

X. 34542

CONTRACT OF SALE

THIS AGREEMENT, entered into this 1st day of June, 1981, by and between WILLIAM C. BURTENHOUSE and SHIRLEY ANN BURTENHOUSE, husband and wife, hereinafter called Sellers, and COLLEEN DENNIS, hereinafter called Buyer;

W I T N E S S E T H :

That the Sellers agree to sell to Buyer, and Buyer agrees to purchase the following real and personal property, to-wit:

Lots 4, 5 and 6 in Block 66 of Klamath Falls Forest Estates, Highway 66 Unit Plat No. 3, in the County of Klamath, State of Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Subject, however, to the following:

1. Reservations and restrictions in deed from Ada Parsons Sparretorn, a widow, to Henry O. Cox, John E. Cox and Charles E. Cox, dated June 9, 1936 recorded June 11, 1936, in Volume 106 page 459, Deed Records of Klamath County, Oregon as follows: "...saving and reserving unto grantor, however, all oil, gas and minerals on in and under said lands with the right at all times to enter into and upon same to explore therefor, and to bore wells and make excavations and remove all oils and minerals found thereon and therein with rights of way for pipe lines."
2. Reservations and Restrictions in the Dedication of Klamath Falls Forest Estates Highway 66 Unit Plat No. 3, as follows "...said plat being subject to a 16-foot easement centered on the back and side lines of all lots for future public utilities a 40 foot building set-back on all lots adjacent to Highway 66 and to all easements and reservations of record."
3. Declaration of Establishment of Conditions, Covenants and Restrictions affecting real property between S.E.C. Co., Inc., an Oregon corporation, Developer, and Curtis Blaustein, dated June 11, 1965 recorded June 24, 1965 Deed Vol. 362, page 400, records of Klamath County, Oregon.
4. Agreement, including the terms and provisions thereof, by and between Edgar Weeks and _____ Weeks, husband and wife, to Alma L. Schultz, a single woman and Margreta C. Wilcox, a single woman, and Charles W. White, a single man, Verda M. Wall, a single woman, and Eula E. Fitzgerald, a single woman, dated August 10, 1967, recorded August 5, 1971, in Volume M-71, page 8267, Deed Records of Klamath County, Oregon.
5. Right of Way Easement, including the terms and provisions thereof, given by S.E.C. Co., Inc., to Edgar Weeks, et al, dated November 29, 1967, recorded December 5, 1967, in Volume M67 page 9484 Deed records of Klamath County, Oregon. (affects Lot 6).

Subject to: Personal property taxes for 1981-1982.

CONTRACT OF SALE
Page-1

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TOGETHER WITH all of the equipment, furnishings and fixtures now used by Sellers in carrying on and conducting that certain business known as the "Ponderosa Cafe", Route 1, Box 587, Bonanza, Oregon 97623, a more particular description of said personal property having been marked Exhibit "A" and attached hereto and by this reference incorporated herein and made a part hereof.

ALSO TOGETHER WITH the assumed business name "Ponderosa Cafe".

ALL at and for a total purchase price of \$175,000.00 payable as follows:

Sellers agree and hereby acknowledge with Buyer herein that the down payment shall consist of Buyer transferring land described as The W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ in Section 7 Township 38 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon and a mobile home attached thereto described as a 1971 Brookwood, 24' by 64' mobile home, Serial No. 2888, Title No. 7136310817, License No. X 42575-6, and Buyer is to receive credit for same in the sum of \$71,500.00; and the remainder of \$103,500.00 to be paid to the order of the Sellers at the times and in amounts as follows: \$103,500.00 with interest at the rate of 10 $\frac{1}{2}$ % per annum from June 1, 1981, payable in installments of not less than \$1,034.00 per month, inclusive of interest, the first installment to be made July 1, 1981, and a further installment on the 1st day of each month thereafter until the full balance of principal and interest are paid.

The purchase price of the property is allocated as follows: Real property \$17,550.00; Building and storage shed \$45,477.21; furniture and fixtures \$16,140.74 and Goodwill, etc., \$95,832.05.

Buyer shall have the privilege of increasing any monthly payment or prepaying the whole consideration at any time provided that additional payments shall not excuse Buyer from making the regular monthly payments provided for in this contract until the remaining balance has been paid in full.

Buyer covenants and agrees as follows: That she will make said payments promptly on the dates above named to the order of Sellers at: Klamath County Title Company, 422 Main Street, Klamath Falls, Oregon 97601; that she will keep all of said real and personal property insured for the full amount of their insurable value in companies approved by the Sellers, and with loss payable to the parties as their interest may appear. Said policies shall be held by the Sellers until this agreement has been completely performed; that she will pay regularly and seasonably as the same shall become payable and before the same shall become delinquent all taxes, assessments, liens and encumbrances of every kind and nature; that she will not suffer or permit any of said property to become subject to any taxes, assessments, liens, charges or encumbrances whatsoever having precedence over the rights of Sellers in and to said property.

