and interest, due on the 10th day of May, 1978. Interest commences on the date of this contract. All payments shall be paid to the Escrow Holder hereinafter named for the credit of Vendor and shall be applied first to interest accrued to the date of receipt thereof, by the Escrow Holder and then to principal. Purchaser shall have the privilege of increasing any installment or to pay off in full the entire deferred balance secured by this contract, together with interest due thereon to the date of payment at any time. No partial payment, increased installments, nor payment for a partial conveyance pursuant to the provisions of this agreement shall be credited in lieu of any regular future installment nor excuse Purchaser from making the regular installments which are specified in this contract.

In the event any governmental agency or entity having the power of eminent domain acquires by eminent domain, or by negotiated sale in lieu of eminent domain, all, or any portion, of the real property described in this contract, Vendor may require Purchaser to apply all proceeds received by Purchaser from such acquisition (remaining after payment by Purchaser of attorney fees, appraiser's fees, and related costs in connection with such acquisition) to be applied by Purchaser toward the payment of the sums secured by this contract. Upon receipt of funds, Purchaser shall notify Vendor of the net amount of proceeds so received, and, within ten (10) days after such notification, Vendor shall notify Purchaser in writing of Vendor's election to have such proceeds applied to the sums secured by this contract or

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shall be conclusively deemed to have elected not to require Purchaser to apply such proceeds toward the sums secured by this contract, such application shall be applied first to payment of accrued interest to the date of application and second to the payment of principal. It is further understood and agreed that regardless of whether such sums are applied to the sums secured by this contract, Vendor will join in any conveyance required by the governmental agency or entity acquiring a portion or all of the real property described herein by eminent domain, but shall not be required to convey more property than that which is acquired by such governmental agency or entity. Any notice or notices required to be given by Purchaser to Vendor pursuant hereto shall be in writing, and shall be deemed given when deposited in the United States mail as certified mail, postage prepaid, addressed to Vendor at the last address given to the Escrow Holder provided for herein.

If Purchaser shall sell said real property described herein and securing the unpaid balance of this contract, Vendor may elect to permit the subsequent Purchaser to assume the balance of Purchaser's obligation secured hereby, or to demand payment from Purchaser, or the transferee of said Purchaser, or both (at the option of the Vendor) of such portion of the deferred balance as Vendor may consider satisfactory, or declare the entire balance of the deferred balance due and payable. This clause cannot be waived, unless Purchaser gives Vendor notice of such sale in writing and Vendor, after receipt of such written notice, accepts a payment from the subsequent Purchaser. The written notice provided for herein shall be deemed given when the same is deposited in the United States mail as certified mail, postage prepaid, addressed to the last address of Vendor shown on the records of the Escrow Holder.

Vendor may appear in or defend any action or proceeding at law, in equity, or in bankruptcy, affecting in any way the security hereof, and in such event, Vendor shall be allowed and paid, and Purchaser hereby agrees to pay all costs, charges and expenses, including costs of evidence of title or validity and priority of the security and attorney's fees in a reasonable sum, incurred in any such action or proceeding in which Vendor may appear, which shall bear interest at 10% from date of demand therefor. Failure of Purchaser to pay Vendor for such costs, charges and expenses within 90 days from date of demand therefor shall constitute a breach of this contract.

Upon commencement of any suit, or action, to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this contract by specific performance, foreclosure, or otherwise, there shall become due, and Purchaser agrees to pay, to Vendor, in addition to all statutory costs and disbursements, any amount Vendor may incur or pay for any title report, title search, insurance of title, or other evidence of title subsequent to the date of this contract on any of the real property above described and this contract shall be security for the payment thereof.

