

15457

MSV Page 12089

ASSIGNMENT OF CONTRACT

For value received, I hereby assign to JESSE W. JACK all my right, title, and interest in and to the contract dated December 4, 1979, between MOLATORES MOTEL, INC., an Oregon corporation and MJB, LTD., a California Limited Partnership and myself concerning the purchase of the WINEMA MOTOR HOTEL in Klamath Falls, Oregon, a copy of which is attached hereto.

Dated this 9 day of August, 1982.

Danny O'Neill
DANNY O'NEILL

Acceptance of Assignment

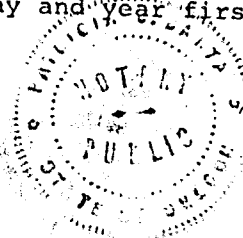
I hereby accept the foregoing assignment, agree to assume and perform all duties and obligations to be performed by DANNY O'NEILL under the contract therein specified to the same extent as if I had been an original party thereto, and agree

STATE OF OREGON)

) ss:

County of Klamath)

On this 9 day of August, 1982, before me, a Notary Public for the State of Oregon, personally appeared the within named DANNY O'NEILL known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same. In witness whereof, I have set my hand and affixed my official seal in the County of Klamath, State of Oregon, the day and year first above written.



Patricia Barte
Notary Public for Oregon

My Commission Expires: 3/7/84

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CONTRACT OF SALE

THIS CONTRACT is made this 4 day of June, 1979,
by MOLATORES MOTEL, INC., an Oregon corporation, whose address
is 100 Main Street, Klamath Falls, Oregon, 97601, as "Seller",
hereinafter called "Seller", and MJB, Ltd., a California Limited
Partnership, whose address is 1111 Main Street, Klamath Falls,
Oregon, 97601, as "Buyer", hereinafter called "Buyer".

WITNESSETH:

Seller agrees to sell to Buyer and Buyer agrees to
buy from Seller for the price and on the terms and conditions
as set forth below:

The real property and the improvements thereon, as
described in Exhibit "A" attached hereto and made a part hereof,
and hereinafter referred to as the "Property", and all personal
property of the Winema Motor Hotel, described in Exhibit "B"
attached hereto and made a part hereof, and hereinafter referred
to as "Personal Property".

1. TAX STATEMENTS: Until a change is requested,
all tax statements shall be sent to the following address:
MJB, Ltd., a California Limited Partnership
1111 Main Street
Klamath Falls, Oregon 97601

2. PURCHASE PRICE: The purchase price for the Real
Property and Personal Property is the sum of \$400,000.00. Buyer
promises to pay the total purchase price as follows:

The sum of \$5,000.00, which has previously been paid
as earnest money, and the further sum of \$95,000.00 upon OLCC
approval, for a total down payment of \$100,000.00.

1 The remaining balance of \$300,000.00 shall be paid
2 as follows: The sum of \$134,137.10 shall be paid by the assumption
3 by the Buyer of the Mortgage dated May 30, 1977, and recorded
4 June 9, 1977, in Volume M-77, page 10037, Microfilm Records of
5 Klamath County, Oregon, from Molatores Motel, Inc., to Winema
6 Motor Hotel, Inc., and the further sum of \$20,488.35 by assumption
7 by Buyer of the Mortgage dated May 24, 1977, recorded June 9, 1977,
8 in Volume M-77, page 10044, Microfilm Records of Klamath County,
9 Oregon, from Molatores Motel, Inc., to United States National
10 Bank of Oregon, a National Banking Association, and the further
11 sum of \$145,374.55 shall be paid in monthly installments of not
12 less than \$1,500.00 each, including interest at the rate of ten
13 percent (10%) per annum on the unpaid balances, the first of such
14 installments to be paid on or before the first day of December,
15 1980, and subsequent installments to be paid on or before the first
16 day of each month thereafter, until the entire purchase price,
17 including both principal and interest, is paid in full, provided
18 further however that on or before July 1, 1990, Buyer shall pay
19 the entire unpaid principal and interest balances. In addition
20 to the above payments Buyer shall make a payment of \$14,415.66
21 on or before December 1, 1980, as interest from date of this con-
22 tract to December 1, 1980. Interest on all unpaid balances shall
23 commence on the date of execution of this contract. Each payment
24 shall be applied first to interest to date of payment and the
25 balance to principal.