Sellers covenant and agree as follows: That said real property is free and clear of all liens and encumbrances, except as set forth above, and that said personal property is free and clear of all liens and encumbrances, except as set forth above; that they have good right to sell said real and personal property to Buyer, and that they will furnish Buyer with their good and sufficient bulks sales affidavit and that they have no creditors. Sellers covenant and agree to indemnify and hold Buyer harmless with respect to any and all

CONTRACT OF SALE.

Page-2

indebtedness of Sellers.

It is expressly understood and agreed that this is a conditional sales agreement and that full title to all of said real and personal property shall remain in Sellers until said balance and interest are paid in full. It is further understood and agreed that any and all equipment, furnishings, fixtures and inventory which may at any time hereafter be placed upon said premises by the Buyer shall become subject to the lien of this agreement as further security to the Sellers for the payment and performance of this agreement, and that any replacements to present equipment when the same wears out will also be secured by this agreement. It is also further understood and agreed that any replacements of equipment furnishings and fixtures or additions thereto which shall be placed on the premises by the Buyer shall be purchased by the Buyer, and not leased or rented, which said replacements or additions shall become subject to the lien of this agreement.

It is further expressly understood and agreed that upon the execution of this agreement Sellers shall make and execute in favor of Buyer a good and sufficient warranty deed conveying said real property free and clear of any and all liens and encumbrances except as set forth above, and a good and sufficient bill of sale conveying said personal property free and clear of all liens and encumbrances, except as set forth above; that Buyer and Sellers shall join in executing a financing statement, and Sellers shall execute a termination of financing statement; and that Sellers shall execute their certificate of withdrawal of the assumed business name, "Ponderosa Cafe", and that said deed, bill of sale, termination of financing statement, together with the original recorded Contract of Sale shall be placed in escrow at Klamath County Title Company, 422 Main Street, Klamath Falls, Oregon 97601.

The real and personal property taxes and the insurance currently in force and effect on the premises will be prorated by and between Sellers and Buyer as of June 1, 1981. Personal property taxes will be prorated based on the 1980 taxes when payable.

Buyer shall be entitled to the possession of said real and personal property on or before the 1st day after closing escrow, 1981.

Sellers shall record their certificate of withdrawal of assumed business name of "Ponderosa Cafe" forthwith upon transfer of possession of said property to Buyer herein.

It is understood and agreed between the parties that there exists a merchandise inventory. The parties agree to take said inventory as of the date of transfer to Buyer herein. The Buyer agrees to pay the Sellers the reasonable value of said inventory separate from the terms of this agreement.

In case Buyer shall fail to make the payments aforesaid or any of them punctually and upon the strict terms and at the times above specified, or fail to keep any of the other terms or conditions of this agreement, time of payment and strict performance being declared to be the essence of this agreement, then Sellers shall have the following rights: (1) To foreclose this contract by strict foreclosure in equity; (2) To declare the full unpaid balance immediately due and payable; (3) To specifically enforce the terms of this agreement by suit in equity; (4) To declare this contract null and void; and in any of such cases, except exercise of the right to specifically enforce this agreement by suit in equity, all of the right and interest hereby created or then existing in favor of Buyer

derived under this agreement shall utterly cease and determine, and the premises aforesaid shall revert and revert in Sellers without any declaration of forfeiture or act of re-entry, and without any other act by Sellers to be performed and without any right of Buyer of reclamation 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 become vacant, Sellers may take possession of the same for the purpose of protecting and preserving the property and their security interest therein, and in the event possession is so taken by Sellers they shall not be deemed to have waived their right to exercise any of the foregoing rights. Buyer agrees that in the event Sellers herein retake the property, and in the event a receiver is appointed by the court that Buyer herein has no objection to Sellers acting as said receiver.

In case suit or action is instituted to foreclose this contract or to enforce any of the provisions hereof, the parties agree to pay reasonable costs of title report and title search and such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in said suit or action, and if an appeal is taken from any judgment or decree of such trial court, the parties further promise to pay such sum as the appellate court shall adjudge reasonable as attorney's fees to the prevailing party on such appeal.

Buyer further agrees that failure by Sellers at any time to require performance by Buyer of any provision hereof shall in no way affect Sellers' right hereunder to enforce the same, nor shall any waiver by Sellers 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.

