

32589

MTG 13227
CONTRACT OF SALE

Vol. M84 Page 862

THIS CONTRACT, made this 22nd day of December, 1983 between the following named seller and the following named buyer who shall be shown herein as the seller and the buyer respectively,

WITNESSETH, That in consideration of the stipulations herein contained and the payments to be made as hereinafter specified, the seller hereby agrees to sell to the buyer and the buyer hereby agrees to purchase from the seller the real estate hereinafter described at the total price and upon the terms as hereinafter shown, to-wit:

SELLER:

JAMES E. LLOYD

BUYER:

HAROLD F. CLARK^{Jr.} and DONALD CLARK

LAND DESCRIPTION:

A portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, Township 24 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon more particularly described as follows:

Commencing at the Northeast corner of said Section 1; thence South along the East line of said Section 1, a distance of approximately 471.3 feet to the true poing of beginning; thence West and parallel to the North line of Section 1 to the Easterly right of way line of State Highway 58; thence Southeasterly along the East right of way line approximately 290 feet to a point; thence East parallel to the North line of Section 1, 72.34 feet, more or less, to the East line of Section 1; thence North along the East line of Section 1 to the point of beginning. Together with the equipment and fixtures listed on Exhibit A attached hereto.

PURCHASE PRICE:

Seventy One Thousand Two Hundred Sixty Five Dollars (\$71,265.00)

DOWN PAYMENT:

Ten Thousand One Hundred and Sixteen Dollars and Eighty Three Cents (\$10,116.83)

PAYMENTS:

Purchaser is to assume the principal balance of \$52,644.88 of a Contract of Sale originally between Manley C. Farrar and Edith B. Farrar, sellers, and Conrad VanHooser and Janet VanHooser, purchasers, dated April 13, 1976 and assigned by various assignments and deeds to the seller, James E. Lloyd, said payments being in the sum of \$400 per month including interest at 8% per annum and to be paid in escrow by purchaser at said rate beginning on the 10th day of January, 1984 to the First Interstate Bank, Bend, Oregon under escrow number 4710. Interest on said balance is paid to November 9, 1983.

In addition, the purchaser shall pay to the seller the sum of \$5,000 not later than June 1, 1984.

The balance of \$3,503.29 together with interest at the rate of 8% per annum shall be paid by purchaser to seller at the rate of \$75 per month, principal and interest, beginning on the 10th day of January, 1984 and continuing on the 10th day of each month thereafter at said rate until principal and interest are fully paid.

POSSESSION DATE: December 22, 1983

Taxes on said premises for the current tax year shall be pro-rated between the parties hereto as of the date of possession shown above.

LIENS, INSURANCE, TAXES, IMPROVEMENTS.

Current taxes shall be pro-rated at closing. Purchaser shall pay all taxes and reimburse Seller in full for any taxes or assessments imposed on the property and paid by Seller upon receipt of proof of payment by Seller thereof. Purchaser will pay all liens which Purchaser permits or which may be lawfully imposed upon the property promptly and before the same or any part thereof become past due. In the event that the Purchaser shall allow assessments upon the property to become delinquent or shall fail to pay any lien or liens imposed or permitted upon the property as they become due, the Seller without obligation to do so, shall have the right to pay the amount due and to add said amount to the contract balance, to bear interest at the rate provided herein.

INSURANCE.

Purchaser agrees to keep the buildings on said premises insured against loss by fire or other casualty in an amount of not less than the full replacement value with loss payable to the parties hereto as their interests appear at the time of loss, with priority in payment to Seller. Any amount received by Seller under the insurance in payment of a loss shall be applied upon the unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Purchaser, on or after the date Purchaser becomes entitled to possession, provided, however, that at the election of Purchaser, Seller agrees to apply any amount received from an insured loss to the restoration or repair of the premises to the extent of the insurance proceeds, but no further; and, in that event, the insurance proceeds will not be credited as any payment upon this contract. A copy of the insurance policy showing the Seller's interest as it may appear shall be delivered to the Seller as soon as issued.

POSSESSION.

Purchaser shall be entitled to possession of the premises on December 22, 1983.

MAINTENANCE AND INSURANCE.

Commencing with the possession date and thereafter at all times during the term of this contract, Purchaser shall with respect to the property do the following:

- (a) Keep all buildings, other improvements and landscape now

existing or which shall hereafter be placed on the property in good condition and repair and not permit any waste or removal thereof.

(b) Promptly comply with all laws, ordinances, regulations, directions, rules and requirements of all governmental authorities applicable to the use or occupancy of the property, and in this connection promptly make all required repairs, alterations and additions.

(c) Keep all improvements now existing or which shall hereafter be placed on the property insured against fire and other casualties covered by a standard policy of fire insurance with extended coverage endorsements. The policy shall be written to the full replacement value with loss payable to Seller and Purchaser as their respective interests may appear, and certificates evidencing the policies shall be delivered to Seller and shall contain a stipulation providing that coverage will not be canceled or diminished without a minimum of ten (10) days written notice to Seller. In the event of loss, Purchaser shall give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within fifteen (15) days of the casualty.

TITLE INSURANCE.

Seller shall furnish, at his expense, a Purchasers' title insurance policy in the amount of \$71,265 promptly insuring Purchaser against loss or damage sustained by them by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in usual printed exceptions of said title insurance policies, easements, conditions and restrictions of record, and encumbrances herein specified, if any.

COVENANT OF TITLE.

Sellers covenant that they are the owners of the within described property, free of all encumbrances except as stated herein.

DELIVERY OF DEED.

Upon payment of the entire purchase price for the property as provided herein, and performance by Purchaser of all other terms, conditions and provisions hereof, Seller shall forthwith execute and deliver to Purchaser a good and sufficient warranty deed conveying said property free and clear of all liens and encumbrances except as above provided, and those placed upon the property or suffered by Purchaser subsequent to the date of this agreement.