26 3. ASSUMPTION OF MORTGAGES: The mortgages described
27 in the preceeding paragraph are hereby assumed by Buyer. Buyer
28 agrees to make all payments required thereunder and to perform
all obligations of Seller and Buyer under said mortgages. Buyer

1 agrees to indemnify Seller from any claim, demand or any other
2 liability arising under said mortgages. A default by Buyer under
3 said mortgages shall be a default under this contract.

4 4. PREPAYMENT: Buyer shall have the right to prepay
5 any or all parts of the balance due hereunder without penalty
6 after the 5th day of January, 1980.

7 5. SELLER'S RIGHT TO PAY: In the event Buyer fails
8 to pay, when due, any amounts required of Buyer to be paid to
9 third parties hereunder, Seller may pay any or all such amounts.
10 If Seller makes any such payments, the amounts thereof shall be
11 immediately due and payable to Seller from Buyer. Until paid,
12 such amounts shall be secured by this contract and shall bear
13 interest at the rate of ten percent (10%) per annum. Seller's
14 election to make any payments pursuant to this paragraph shall
15 not constitute a waiver of Seller's right to declare Buyer to be
16 in default of this contract.

17 6. ESCROW AGENT: All payments to Seller hereunder
18 shall be made to Klamath County Title Company, 422 Main Street,
19 Klamath Falls, Oregon -----, as escrow agent.

20 7. CLOSING: The sale shall be closed through Klamath
21 County Title Company, 422 Main Street, Klamath Falls, Oregon,
22 97601, the cost of which shall be shared equally by the parties.
23 Seller shall deliver to Klamath County Title Company, the deed
24 described in paragraph ____ together with suitable instructions
25 authorizing delivery after all payments have been made and all
26 other obligations of Buyer under this contract have been fulfilled.

27 6. TAXES: All taxes levied against the Property for
28 the current tax year shall be prorated between Seller and Buyer

1 as of the date of possession. Buyer agrees to pay when payable
2 all taxes and assessments which are thereafter levied against
3 the Property and to keep the Property free from all public,
4 municipal and statutory liens which may be thereafter lawfully
5 imposed upon the Property.

6 7. POSSESSION: Buyer shall be entitled to possession
7 of the Property upon the closing of the escrow by Klamath County
8 Title Company, provided however, that Seller and Seller's agents
9 may enter upon the Property at reasonable times for the purpose
10 of inspecting the Property.

11 8. MAINTENANCE AND INSURANCE: Commencing with the
12 possession date and thereafter at all times during the term of
13 this contract, Buyer shall with respect to the Property do
14 the following:

15 (a) Keep all buildings, other improvements and
16 landscape now existing or which shall hereafter be placed on
17 the Property in good condition and repair and not permit any
18 waste or removal thereof, nor make any substantial improvements
19 or alterations without the prior written consent of Seller.

20 (b) Promptly comply with all laws, ordinances, reg-
21 ulations, directions, rules and requirements of all govern-
22 mental authorities applicable to the use or occupancy of the
23 Property, and in this connection promptly make all required re-
24 pairs, alterations and additions.

25 (c) Keep all improvements now existing or which
26 shall hereafter be placed on the Property insured against fire
27 and other casualties covered by a standard policy of fire in-
28 surance with extended coverage endorsements in a company acceptable

1 to Seller. The policy shall be written in an amount not less than
2 the unpaid balance of this contract, with loss payable to Seller
3 and Buyer as their respective interests may appear. Certificates
4 evidencing the policies shall be delivered to Seller. In the
5 event of loss, Buyer shall give immediate notice to Seller. Seller
6 may make proof of loss if Buyer fails to do so within ten days of
7 any loss.