Vendor agrees to pay, prior to payment in full by Purchasers and according to the terms thereof, the debt secured by the mortgage recorded in Volume 132, Page 228, Klamath County Mortgage Records wherein Hans and Gertrude Hansen, or survivor, or mortgagees, and to hold Purchasers harmless therefrom

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GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

Vendor will, upon execution hereof, make and execute in favor of Purchaser, a good and sufficient Warranty Deed, conveying said premises free and clear as of this date of all encumbrances, subject to the above set forth exceptions, and will place said deed, together with the original copy of this agreement, in escrow at Klamath Falls Branch of United States National Bank of Oregon with instructions to said Escrow Holder that when and if the Purchaser shall have paid the balance of the purchase money and interest as above specified and shall have complied with all other terms and conditions of this agreement, to deliver said documents to Purchaser subject to the usual printed conditions and provisions of the standard form of escrow instructions provided by said Escrow Holder.

Vendor shall furnish, at his own expense, a Purchaser's Title Insurance Policy insuring title to the above described real property in the amount of \$12,500.00 and deposit said policy in the above-described escrow under the above terms.

Purchaser agrees to keep the buildings now on or hereafter placed upon the above described real property insured against loss by fire or other casualty in an amount not less than \$9,000.00 total insurance and shall obtain, at his own expense, said insurance in the name of the Vendor as the primary insured with an endorsement thereon providing for loss payable to Vendor and Purchaser as their respective interests may appear. The policy or policies of insurance shall be delivered to Vendor, or, in lieu thereof, a certificate of such insurance may be provided by Purchaser and delivered to Vendor. If a loss should occur for which insurance proceeds shall become payable, the Purchaser may elect to either rebuild or repair the portion of the building so destroyed, or apply the proceeds to payment of the then unpaid balance of the purchase money. If the Purchaser elects to rebuild, he shall sign such documents as may be necessary to guarantee the application of the insurance proceeds to the cost of such rebuilding or repair. If the Purchaser elects to apply the insurance proceeds toward payment on this contract, any amount received by Vendor under any such insurance in payment of a loss shall be applied upon the unpaid principal balance of the purchase price and shall reduce said unpaid principal balance to the extent of the amount of the insurance payment received by Vendor.

Purchaser shall be entitled to possession of the above described real property on date hereof. Purchaser shall remain in possession so long as Purchaser is not in default hereunder. Purchaser shall and hereby agrees to keep said real property in clean, sanitary, tightly, attractive condition; to commit no waste or otherwise damage or injure said premises; to maintain said premises in accordance with the laws and the ordinances and regulations of any constituted authority applying to said premises and to make no unlawful use thereof; to pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, and charges levied and assessed against said real property, and to pay and discharge all encumbrances thereafter placed thereon by Purchaser; to permit no lien or other encumbrance to be filed upon or placed against said premises without the written consent of Vendor; and it is further understood and agreed, for the purposes of this provision, that if Purchaser fails to pay or discharge any taxes, assessments, liens, encumbrances, or charges, Vendor, at his option and without waiver of default or breach of Purchaser, and without being obliged to do so, may pay or discharge all or any part thereof all of which said sums so paid by Vendor shall become repayable by Purchaser, together with interest at the rate of ten (10%) percent per annum, upon demand, payment of which is a condition to delivery of deed hereunder as part of the performance of this agreement by Purchaser.

If Purchaser shall fail to perform any of the terms of this agreement, time of payment and performance being of the essence, Vendor shall, at his option, subject to the requirements of notice as herein provided, have the following rights:

- (a) To foreclose this contract by strict foreclosure in equity;
- (b) To declare the full unpaid balance of the purchase price immediately due and payable;
- (c) To specifically enforce the terms of this agreement by suit in equity; and
- (d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payments heretofore made upon said premises. Under option (d) all of the right, title and interest of Purchaser shall revert and re-vest in Vendor without any act of re-entry or without any other act by Vendor to be performed, and Purchaser agrees to peaceably surrender the premises to Vendor, or in default thereof, Purchaser may, at the option of Vendor, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

Purchaser shall not be deemed in default for failure to perform any covenant or condition of this contract, other than the failure to make payments as provided for herein, until notice of said default has been given by Vendor to Purchaser and Purchaser shall have failed to remedy said default within 30 days after the giving of the notice.

