

24902

CONTRACT

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THIS CONTRACT is made as of this 1st day of February, 1977, by and between CLYDE P. NELSON and ALTA M. NELSON, husband and wife, whose address is 3918 Mazama Street, Klamath Falls, Oregon, and who are herein called Seller, and LLOYD C. KINNAN and LAURETTA L. KINNAN, husband and wife, whose address is 1800 Modoc, Klamath Falls, Oregon, who are herein called Purchaser.

W I T N E S S E T H :

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller for the price and on the terms and conditions set forth below that certain personal property and business called "NELSON'S T.V. AND RADIO" located at 3004 Altamont Drive, Klamath Falls, Oregon, including all merchandise inventory, equipment inventory, fixtures, and other property used in the conduct of said business along with the accounts receivable therefor. Additionally, a 1974 Dodge Van also used in the business is also hereby sold, and will be paid for as follows, to-wit:

1. The property referred to as the business shall be paid for in monthly installments of \$593.25 per month commencing March 15, 1977, with a like payment on the 15th day of each month thereafter continuing for fifteen (15) years until \$74,900.00 has been paid to Seller. Said price includes

interest at the rate of 5% per annum.

2. The 1974 Dodge Van shall be paid for in monthly installments of \$74.93 each commencing on March 15, 1977, and continuing for thirty-six (36) months until the sum of \$2,500.00 which includes interest at 5% per annum has been fully paid.

Purchaser agrees to assume and pay the accounts payable due as of February 1, 1977. In the event Purchaser fails to pay when due any of said accounts payable, Seller may pay same and add said payments to the balance due under this Contract. Seller's election to make any payment pursuant to this paragraph shall not constitute a waiver of Seller's right to declare Purchaser to be in default of this Contract.

The parties contemplate using the Western Bank as escrow agent to hold the Bill of Sale herein and such other relevant documents to this transaction, and Purchaser agrees to make the payments required by this Contract to said escrow agent who shall disburse them according to Seller's order which may from time to time be changed.

It is further understood and agreed that the shop test equipment, fixtures, display cabinets and other miscellaneous equipment used in the business are valued at \$11,500.00 and the balance of the assets of the business are valued at \$63,400.00.

The parties will prorate the personal property tax as of the date of sale.

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The Purchaser shall be entitled to possession of the property from and after February 1, 1977.

Purchaser shall not commit or suffer any waste of the property and shall maintain the property in good condition.

Purchaser shall also keep the personal property insured against loss by fire in an amount not less than \$21,000.00.

Purchaser shall indemnify and defend Seller from any claim, loss or liability arising out of or related to any activity of Purchaser in the conduct of the business.

Upon payment of the total purchase price required by this Contract the escrow agent is authorized and directed to deliver to Purchaser the Bill of Sale to the property sold.

Seller agrees that Purchaser may use the name of "NELSON'S T.V. AND RADIO" and that any appropriate assumed business name will be filed by both Seller and Purchaser that may be required by the State of Oregon.

This instrument shall constitute a security agreement within the meaning of the uniform commercial code with respect to any personal property included within the description of the property. Upon request of Seller Purchaser shall execute any necessary financing statements in the form required by the uniform commercial code and shall file the statements at Purchaser's expense in all appropriate public offices. Seller may at any time and at its option without further authorization from Purchaser, file copies of this Contract as financing

statements. Upon default hereunder, Purchaser shall within three (3) days of receipt of written demand from Seller assemble the personal property and make it available to Seller.

Time is of the essence of this Contract. A default shall occur if:

1. Purchaser fails to make any payment at the time required within ten (10) days after it is due.
2. Purchaser fails to perform any other obligation imposed by this Contract and does not correct or commence correction of such failure within ten (10) days after receipt of written notice from Seller specifying the manner in which Purchaser is in default; or
3. Purchaser becomes insolvent, a receiver is appointed to take possession of all or a substantial part of Purchaser's properties, Purchaser makes an assignment for the benefit of creditors or files a voluntary petition in bankruptcy, or Purchaser is the subject of an involuntary petition in bankruptcy which is not dismissed within ninety (90) days. If Purchaser consists of more than one person or entity, the occurrence of any of these events as to any one such person or entity shall constitute a default hereunder.

In the event of a default, Seller may take any one or more of the following steps:

1. Declare the entire balance of the purchase price and interest immediately due and payable;
2. Foreclose this Contract by suit in equity;



3. Specifically enforce the terms of this Contract by suit in equity;

4. Declare this Contract null and void as of the date of the breach and retain as liquidated damages the amount of the payments previously made hereunder. In such event, all of the right, title and interest of Purchaser to the property shall revert to and be vested in Seller without any act of reentry or without any other act by Seller to be performed, and Purchaser agrees to peaceably surrender the property to Seller. Should Purchaser fail to so surrender the property, Seller may at his option treat Purchaser as a tenant holding over unlawfully after the expiration of the lease, and Purchaser may be ousted and removed as such.

The remedies provided above shall be non-exclusive and in addition to any other remedies provided by law.

Seller shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the property exceeds the amount of the balance due hereunder, and any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the property the receiver may:

1. Use, operate, manage, control and conduct business on the property and make expenditures for all maintenance and improvements as in its judgment are proper;
2. Collect all rents, revenues, income, issues and

profits from the property and apply such sums to the expenses of use, operation and management;

3. At Seller's option, complete any construction in progress on the property and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications that Seller deems appropriate.

If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow from Seller or otherwise, such sums as it deems necessary for the purposes stated in this paragraph, and repayment of such sums shall be secured by this Contract. The amounts borrowed or advanced shall bear interest at the same rate as the balance of the purchase price hereunder from the date of expenditure until repaid and shall be payable by Purchaser on demand.

Purchaser accepts the property in its present condition including latent defects without any representations or warranties, expressed or implied unless they are in writing signed by Seller.

Any notice under this Contract shall be in writing and shall be effective when actually delivered or when deposited in the mail addressed to the parties at the addresses stated in this Contract or such other addresses either may designate by written notice to the other.

Failure of Seller at any time to require performance of any provision of this Contract shall not limit the right of Seller to enforce the provisions nor shall any waiver by Seller



of any breach of any provision be a waiver of any succeeding breach of that provision or a waiver of that provision itself or any other provision.

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.

This Contract shall be binding upon and inure to the benefit of the parties, their successors and assigns, but no interest of Purchaser shall be assigned or transferred voluntarily or involuntarily without the prior written consent of Seller.

As used herein the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

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

Elyse Nelson

Hoyd C. Kinnear

Alta M Nelson

Lauretta L. Kinnear

SELLER

PURCHASER

1820

STATE OF OREGON )  
County of Klamath ) ss.

Personally appeared the above named CLYDE P. NELSON,  
ALTA M. NELSON, LLOYD C. KINNAN and LAURETTA L. KINNAN and  
acknowledge the foregoing instrument to be their voluntary  
act and deed.

Before me:

*O. W. Goakey*  
Notary Public for Oregon  
My Commission Expires: 6-2-78

STATE OF OREGON; COUNTY OF KLAMATH; ss.  
Filed for record at request of O W GOAKEY 3:51  
this 1st day of FEBRUARY A. D. 19 77 at     o'clock P M., and  
duly recorded in Vol. M 77, of DEEDS on Page 1813  
FEE \$ 24.00 Wm D. MILNE, County Clerk  
.50 Cert By *Glazil Onagis*

Rel  
C. W. Goakey  
4131 Main  
City

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