

38359

## LAND SALE CONTRACT

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THIS AGREEMENT, made and entered into this 5th day of July, 1977, by and between ROY C. PHILLIPS and ELEANOR PHILLIPS, husband and wife, hereinafter referred to as SELLERS, and O. D. HARRIS, JR. and HELEN M. HARRIS, husband and wife, hereinafter referred to as PURCHASERS.

## W I T N E S S E T H :

RECITALS:

WHEREAS, SELLERS are the owners of a certain motel commonly known as Jo's Motel subject to certain contracts of sale between the Sellers and other parties as set forth herein, and

WHEREAS, PURCHASERS are desirous of purchasing said business together with all the equipment, furnishings, fixtures and inventory now used by Sellers in carrying on and conducting that certain motel business known as Jo's Motel set forth in Exhibit "A" herein and by this reference incorporated herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing recitals, which are by reference expressly made a part of this agreement and the terms, covenants and conditions hereinafter contained on the part of the respective parties to be kept and performed, IT IS AGREED:

(1) That the Sellers agree to sell and the Purchasers agree to purchase all of the following described real property located in Klamath County, State of Oregon, more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 in Block 2 and Lot 1 in Block 4 of BUTLER'S ADDITION TO FORT KLAMATH, OREGON, together with the South one-half of vacated "A" Street adjoining Block 2 on the North and the West one-half of vacated Wood River Boulevard lying North of the North line of 1st Street and that portion of the East one-half of vacated Wood River Boulevard lying North of the South line of Lot 1 Block 4 BUTLER'S ADDITION TO FORT KLAMATH, extended Westerly and the vacated alley in Block 2 BUTLER'S ADDITION TO FORT KLAMATH.

Subject, however, to the following:

1. Unrecorded Contract, including the terms and provisions thereof, and such other exceptions as may appear necessary upon the recording thereof,

Dated : October 27, 1960

LAND SALE CONTRACT

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Return TA Kathy Taxes: Box 428, FORT KLAMATH, OR

Vendor : Joanna Taylor, a widow  
 Vendee : Jack Simington and Erlene Simington, husband and wife  
 as disclosed by the following assignment:  
 The Vendors' interest in said contract was assigned by instrument  
 Dated : July 6, 1965  
 Recorded : July 12, 1965 Book 363 Page 132  
 To : Mary E. Moss  
 The Vendees' interest in said contract was assigned by instrument  
 Dated : May 15, 1970  
 Recorded : May 28, 1970 Book: M-70 Page: 4248  
 From : Jack Simington and Erlene Simington, husband and wife  
 To : Roy C. Phillips and Eleanor Phillips, husband and wife,  
 which Buyers assume and agree to pay according to the terms thereof.  
 2. Contract, including the terms and provisions thereof,  
 Dated : May 15, 1970  
 Recorded : May 28, 1970 Book: M-70 Page 4243  
 Vendor : Jack Simington and Erlene Simington, husband and wife  
 Vendee : Roy C. Phillips and Eleanor Phillips, husband and wife,  
 which Buyers assume and agree to pay according to the terms thereof.

(2) The purchase price for the property described in paragraph (1) above which the Purchasers agree to pay shall be the sum of One Hundred Fifteen Thousand and no/100th Dollars (\$115,000.00) on account of which \$30,000.00 is paid on execution hereof (the receipt of which is hereby acknowledged by the Sellers). The Purchasers agree to pay the remainder of said purchase price, to-wit: \$85,000.00 as follows:

(a) Purchasers hereby agree to assume the following Contract of Sale, to-wit: Escrow number 1775 with First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, contract dated May 15, 1970, between Jack Simington and Erlene Simington, husband and wife, as sellers, and Roy C. Phillips and Eleanor Phillips, husband and wife, as buyers with a present balance due and owing thereon in the sum of \$12,310.19 with interest paid to November 19, 1976; and Escrow number 1420 with First National Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, contract dated October 27, 1960, between Joanna Taylor, a widow, as seller, and Jack Simington and Erlene Simington, husband and wife, as Purchasers. Vendors interest in said contract was assigned by instrument dated July 6, 1965, recorded July 12, 1965, Book 363, Page 132 to Mary E. Moss. Vendees interest in said contract was assigned by instrument dated May 15, 1970, recorded May 28, 1970, Book M-70, Page 4248, from Jack Simington and Erlene Simington, husband and wife, to Roy C. Phillips and Eleanor Phillips, husband and wife, with a present balance due and owing thereon in the sum of \$25,902.47 with interest paid thereon to November 19, 1976.