8 9. WASTE: Buyer shall not commit or suffer any
9 waste of the Property and shall maintain the Property in good
10 condition.

11 10. INDEMNIFICATION: Buyer shall indemnify and hold
12 Seller harmless from any claim, loss or liability arising out of
13 or related to any activity of Buyer, his agents or employees, on
14 the Real or Personal Property.

15 11. COVENANTS OF SELLER: Seller covenants that Seller
16 is the owner of good and marketable title to the Real Property,
17 free of all liens and encumbrances except:

18 (a) Reservations, restrictions, rights-of-way,
19 easements of record and those apparent upon the land.

20 (b) Mortgage, including the terms and provisions
21 thereof, executed by Molatores Motel, Inc., an Oregon Corporation,
22 to Wi-Ne-Ma Hotel, Inc., an Oregon Corporation, dated May 30, 1977,
23 recorded June 9, 1977, in Volume M-77, page 10037, Microfilm
24 Records of Klamath County, Oregon, to secure the payment of
25 \$147,500.00. (Affects Parcel 1)

26 By instrument dated September 23, 1977, recorded
27 September 28, 1977, in Volume M-77, page 18220, Microfilm Records
28 of Klamath County, Oregon, said Mortgage was assigned to

1 M.S. West.

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2 By instrument dated September 23, 1977, recorded
3 September 28, 1977, in Volume M-77, page 18221, Microfilm Records
4 of Klamath County, Oregon, said Mortgage was assigned to the
5 United States National Bank of Oregon, a National Banking Associa-
6 tion.

7 (c) Mortgage, including the terms and provisions there-
8 of, executed by Molatores Motel, Inc., an Oregon Corporation, to
9 the United States National Bank of Oregon, a National Banking
10 Association, dated May 24, 1977, recorded June 9, 1977, in Volume
11 M-77, page 10044, Microfilm Records of Klamath County, Oregon,
12 to secure the payment of \$22,500.00. (Affects Parcel 2)

13 12. TITLE INSURANCE: Seller shall furnish at Seller's
14 expense a buyer's title insurance policy in the amount of
15 \$400,000.00 within 20 days of the date of closing, insuring Buyer
16 against loss or damage sustained by Buyer by reason of the un-
17 marketability of Seller's title, or liens or encumbrances thereon,
18 excepting matters contained in the usual printed exceptions in
19 such title insurance policies.

20 13. DEFAULT: Time is of the essence of this contract.
21 A default shall occur if:

22 (a) Buyer fails to make any payment promptly when due.

23 (b) Buyer fails to perform any other obligation im-
24 posed by this contract and does not correct said failure within
25 15 days after the mailing of notice from Seller specifying the
26 manner in which Buyer is in default, by registered or certified
27 mail, to the address maintained by the collection escrow agent
28 for Buyer. Actual receipt by Buyer is not required; or

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1 (c) Buyer becomes insolvent, a receiver is appointed
2 to take possession of all or a substantial part of Buyer's
3 properties, Buyer makes an assignment for the benefit of creditors
4 or files a voluntary petition in bankruptcy or Buyer is the sub-
5 ject of an involuntary petition in bankruptcy which is not dis-
6 missed within 90 days. If Buyer consists of more than one person
7 or entity, the occurrence of any of these events as to any one
8 such person or entity shall constitute a default hereunder.

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

11 (a) Declare the entire balance of the purchase
12 price and interest immediately due and payable;

13 (b) Foreclose this contract by suit in equity;

14 (c) Specifically enforce the terms of this contract
15 by suit in equity;

16 (d) Declare this contract null and void as of
17 the date of the breach and retain as liquidated damages the amount
18 of the payments previously made hereunder. In such event, all of
19 the right, title and interest of Buyer to the Property shall
20 revert to and be vested in Seller without any act of re-entry
21 or without any other act by Seller to be performed, and Buyer
22 agrees to peaceably surrender the Property to Seller. Should
23 Buyer fail to so surrender the Property, Seller may, at his option,
24 treat Buyer as tenant holding over unlawfully after the expiration
25 of a lease and Buyer may be ousted and removed as such.