If Purchaser shall fail to make payment as herein provided and said failure shall continue for more than 30 days after the payment becomes due, Purchaser shall be deemed to be in default and Vendor shall not be obligated to give notice to Purchaser of a declaration of said default.

Where notice in writing is required by Vendor to the Purchaser, such notice shall be deemed given when the same is deposited in the United States mail as Registered Mail, addressed to the address of Purchaser shown at the beginning of this agreement.

No waiver by Vendor of any breach of any covenant of this agreement shall be construed as a continuing waiver of any subsequent breach of such covenant nor as a waiver of any breach of any other covenant nor as a waiver of the covenant itself.

If suit or action is taken to enforce any agreement contained herein, Purchaser agrees to pay, in addition to costs and disbursements provided by law, such sums as the court, or courts, hearing said matter, may adjudge reasonable as Vendor's attorney's fees, including any fees on appeal, together with costs and disbursements provided by law. If this contract should be placed in the hands of an attorney or collector for collection of payment and no suit shall be filed hereon, Purchaser further agrees to pay the reasonable costs of collection of said payments.

This agreement contains the full understanding of the parties with respect to the subject hereof and no modification hereof shall be given effect unless the same be in writing subscribed by the parties hereto or their successors in interest.

This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto, and their respective successors, heirs, executors, administrators, and assigns. Provided, However, Purchaser shall not assign this agreement or his rights hereunder or in the property covered thereby without written consent of Vendor.

In construing this agreement, the singular shall include both the singular and the plural and the masculine both the masculine and feminine.

WITNESS the hands and seals of the parties hereto the day and year first above written.

Vendor

Purchaser

Pauline S. Conner (SEAL)
Pauline S. Conner, also known as
Pauline S. Pound (SEAL)

James R. Harmoning (SEAL)
James R. Harmoning

Jerry R. Hailey (SEAL) J.R.H.
Jerry R. Hailey Anita M.

For valuable consideration, receipt of which is hereby acknowledged, Phyllis J. Harmoning, wife of James R. Harmoning, and Anita M. Hailey, wife of Jerry R. Hailey, jointly and severally, do hereby guarantee unconditionally the payment and faithful performance of the foregoing contractual obligations of James R. Harmoning and Jerry R. Hailey, as Purchaser herein. The undersigned, jointly and severally, further expressly waive presentment for payment, notice of non-payment, and protest to any extensions of time of payment guaranteed by us. This guarantee is to remain in full force and effect during the term of said contract and until it is fully paid and performed. It is understood and agreed that there are no conditions or limitations to this understanding and that after execution, no alteration, change or modification shall be made except by writing signed by all the parties hereto and undersigned.

Dated this 10th day of April, 1973.

Phyllis J. Harmoning
Phyllis J. Harmoning

Anita M. Hailey
Anita M. Hailey

STATE OF OREGON)
County of Klamath) ss.

On the 21st day of March, 1973, personally appeared the above named Pauline S. Conner, aka Pauline S. Pound, and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

(SEAL)

Anthony E. Giacomini
Notary Public for Oregon
My commission expires: Aug 5, 1974

RETURN TO:

TRANSAMERICA
Jim

J. ANTHONY GIACOMINI
ATTORNEY AT LAW
125 N. 8TH STREET
KLAMATH FALLS, OREGON

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4835

STATE OF OREGON,
County of Klamath
Filed for record at request of
TRANSAMERICA TITLE INS. CO
on this 23 day of APRIL A.D. 19 73
at 11:20 o'clock A M, and duly
recorded in Vol. M 73 of DEEDS
Page 4835
Wm D. MILNE, County Clerk
By *Charles L. Drayton* Deputy
Fee \$ 10.00

INDEXED

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STATE OF OREGON, re-recorded to correct
County of Klamath description
Filed for record at request of
TRANSAMERICA TITLE INS. CO
on this 15 day of May A.D. 19 73
at 3:53 o'clock P M, and duly
recorded in Vol. M 73 of DEEDS
Page 5867
Wm D. MILNE, County Clerk
By *Charles L. Drayton* Deputy
Fee \$ 10.00

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