(b) The remaining balance of \$46,787.34 shall be paid to the order of the Sellers in annual installments of not less than \$5,206.68, including interest, the first annual installment to be paid August 1, 1978, and an annual installment on the first day of August each year thereafter, prepayment without penalty, and continuing until said purchase price is fully paid. All of said purchase price may be paid at any time; all deferred balances of said purchase price shall bear interest at the rate of 7 $\frac{1}{2}$ % per annum from August 1, 1977, until paid, interest to be paid annually and being included in the minimum monthly payments above required. Purchasers shall have the privilege of increasing any annual payment or prepaying the whole consideration at any time, provided that additional payments shall not excuse Purchasers from making the regular annual payments provided for in this contract until the remaining balance has been paid in full.

Purchasers specifically agree to pay the full contract balance fifteen (15) years from the date of the contract.

(c) It is further agreed that the Purchasers shall pay all taxes and assessments and any other obligations incurred by the Purchasers, in addition to the monthly installments set forth above.

(d) The parties agree to prorate the real property taxes for the fiscal year 1977-78 as of ~~August 10~~<sup>July 10</sup>, 1977. The parties agree to prorate the personal property taxes for the year 1977 as of ~~August 10~~<sup>July 10</sup>, 1977. Purchasers agree to pay when due all taxes which are hereafter levied against the property, and all public, municipal and statutory liens which may be hereafter lawfully imposed upon the premises.

(3) In the event the Purchasers default in the payment of any taxes or liens, Sellers are authorized to make payment on said taxes or liens on behalf of Purchasers, and to add such sums paid to the principal of this contract, to be paid by Purchasers, including interest at the rate of 7½% per annum.

(4) Purchasers agree to keep the buildings on said premises insured against loss by fire in an amount not less than \$115,000.00, with loss payable to the parties hereto as their interests appear at the time of loss. However, the Purchasers shall have the election to rebuild the improvements out of the insurance proceeds, providing they elect to do so in writing with notice to the Sellers. In the event they do not so elect, any amount received by Sellers under said insurance in payment of loss shall be applied upon the unpaid balance of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Sellers. All uninsured losses shall be borne by Purchasers, on or after date Purchasers become entitled to possession.

(5) Purchasers shall be entitled to possession of the premises as of the ~~15th day of August~~<sup>10th day of July</sup>, 1977.

(6) Purchasers verify that this contract is accepted on the basis of Purchasers' own examination and personal knowledge of the properties and opinion as to the value thereof; that the only material representations and warranties inducing this transaction are those expressly set forth herein; that no agreement or promise to alter, repair or improve said properties has been made by Sellers or any agent of Sellers; and Purchasers hereby agree to take said properties and the improvements thereon in the condition they are in at the time of execution of this agreement. Purchasers agree to keep said properties and the improvements in a good condition of repair and maintenance, and Purchasers will commit no waste thereof.

(7) Sellers covenant with Purchasers as follows: Except as expressly provided herein to the contrary, Sellers are the sole owner of said property and seized in fee simple of the above described real property; that Sellers' title to the same is marketable; that Sellers have a right to transfer title to the same and possession thereof; that the properties are presently free from all matured and inchoate liens, charges and encumbrances whatsoever, except as the same may be noted in this agreement; that Purchasers shall have quiet enjoyment of the properties and that Sellers will warrant and defend the same against all lawful claims and demands whatsoever, except as stated herein.

(8) The Sellers agree that at their expense they will furnish unto Purchasers a title insurance policy insuring in an amount equal to said purchase price marketable title in and to said premises as of the date of this contract.

(9) If Purchasers fail to make any of the payments herein stated within thirty (30) days of the specified payment date, or if the Purchasers fail to perform any of the other terms, covenants or conditions of this sale agreement, and if any such default in payment or performance shall remain uncorrected by Purchasers for thirty (30) days after written notice of such default has been given by certified mail by Sellers to Purchasers at the Purchasers' last known address, (provided always, that NO NOTICE WHATSOEVER SHALL BE REQUIRED OF SELLERS FOR ANY DEFAULT IN PAYMENT OF ANY DEFERRED INSTALLMENTS OF PURCHASE PRICE), time of payment and strict performance in all things being of the essence of this agreement, Sellers shall have the following rights:

(a) To declare the entire unpaid balance of the purchase price, both principal and interest, immediately due and payable and to exercise any of the following options:

1. To sue for the unpaid balance then due on this agreement;
2. To foreclose this contract by strict foreclosure in equity; and to the appointment of a receiver during the pendency of the suit;
3. To sue for specific enforcement of this agreement;

(b) or, to declare this agreement null and void and to retain as liquidated damages the payments theretofore made under this agreement by Purchasers, and any repair and improvements made upon said properties. If Sellers shall so elect to declare this agreement null and void as hereinabove provided, all of the right, title and interest of Purchasers shall immediately revert to and revest in Sellers without any other act by Sellers to be performed and without any right of Purchasers of reclamation or compensation for money paid or repairs or improvements added, as absolutely, fully and perfectly as if no agreement had ever been made, and Purchasers agree to surrender peaceably said properties and the possession thereof to Sellers, or in default thereof Purchasers may, at the option of the Sellers, be treated as a tenant holding over unlawfully after expiration of a lease and may be ousted and removed as such. Provided always that the recitation of remedies herein shall not be deemed exclusive and shall not bar the parties from any other or additional or supplemental remedy or remedies afforded at law, in equity, or otherwise.

(10) If Purchasers shall fail to pay any assessments, liens, insurance premiums, or any other expense necessary to preserve Sellers' lien hereby retained, and the value and priority thereof, Sellers, without obligation to do so, and without waiver of Purchasers' default, has the right to pay the same, and treat the amount so paid as a debt due and owing from Purchasers to Sellers, secured by the lien of this agreement, and to bear interest at contract rate per annum until paid.

(11) No waiver of a breach of any covenant, term or condition of this agreement shall be a waiver of any other or subsequent breach of the same, or any other term, covenant or condition, or as a waiver of the term, covenant or condition itself; nor shall such waiver require any notice of any kind to

be given to reinstate the defaulted term, covenant or condition, or to make time and strict performance again of the essence.

(12) The obligations of the undersigned are joint and several, and wherever the context hereof so admits or requires, the singular shall include the plural. This Sale Agreement contains the entire agreement of the parties and cannot be modified except upon written agreement. This agreement shall benefit and bind the heirs, executors, administrators, successors and assigns of the parties.

(13) Should suit, action or other legal proceeding be instituted to declare or enforce any right created by this instrument, the prevailing party therein shall be entitled to the costs and disbursements provided by statute, and such other sum as the Court may adjudge reasonable for attorney's fees.

(14) As soon as practicable after the execution of this agreement, the parties shall deliver to FIRST NATIONAL BANK OF OREGON, 601 Main Street, Klamath Falls, Oregon, in escrow the following documents:

- (a) A fully executed and recorded original Land Sale Contract.
- (b) A full warranty deed covering the above described real property.
- (c) Such escrow instructions as shall meet with the approval of the above named escrow agent.

The parties instruct the above named escrow agent to receive for collection the installments provided for herein and to remit the same to Sellers as Sellers may from time to time direct. Sellers retain a lien on said properties to secure Purchasers' payment and performance hereof; but upon full and faithful payment and performance hereby by Purchasers, title shall pass, and the escrow agent shall then deliver to Purchasers all instruments deposited in escrow. Fees to establish the escrow shall be paid equally by the parties; periodic collection charges as deferred installments are made shall be paid by Sellers.

(15) It is expressly understood and agreed that the Sellers hold their interest in this contract and the land herein described as tenants by the entirety with right of survivorship; that is to say, the interest shall vest absolutely in the survivor of them in the event of the death of either of them.

(16) In the event the Purchasers become in default and the Sellers commence foreclosure proceedings, the Sellers shall have the right to apply for the appointment of a receiver to take possession of the premises and manage the same during the foreclosure proceedings.

(17) 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

agreement to be executed this 5th day of July, 1977.

Roy C. Phillips  
Roy C. Phillips

Eleanor Phillips  
Eleanor Phillips

SELLERS

O. D. Harris, Jr.  
O. D. Harris, Jr.

Helen M. Harris  
Helen M. Harris

PURCHASERS

STATE OF OREGON     )  
                              ) ss.  
County of Klamath    )

July 1, 1977.

Personally appeared the above named Roy C. Phillips and Eleanor Phillips, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Kathy R. Mella  
Notary Public for Oregon  
My Commission Expires: 6-13-80

STATE OF ~~CALIFORNIA~~ <sup>OREGON</sup>     )  
  ) ss.  
County of KLAMATH                    )

July 5, 1977.