ACTS CONSTITUTING DEFAULT.

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

- (a) Purchaser fails to make any payment at the time it is required;
- (b) Purchaser fails to perform any other obligation imposed by this contract and does not correct or commence correction of such failure within thirty days after receipt of written notice from Seller specifying the manner in which Purchaser is in default; or
- (c) 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.

REMEDIES FOR DEFAULT.

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

- (a) Declare the entire balance of the purchase price and interest immediately due and payable;
- (b) Foreclose this contract by suit in equity;
- (c) Specifically enforce the terms of this contract by suit in equity;
- (d) 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 re-entry 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 tenant holding over unlawfully after the expiration of a lease and Purchaser may be ousted and removed as such.

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

REPRESENTATIONS AND CONDITION OF PROPERTY.

Purchaser accepts the land, buildings, improvements and all other aspects of the property in their present condition, AS IS, including latent defects, without any representations or warranties, expressed or implied, unless they are in writing signed by Seller. Purchaser agrees that he has ascertained, from sources other than Seller, the applicable zoning, building, housing and other regulatory ordinances and laws and that they accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property, and Seller has made no representations with respect thereto.

LIABILITY INSURANCE.

The Purchaser shall at purchaser's expense obtain and maintain a policy of personal injury and property damage liability insurance covering the business and operations of the Purchaser in an amount not less than \$100,000/\$300,000 personal injury liability and \$50,000 property damage. Seller shall be named as an additional insured as his interest may appear on the said policy. A copy of the said policy shall be delivered to the Seller as soon as issued.

NOTICE.

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

WAIVER.

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 provision, 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 provisions.

COSTS AND ATTORNEY FEES.

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 attorneys' fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

SUCCESSOR INTERESTS.

This contract shall be binding upon and inure to the benefit of the parties, their successors and assigns.

ASSIGNABILITY.

No interest of Purchaser shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller; however, consent shall not be unreasonably withheld. Consent by Seller to one transfer shall not constitute consent to other transfers or waiver of this section.

PRIOR AGREEMENT.

This document is the entire, final and complete agreement of the parties pertaining to the sale and purchase of the property, and supercedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the property is concerned.

NUMBER, GENDER AND CAPTIONS.

As used hereing 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 as of the day and year first above written. This instrument does not guarantee that any particular use may be made of the property described in this instrument. A buyer should check with the appropriate city or county planning department to verify approved uses.

James E. Lloyd
JAMES E. LLOYD
Seller

X Harold F. Clark, Jr. by Emma Clark
HAROLD F. CLARK, JR. by *Emma Clark*
EMMA CLARK, his

Attorney in fact, *X HRC & WCC.*

Donald Clark
DONALD CLARK by *Emma Clark, his Attorney*
Purchasers

STATE OF OREGON)
County of)

Personally appeared the above named JAMES E. LLOYD and acknowledged the foregoing instrument to be his voluntary act and deed.

Janice K. Jones
NOTARY PUBLIC FOR OREGON
My commission expires: 9-15-86

STATE OF OREGON)
County of)

Personally appeared before me the above named ~~HAROLD F. CLARK~~ ^{FR.} and DONALD CLARK and acknowledged the foregoing instrument to be their voluntary act and deed.

Jamie K. Jones
NOTARY PUBLIC FOR OREGON

My commission expires: 9-15-86

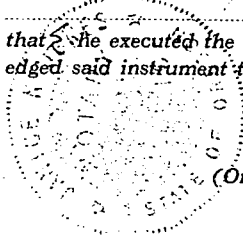
FORM No. 159—ACKNOWLEDGMENT BY ATTORNEY-IN-FACT.

STATE OF OREGON,

County of DESCHUTES

} ss.

On this the 9th day of January, 19 84 personally appeared Emma Clark who, being duly sworn (or affirmed), did say that *She* is the attorney in fact for Harold F. Clark, Jr. and that *she* executed the foregoing instrument by authority of and in behalf of said principal; and *she* acknowledged said instrument to be the act and deed of said principal.



(Official Seal)

Before me

Jamie K. Jones
(Signature)

My commission expires Sept. 15, 1985

(Title of Officer)

EXHIBIT "A"

Tire Changer
 Air Compressor
 Ice Cube Machine 350 lb. per day
 Block Ice Machine
 Chest freezer 21 Cu. ft.
 Ice Storage house
 4 Maytag Commercial Washers
 2 Speed Queen Commercial Gas Dryers
 Lincoln Arc Welder 225 Amps.
 Sales Counter
 Office Desk
 Cash register (Clary)
 Air Jack (bumper)
 Wheel balancer (bubble)
 Battery Charger Marquette
 Pneumatic grease gun
 Gear oil dispenser
 5 gas dispensers
 1/2" impact gun (needs repair)
 80 gallon Commercial Water Heater (gas)
 Snow Plow 7.5 ft. Western, Manuels on repairing automobiles

Restaurant Equipment (Left in kitchen of living quarters)

Grill 3 burner
 Deep fat fryer
 Stove (electric)
 Soft Ice Cream Machine (Sweden)
 3 compartment sink stainless steel
 Water table stainless steel
 2 Refrigerators

KEY TITLE AND ESCROW CO.
 P.O. Box 6178
 BEND, OR. 97708

STATE OF OREGON,)
 County of Klamath)
 Filed for record at request of

on this 17th day of Jan A.D. 1984
 at 9:02 o'clock A M, and duly
 recorded in Vol. MR4 of Deeds
 age 867

EVELYN BIEHN, County Clerk

By Ram Smith Deputy

Fee 28.00