26 The remedies provided above shall be nonexclusive
27 and in addition to any other remedies provided by law.

28 14. CONDITION OF PROPERTY: Buyer accepts the Real

1 Property, including buildings and improvements, and all other
2 aspects of the Real Property in their present condition, AS IS,
3 including latent defects, without any representations or warranties,
4 expressed or implied, unless they are in writing signed by Seller.
5 Buyer agrees that he has ascertained, from sources other than
6 Seller, the applicable zoning, building, housing and other reg-
7 ulatory ordinances and laws and that he accepts the Real Property
8 with full awareness of these ordinances and laws as they may
9 affect the present use or any intended use of the Real Property,
10 and Seller has made no representations with respect thereto.
11 Seller has made no representations or warranties regarding the
12 condition, merchantability or fitness of the Personal Property.
13 Buyer accepts all Personal Property in their present condition,
14 AS IS, including latent defects.

15 15. WAIVER: Failure of Seller at any time to require
16 performance of any provision of this contract shall not limit
17 the right of Seller to enforce the provision, nor shall any .
18 waiver by Seller of any breach of any provision be a waiver of
19 any succeeding breach of that provision or a waiver of that
20 provision itself or any other provisions.

21 16. COSTS AND ATTORNEY FEES: In the event suit or
22 action is instituted to enforce any of the terms of this contract,
23 the prevailing party shall be entitled to recover from the other
24 party such sum as the court may adjudge reasonable as attorney's
25 fees at trial or on appeal of such suit or action, in addition to
26 all other sums provided by law.

27 17. SUCCESSOR INTERESTS: This contract shall be
28 binding upon and inure to the benefit of the parties, their

1 successors and assigns.

2
3 18. PRIOR AGREEMENTS: This document is the entire,
4 final and complete agreement of the parties pertaining to the
5 sale and purchase of the Real and Personal Property, and super-
6 sedes and replaces all written and oral agreements heretofore
7 made or existing by and between the parties or their represent-
8 atives insofar as the Real and personal Property is concerned.

9 19. NUMBER, GENDER AND CAPTIONS: As used herein, the
10 singular shall include the plural, and the plural the singular.
11 The masculine and neuter shall each include the masculine,
12 feminine and neuter, as the context requires. All captions used
13 herein are intended solely for convenience of reference and shall
14 in no way limit any of the provisions of this contract.

15 20. PRORATION: All pro-rates, including utilities,
16 rents and employee vacations shall be pro-rated as of the date
17 of possession.

18 21. SECURITY INTEREST: Buyers hereby grant Sellers
19 a security interest in the Personal Property as described in
20 Exhibit "B" and agree to execute any documents reasonable or
21 necessary for the perfection of such security interest by Seller.

22 22. PROHIBITION AGAINST SELL: Buyers shall not sell,
23 mortgage or convey any of the Real Property or improvements sold
24 under this contract, without prior written consent of Sellers,
25 which consent shall not be unreasonably withheld. Buyers shall
26 not sell or assign any interest in this contract, without the
27 prior written consent of Seller, which consent shall not be
28 unreasonably withheld. Buyer shall not sell, mortgage or convey

1 any of the Personal Property sold under this contract, without
2 the prior written consent of Seller, which consent shall not be
3 unreasonably withheld, provided further that Buyer is allowed to
4 sell any of the Personal property described in Exhibit "B", which
5 sale is in the usual and normal course of Buyer's business.

6 23. CONDEMNATION: Any proceeds received by Buyer
7 as the result of any condemnation or eminent domain action or
8 threatened condemnation or eminent domain action shall be applied
9 first to the Mortgages executed by Seller in favor of the United
10 States National Bank of Oregon and the Winema Motor Hotel, Inc.,
11 then to the unpaid balance of this contract, and any remaining
12 funds after the payment of said mortgages and this contract shall
13 be applied to Buyer.

