

345A

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CONTRACT OF SALE

38-9381

1
2 THIS AGREEMENT, made and entered into this 1st day of August,
3 1975, by and between M.H. CLARK, also known as MARTIN HAROLD CLARK,
4 and MARCIA L. CLARK, husband and wife, hereinafter called Seller,
5 and ALPHONSO C. CIONGOLI and MARLENE J. CIONGOLI, husband and
6 wife, hereinafter called Buyer, (it being understood that the
7 singular includes the plural if there are two or more sellers
8 and/or buyers.

WITNESSETH:

9
10 Seller agrees to sell to the Buyer and the Buyer agrees to
11 buy from the Seller all of the following described real and per-
12 sonal property situate in Klamath County, State of Oregon, to-wit:

13 REAL PROPERTY: All that certain real property more parti-
14 cularly described and set forth on Exhibit "A" which is
15 attached hereto and by this reference made a part hereof,
16 subject to the exceptions thereon set forth.

17 PERSONAL PROPERTY: All that certain personal property more
18 particularly set forth on the Exhibit "B" attached hereto
19 and by this reference made a part hereof.

20 The purchase price thereof shall be the sum of \$75,000.00,
21 payable as follows: \$6,000.00 upon the execution hereof; the bal-
22 ance of \$69,000.00 shall be paid in monthly installments of \$500.00
23 including interest at the rate of 6% per annum on the unpaid bal-
24 ances, the first such installment to be paid on the 1st day of
25 August, 1976, and a further and like installment to be paid on or
26 before the 1st day of every month thereafter until the entire pur-
27 chase price, including both principal and interest, is paid in full.

IT IS MUTUALLY AGREED AS FOLLOWS:

28 1. Interest as aforesaid shall commence from August 1, 1976;
29 Buyer shall be entitled to possession of the property as of August
30 1, 1975;

31 2. After January 1, 1978, Buyer shall have the privilege of
32 increasing any payment or prepaying the entire balance with inter-
est due thereon to the date of payment;

3. Buyer shall pay promptly all indebtedness incurred by
their acts which may become a lien or purported lien, upon said
property, and shall regularly and before the same shall become

RECEIVED
AUG 4 1975
3:30 pm
PRENTISS K. PUCKETT, P.C.
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS
& LOAN BUILDING
KLAMATH FALLS, ORE.

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delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, purported 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 pro-rated as of August 1, 1975, 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 and such amount shall bear interest at the same rate as provided above, 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;

4. Buyer shall keep the buildings on said property insured against loss or damage by fire or other casualty in an amount not less than the 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 Buyer, on or after the date Buyer becomes entitled to possession;

5. 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, provided, Buyer shall not make or cause to be made any major improvement or alteration to the property without first obtaining the written consent of Seller;

6. Seller shall upon the execution hereof make and execute in favor of Buyer a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as herein provided, and which Buyer assumes, unless otherwise therein provided, and will place said deed, together with one of these agreements in escrow at United States National Bank of Oregon, Klamath Falls, Oregon, and shall enter into written escrow instructions in 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 deed to Buyer, but in case of default by Buyer said escrow holder shall, on demand, surrender said instruments to Seller.

7. The parties hereto attribute \$5,000.00 of said purchase price to the fixtures, grocery and meat equipment within the improvement located upon the subject real property above referred to and Seller agrees to deposit in said escrow a Bill of Sale to said property instructing said escrow holder to deliver the same unto Buyer at such time as the said principal unpaid balance is reduced to \$60,000.00. Buyer may replace items of said fixtures, grocery and meat equipment when necessary, provided they do so with like quality.

8. The parties hereto acknowledge that there presently exists a lease executed in 1973 wherein M.H. Clark was Lessor and Stanley R. Duell was Lessee, which lease agreement Buyer takes subject to and Buyer covenants that they have read said lease and understand its basic terms, a copy of same is attached hereto and marked

PRENTISS K. PUCKETT, P.C.
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS
& LOAN BUILDING
KLAMATH FALLS, ORE.

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1 Exhibit "C" and by this reference made a part hereof.