Personally appeared the above named O. D. Harris, Jr. and Helen M. Harris, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Kathy R. Mella  
Notary Public for California  
My Commission Expires: 6-13-80

## EXHIBIT "A"

PAGE 1

## PERSONAL PROPERTY

OFFICE

Desk  
 Desk chair  
 Desk lamp  
 Mirror  
 Shelving  
 Fire Extinguisher  
 2 Drawer file cabinet  
 Wastepaper basket

BATHROOM

3 Drawer stand  
 Medicine cabinet  
 Door mirror  
 curtains

KITCHEN

Monarch electric stove  
 Trash burner  
 Table  
 4 chrome chairs  
 vent hood  
 Dishmaster  
 Gibson Refrigerator  
 Fire extinguisher

MASTER BEDROOM

Shutters  
 Drapes

LAUNDRY PORCH

Kenmore dryer & Whirlpool washer  
 Metal cabinet  
 Kelvinator chest freezer  
 Wooden storage cabinet  
 Metal Cart  
 Fire extinguishers

OUTDOOR EQUIPMENT

Power Mower - Montgomery Wards  
 Riding Mower - Mustang 25  
 Water hoses  
 Sprinklers  
 Water pump  
 Irrigation pipe - misc.  
 Hand push mower  
 Fertilizer spreader  
 Wood stove  
 Snow shovel  
 3 hand saws  
 Axe  
 Grub hoe  
 Sledge hammer  
 1 hand scythe  
 Misc. tools, pipes, fittings  
 4 picnic tables with benches  
 7 trash cans

OUTDOOR LAUNDRY ROOM

2 New Gas Water heaters  
 2 New National Electric water heaters  
 2 Maytag washers  
 2 Maytag Dryers  
 1 small table  
 3 chairs  
 2 benches

MISC. IN STORAGE ROOMS

Mangle  
 Sewing machine  
 Key making machine  
 Ice machine  
 Gasoline storage tank-250 gal.  
 Floor polisher  
 Shampoo machine  
 Vacuum broom  
 Vacuum  
 Porta Crib  
 Neon Sign in Front  
 All Hanging Signs  
 Large Highway Sign Billboard (Hwy. 62)  
 2 Ladders  
 3 Telephones  
 1 Cot Aluminum  
 2 Electric Coolers  
 2 Electric Heaters  
 8 TV Trays  
 2 Electric Fans  
 Freezer - Signature Upright  
 Insulated storage chest  
 Foldaway bed spring  
 1 Tile Cutter  
 5 boxes ceramic tile  
 2 toilets new (bowl only)  
 1 wash basin  
 1 flood lamp  
 Misc. mops, buckets, brooms  
 Misc. lamps, ice buckets, pictures,  
 awnings.  
 Misc. dishes, silverware, glasses, pots  
 1 box ash trays  
 Misc. supplies

LINENS

165 sheets  
 164 pillow slips  
 34 bath towels  
 34 hand towels  
 36 wash cloths  
 10 extra pillows  
 9 extra blankets  
 15 extra spreads  
 8 extra bed pads

11880

EXHIBIT "A"

PAGE 2

PERSONAL PROPERTY

UNITS 1 - 6 (Identical furnishings)

2 Double beds (completely made up)  
2 3 drawer chest  
2 night stands  
1 TV  
1 TV table  
1 dinette table - 2 chairs  
1 desk - 1 chair  
1 occasional chair  
1 hanging lamp  
2 wastepaper baskets  
Mirror  
Artificial flowers  
Built-in kitchen combo  
Drapes and curtains

UNIT 7 (2 bedroom house)

2 double beds  
1 stove - refrig. sink combo  
1 kitchen table  
2 chest of drawers  
1 end table  
Odd chairs  
1 pole lamp

UNIT 8

1 Double bed  
1 end table  
Kitchen table - 2 chairs  
Frigidaire refrig.  
1 electric hot plate  
1 4 drawer chest  
1 night stand  
2 chairs

UNIT #9

1 Double bed  
1 single bed  
1 4 drawer chest  
2 occasional chairs  
1 small 3 drawer chest  
1 TV  
Curtains and drapes

MISCELLANEOUS

4 folding luggage stands  
Misc. throw rugs

DEEDS OF THE COUNTY OF HAWAII

RECORDED IN THE DEEDS BOOK NO. 11883

6th JULY

11:59

1977

DEEDS

and

11883

FEE \$ 24.00

By *Hazel Drazil*