14 24. ASSUMED BUSINESS NAMES: Seller assigns and
15 transfers to Buyer the assumed business names of Winema Motor
16 Hotel and Round Table Room

17 25. PREVIOUS CONTRACT: The Real Property and Personal
18 Property sold by this contract were acquired by Seller in 1977
19 from the Winema Motor Hotel, Inc., an Oregon Corporation. On
20 April 13, 1976, the Winema Motor Hotel entered into a contract
21 with Local Union #424, Culinary Alliance and Bartender's Union,
22 affiliated with the Hotel and Restaurant Employee's International
23 Union, AFLCIO. Buyer makes no warranties regarding the effect
24 of said contract or of the sale from the Winema Motor Hotel, Inc.,
25 to Buyer or from Buyer to Seller, upon said contract.. Buyer assumes
26 the obligations, if any, of said Union contract and agrees to hold
27 Seller harmless from any claim, demand or liability arising after
28 the date of this contract through said Union contract.

1 26. MERLE WEST: Buyer has made an oral agreement
2 with Merle West that Buyer would allow Merle West to live in the
3 Winema Motor Hotel so long as Merle West pays reasonable rent
4 and wishes to live in the Winema Hotel. Seller agrees to allow
5 Merle West to live in the Winema Hotel. Seller agrees to allow
6 Merle West to live in the Winema Motor Hotel as long as Merle
7 West so desires and so long as Merle West pays reasonable rent.

8 27. OTHER AGREEMENTS: Seller has agreements with the
9 following:

- 10 (a) Pacific Northwest Bell, regarding yellow pages.
- 11 (b) Pacific Northwest Bell, regarding phone equipment.
- 12 (c) Coca-Cola Bottling Co.
- 13 (d) Department of Commerce
- 14 (e) California-Pacific Utilities Company
- 15 (f) Terminix International, Inc.
- 16 (g) American Express Company
- 17 (h) Pacific Trailways
- 18 (i) Klamath Falls Cash Registers
- 19 (j) Greyhound Leisure Travel
- 20 (k) Southern Oregon Cable TV
- 21 (l) Otis Elevator Company
- 22 (m) Radio KA-GO
- 23 (n) Towlmastr
- 24 (o) J.G. Themelis Company
- 25 (p) S.E. Rykoff & Co.

26 Buyer acknowledges receiving a copy of said agreements
27 and agrees to assume said agreements.

28 28. RECEIVER: In the event of a default by Buyer and

1 after the giving of notice by Seller, Seller shall be entitled
2 to the appointment of a receiver as a matter of right whether or
3 not the apparent value of the Property exceeds the amount of the
4 balance due hereunder, and any receiver appointed may serve
5 without bond. Employment by Seller shall not disqualify a person
6 from serving as receiver. Upon taking possession of all or any
7 part of the Property the receiver may:

8 (a) Use, operate, manage, control and conduct business
9 on the Property and make expenditures for all maintenance and
10 improvements as in its judgment are proper;

11 (b) Collect all rents, revenues, income, issues and
12 profits from the Property and apply such sums to the expenses of
13 use, operation and management;

14 (c) At Seller's option, complete any construction in
15 progress on the Property, and in that connection pay bills, borrow
16 funds, employ contractors and make any changes in plans or spec-
17 ifications as Seller deems appropriate.

18 If the revenues produced by the Property are insuffi-
19 cient to pay expenses, the receiver may borrow, from Seller or
20 otherwise, such sums as it deems necessary for the purposes stated
21 in this paragraph, and repayment of such sums shall be secured
22 by this contract. The amounts borrowed or advanced shall bear
23 interest at the same rate as the balance of the purchase price
24 hereunder from the date of expenditure until repaid and shall be
25 payable by Buyer on demand.

26 29. LIMITED WARRANTY: Notwithstanding the provisions
27 of paragraph 14 hereof, Seller warrants that all personal property
28 as of the date of this contract, is in operating condition.

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IN WITNESS WHEREOF the parties have set their hands
this 4 day of Aug, 1979.

SELLER: MOLATORES MOTEL, INC.,
an Oregon corporation

BY: Harry Molatore
Harry Molatore, Pres.