2 9. That Seller during the term and/or renewal period of the
3 aforementioned lease shall at all times endeavor and act with
4 diligence in keeping the westerly portion of Lot 6, Block 19,
5 FAIRVIEW ADDITION # 2 to the City of Klamath Falls, Klamath County,
6 Oregon, the portion of said Lot 6 not so leased, to be accessible
7 for the free flow of traffic over and upon said portion of said
8 Lot 6.

9 10. That Buyer shall further keep the personal property re-
ferred to on said Bill of Sale insured against fire and other
casualties covered by a standard policy of fire insurance with ex-
tended coverage endorsements. The said policy shall be written
to the full replacement value with loss payable to Seller and
Buyer as their respective interests may appear.

11 11. Buyer shall indemnify and defend Seller from any claim,
12 loss or liability arising out of or related to any activity of
13 Buyer on the subject property or any condition of the property.

14 12. During the term of this contract, Buyer shall maintain
15 public liability and property damage insurance in a responsible
16 company with limits of not less than \$ 100,000.00 for injury
17 to one person and \$ 100,000.00 for injury to two or more
18 persons in one occurrence, and \$ 100,000.00 for property
19 damage.

20 13. Buyer accepts the land, buildings, improvements and all
21 other aspects of the subject sale in their present condition with-
22 out any representations or warranties.

23 14. This contract shall be binding upon and inure to the
24 benefit of the parties, their successors and assigns, but no
25 interest of Buyer shall be assigned, transferred or sold without
26 the prior written consent of Sellers, which consent shall not be
27 unreasonably withheld.

28 15. It is further mutually agreed that if Buyer shall have
29 duly and punctually fulfilled all of the provisions and conditions
30 of this agreement to the date the within option is exercised, in-
31 cluding the provisions hereinafter set forth, that Seller on the
32 receipt of written notice from Buyer within thirty days after the
termination of said lease indicating that Buyer elects to purchase
the following described real property located in Klamath County,
Oregon, namely:

Lot 6 in Block 19 FAIRVIEW ADDITION # 2 to the City of
Klamath Falls, Oregon;

that Seller will convey said Lot 6 to Buyer upon the following
terms:

- a) Purchase price shall be \$10,000.00;
- b) Down payment shall be \$2,000.00;
- c) Monthly payments shall be \$150.00 per month, which pay-
ments shall include interest at the rate of 7 1/2% per annum and
which payments shall commence on the sixtieth day following the
termination of said tenancy and monthly thereafter until said
unpaid balance and interest is paid in full.
- d) Interest shall commence on the date said option is exer-
cised and Buyer shall be entitled to possession the date the docu-
ments are executed which documents shall include a standard con-

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1 tract of sale, in general form, escrow instructions in like form,
2 and, executed warranty deed which deed shall convey marketable
3 title at the time it is executed and said deed shall be placed in
4 escrow at such place as is mutually acceptable to the parties
5 hereto with general instructions to deliver said deed to Buyer
6 when the purchase price and interest is paid in full.

7 e) The documents above referred to shall entitle Buyer to
8 pre-pay the purchase price at any time without penalty and all
9 taxes and other assessments shall be pro-rated on the date of
10 closing.

11 f) Seller shall promptly notify Buyer of the date said lease
12 is terminated.

13 g) Seller shall furnish a preliminary title report to Buyer
14 upon said option being exercised and thereafter pay for and furn-
15 ish a purchaser's policy of title insurance.

16 PROVIDED, FURTHER, that in case Buyer shall fail to make the
17 payments aforesaid, or any of them, punctually and upon the strict
18 terms and at the times above specified, or fail to keep any of the
19 other terms or conditions of this agreement, time of payment and
20 strict performance being declared to be the essence of this agree-
21 ment, then Seller shall have the following rights: (1) To fore-
22 close this contract by strict foreclosure in equity; (2) To de-
23 clare the full unpaid balance immediately due and payable; (3) To
24 specifically enforce the terms of this agreement by suit in equity;
25 (4) To declare this contract null and void, and in any of such
26 cases, except exercise of the right to specifically enforce this
27 agreement by suit in equity, all the right and interest hereby
28 created or then existing in favor of Buyer derived under this
29 agreement shall utterly cease and determine, and the premises
30 aforesaid shall revert and revest in Seller without any declara-
31 tion of forfeiture or act of re-entry, and without any other act
32 by Seller to be performed and without any right of Buyer of re-
clamation or compensation for money paid or for improvements made,
as absolutely, fully and perfectly as if this agreement had never
been made.