PROVIDED FURTHER, that the personal property herein sold is subject to terms and provisions of Uniform Commercial Code of the State of Oregon, and that all of the terms herein, the right, duties and remedies of the parties shall be governed by the laws of Oregon. That Sellers' address is _____.

That Buyer's address is _____.
Route 1, Box 587, Bonanza, Oregon 97623. That each demand, notice or other communication shall be served or given by mail or telegram addressed to the parties at their mailing addresses as set forth herein, or by personal service upon the parties. Reasonable notice, when notice is required, shall be five (5) days. Buyer agrees to join with Sellers in executing and filing a financial statement as required by said Uniform Commercial Code as above mentioned to protect and continue Sellers' security interest.

Buyer acknowledges that she has personally inspected the personal property and real property and accepts it in its present condition. Buyer further acknowledges that Sellers have made no representation as to the amount of income that can be realized from the operation of this business.

Buyer agrees to keep said property at all times in as good condition as the same now are, that no improvement, now on or which may hereinafter be placed on said property shall be removed or destroyed before the entire purchase price has been paid.

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

CONTRACT OF SALE

Page-4

It is further expressly understood and agreed that upon the execution of this agreement and the approval from the Oregon Liquor Control Commission that Sellers shall make and execute in favor of Buyer any and all permits and licenses pertaining to the business.

This Contract or any rights or interest hereunder, including Buyer's interest in the real property which is the subject of this Contract shall not be assigned, sold or conveyed by Buyer herein, or her heirs, legal representatives, successors or assigns, without the prior consent of Sellers (which consent shall not be unreasonably withheld) Sellers shall consent to any voluntary transaction when the withholding thereof would be unreasonable in the circumstances. Sellers may require such personal information concerning any future Buyer, assignee or grantee as a prudent lender would require of a prospective borrower.

As soon as practicable after the execution of this agreement, the parties shall deliver to Klamath County Title Company, 422 Main Street, Klamath Falls, Oregon 97601, in escrow the following documents:

- a. A full warranty deed covering the above described real property.
- b. A fully executed and recorded original land sale contract.
- c. An unrecorded bill of sale dated June 1, 1981, from said Sellers to Buyer conveying the personal property described in said contract.
- d. Termination of financing statement-Form UCC 3.
- f. 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 Buyer's payment and performance hereof; but upon full and faithful payment and performance hereby by Buyer, title shall pass, and the escrow agent shall then deliver to Buyer all instruments deposited in escrow.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Return to K & O
3694

Mail for statement to
Buyer

Rt 1 Bx 587
Bonanza Op 97673

STATE OF OREGON)

County of Klamath)

William C. Burtenhouse
WILLIAM C. BURTENHOUSE

Shirley Ann Burtenhouse
SHIRLEY ANN BURTENHOUSE

"SELLERS"

Colleen Dennis
COLLEEN DENNIS

"BUYER"

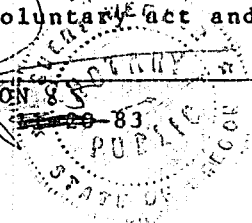
ss.

May 28, 1981

Personally appeared, before me, the above named WILLIAM C. BURTENHOUSE, SHIRLEY ANN BURTENHOUSE and COLLEEN DENNIS, and acknowledged the foregoing instrument to be their voluntary act and deed.

CONTRACT OF SALE
Page-5

NOTARY PUBLIC FOR OREGON
My Commission Expires 8-29-83



EQUIPMENTDining Room

Nine tables
 Thirty-seven chairs
 Nine counter stools

Kitchen

Milk shake machine
 Coffee maker
 Cash register
 Cooking unit - grill
 Kelvinator 4 burner electric stove
 Microwave oven
 Bread warmer
 Utility food warmer
 Toaster
 Two Refrigerators
 Two Upright freezers
 Morris milk dispenser
 Ice machine
 Two Chopping block cutting counters
 Two Stainless steel sinks and counters
 Fountain ice box refrigeration unit
 Two Chest type refrigeration units
 All glasses, dishes, silverware and accessories
 Meat slicer

Lounge

Nine Tables
 Fourteen Chairs
 Fifteen Bar Stools
 Pool table
 Three Chest type refrigeration units
 Stainless steel sink unit
 Cash Register

Miscellaneous

One 18 foot travel trailer set up stationary adjacent to
 the utility building

One 12 x 15 foot metal storage shed

Office

Desk
 Chair
 Adding Machine

EXHIBIT "A"

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County Title Co.
 this 27th day of July A.D. 19 81 at 3:48 o'clock P.M., and
 duly recorded in Vol. 381, of Deeds on Page 13462

EVELYN BIEHN, County Clerk
 By Bernetha D. Detach