David Molatore Sec.
David Molatore, Sec.

STATE OF OREGON)
County of Klamath) ss.
Aug 4, 1979

Personally appeared Harry Molatore and David Molatore who, being duly sworn, each for himself and not one for the other did say that the former is the President and the latter is the Secretary of Molatores Motel, Inc., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

PENNY D. HAMMONDS
Notary Public for Oregon
My commission expires

Penny D. Hammond
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5-1-82

BUYER: MJB, Ltd., a California
Limited Partnership

BY: John Mesa
John Mesa, General Partner

Danny O'Neill
Danny O'Neill, General Partner

Jesse W. Jack by Danny O'Neill
Jesse W. Jack, General Partner

STATE OF OREGON)
County of Klamath) ss.
Aug 4, 1979

Personally appeared John Mesa, who, being duly sworn did say that he is a general partner of MJB, Ltd., a California Limited Partnership, and that said instrument was signed on behalf of said partnership, and he acknowledged said instrument to be its voluntary act and deed.

Before me:

PENNY D. HAMMONDS
Notary Public for Oregon
My commission expires

Penny D. Hammond
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5-1-82

1 STATE OF OREGON)
2 County of Klamath) ss.
3 Dec 4, 1979

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4 Personally appeared Danny O'Neill, who, being duly
5 sworn did say that he is a general partner of MJB, Ltd., a Calif-
6 ornia Limited Partnership, and that said instrument was signed on
behalf of said partnership, and he acknowledged said instrument
to be its voluntary act and deed.

7 Before me:
8 P. NNY D. HAMMONDS
Notary Public for Oregon
My commission expires

P. NNY D. HAMMONDS
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5-1-82

9 STATE OF OREGON)
10 County of Klamath) ss.
11 Dec 4, 1979

12 Personally appeared Danny O'Neill, known to me to be
13 the person whose name is subscribed as attorney in fact for
14 Jesse W. Jack, a general partner of MJB, Ltd., a California
Limited Partnership, and acknowledged that he executed the same
as the act of his principal for the purposes therein contained.

15 Before me:

16
17 P. NNY D. HAMMONDS
Notary Public for Oregon
18 My commission expires

P. NNY D. HAMMONDS
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5-1-82

EXHIBIT "A"

DESCRIPTION OF PROPERTY

All the following described real property situate in Klamath County, Oregon:

PARCEL 1: A tract of land situated in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at the intersection of the Southerly line of Pine Street and the Easterly line of Eleventh Street in the City of Klamath Falls, Oregon; thence North-easterly along said Southerly line of Pine Street 170 feet to a point thereon distant 50 feet Southwesterly along said Pine Street from the most Westerly corner of Lot 5, Block 3, Hot Springs Addition to the City of Klamath Falls, Oregon; thence Southeasterly and parallel with said Easterly line of Eleventh Street 112 feet; thence Southwesterly parallel to said Pine Street, 50 feet; thence Southeasterly parallel with Eleventh Street 8 feet; thence Northeasterly and paral-
lel with the Northerly line of Main Street in the City of Klamath Falls, Oregon, 125 feet; thence Southeasterly and parallel with said Easterly line of Eleventh Street 120 feet to said Northerly line of Main Street at a point thereon distant 50 feet Southwesterly from the Southwest corner of Lot 6, Block 3, Hot Springs Addition to the City of Klamath Falls, Oregon; thence Southwesterly along said Northerly line of Main Street 245 feet to the Northeast corner of Main Street and Eleventh Street; thence Northwesterly along the Easterly line of Eleventh Street to the Point of Beginning. Subject to the alley existing in said Block 3, a portion of which is included in the above description.

PARCEL 2: Lots 1, 2, 3 and 4 in Block 2 of Canal Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

is 13 day of Sept

A.D. 19 82 at 11:57 o'clock A M

duly recorded in Vol. M 82 of Deeds on p. 12089

EVELYN BIEHN, County

Fee \$64.00

By Joyce M. Jones

*Ret
Stanley Jones
635- Main - H. Jones*