Should Buyer, while in default, permit the premises to be-
come vacant, Seller may take possession of same for the purpose
of protecting and preserving the property and his security inter-
est therein, and in the event possession is so taken by Seller he
shall not be deemed to have waived his right to exercise any of
the foregoing rights.

And in case suit or action is instituted to foreclose this
contract or to enforce any of the provisions hereof, Buyer agrees
to pay reasonable cost of title report and title search and such
sum as the trial court may adjudge reasonable as attorney's fees
to be allowed seller in said suit or action, and if an appeal is
taken from any judgment or decree of such trial court, the Buyer
further promises to pay such sum as the appellate court shall
adjudge reasonable as seller's attorney's fees on such appeal.

Buyer further agrees that failure by Seller at any time to
require performance by Buyer of any provision hereof 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.

This agreement shall bind and inure to the benefit of, as
the circumstances may require, the parties hereto and their re-
spective heirs, executors, administrators, successors and assigns,

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1 subject to the foregoing.

2 WITNESS the hands of the parties the day and year first
3 herein written.

4 SELLERS:

M.H. Clark
M.H. Clark

Marcia L. Clark
Marcia L. Clark

8 BUYERS:

Alphonso C. Ciongoli
Alphonso C. Ciongoli

Marlene J. Ciongoli
Marlene J. Ciongoli

11 STATE OF OREGON)

12 County of Klamath)

ss. August 1, 1975

13 Personally appeared the within named M.H. CLARK, also known
14 as Martin Harold Clark, and MARCIA L. CLARK, husband and wife,
15 and, ALPHONSO C. CIONGOLI and MARLENE J. CIONGOLI, husband and
16 wife, and acknowledged the foregoing instrument to be their
17 voluntary act and deed.

18 BEFORE ME:

Notary Public
Notary Public for Oregon
My Commission expires: 4-26-77

21 Return to:
22 P. H. Puckett
23 540 Main
24 City
25

ORDERED BY THE COURT
MAY 12 1975
CLERK OF THE COURT

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EXHIBIT "A"

The following described real property in Klamath County, Oregon:

PARCEL 1

Lots 1, 2 and 3 in Block 19 FAIRVIEW ADDITION #2 TO THE CITY OF KLAMATH FALLS,

TOGETHER WITH the $\frac{1}{2}$ of vacated alley adjoining the North boundary of Lot 1. ALSO TOGETHER WITH the following described property:

Beginning at a point on the center line of vacated portion of Donald Street, said point being 60 feet, 6 inches West of West line of Oregon Avenue; thence continuing West along said center line 49 feet, 6 inches to the East line of a alley; thence North along the East line of said alley 6 feet, 6 inches; thence East parallel to said center line 49 feet, 6 inches; thence South 6 feet, 6 inches to the point of beginning. Same being a portion of the North $\frac{1}{2}$ of vacated Lot 6 Block 12, Fairview Addition No. 2 to the City of Klamath Falls, Oregon.

PARCEL 2

Lots 4 and 5 in Block 19 FAIRVIEW ADDITION #2 TO THE CITY OF KLAMATH FALLS.

SUBJECT TO: 1975-76 real property taxes which are now a lien, but not yet payable, and all future real property taxes and assessments; reservations, restrictions, easements and rights of way of record, and those apparent on the land.

STATE OF OREGON; COUNTY OF KLAMATH; ss.
Filed for record at request of Transamerica Title Company
this 11th day of August A. D., 1975 at 3:30 o'clock P. M., and duly recorded in
Vol. M75 of Deeds on Page 9033

Fee \$19.00

WM. D. MILNE, County Clerk
By Hazel Craig Deputy