

MTG-21058P

LAND SALE CONTRACT

THIS CONTRACT, made and entered into this 20th day of March, 1989, by and between ROBERTA EVON BURNS hereinafter called Seller, and JACK L. KELLY and CYRENA L. KELLY, Husband and Wife, hereinafter called Buyer (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

W I T N E S S E T H:

Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller for the price and on the terms and conditions set forth hereafter all of the following described property and improvements legally described on Exhibit "A", attached hereto and incorporated by reference herein as if fully set forth, subject to the encumbrances also set forth on Exhibit "A".

SUBJECT TO: contracts and/or liens for irrigation and/or drainage, the schedule of exclusions from coverage, together with any schedules contained in standard title policies, reservations, easements, restrictions and rights of way of record and those apparent on the land.

ALSO SUBJECT TO: rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

It is mutually agreed as follows:

1. **Possession:** Buyer shall be entitled to possession of the property as of the date hereof;

2. **Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment;

3. **Payment of Liens and Taxes:** Buyer shall pay promptly all indebtedness incurred by their acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date, provided, all such taxes, assessments and charges for the current year shall be pro-rated as of the date hereof, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller and such amount shall bear interest at the same rate as provided herein, without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such

amounts to the contract balance upon being tendered a proper receipt therefore;

4. **Insurance:** Buyer shall keep any buildings on said property insured against loss or damage by fire or other casualty in an amount not less than the full insurable value thereof with loss payable in the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession; Buyer shall furnish Seller proof of such insurance coverage;

5. **Waste Prohibited:** Buyer agrees that all improvements now locate or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not cut or remove any timber, trees or shubbery without Sellers prior written consent. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair, provided, Buyer shall not make or cause to be made any major improvements or alterations to the property without first obtaining the written consent of Seller;

6. **Transfer of Title:** Seller shall upon the execution hereof make and execute in favor of Buyer a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as provided on Exhibit "A", together with a good and sufficient Bill of Sale or Certificate of Title as appropriate and will place said documents, together with one of these agreements, in escrow at Mountain Title Company, 407 Main Street, Klamath Falls, Oregon, and if Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said escrow holder shall deliver said documents, together with appropriate amendments to escrow, to the collection escrow established at Klamath First Federal Savings & Loan (or it's successor) for collection of that certain real estate contract dated May 22, 1979, as between James F. Inman, Jr. III as vendor and Paul R. Zech and Ben Jean Zech, husband and wife, as vendee; but in case of default by Buyer said escrow holder shall, on demand, surrender said documents to Seller;

7. **Tax Payment Procedures:** Buyer and Seller agree that there is presently an obligation owing under a certain Trust Deed dated July 10, 1978, wherein Klamath First Federal Savings & Loan is beneficiary. The terms and provisions of the said Trust Deed are such as to require the monthly payment of certain sums into a reserve account, for utilization by Klamath First Federal Savings & Loan, in payment of real property taxes owing. The parties hereto agree that, for so long as Klamath First Federal Savings & Loan shall continue to maintain such reserve accounts and pay the said real property taxes, that the parties shall, upon being provided a proof of such payment by Klamath First Federal Savings & Loan, add the sum so paid back into the then existing principal balance owing hereunder.

At such time as there shall cease to be in existence a reserve account for payment of real property taxes, all tax statements shall then be sent to the address designated by Buyer hereinafter. Buyer shall be required to pay the said real property taxes and provide proof of such payment to Seller within thirty (30) days of the date of mailing of the said tax statements by the county tax collector.

8. **Property Taken "As Is":** Buyer certifies that this contract of purchase is accepted and executed on the basis of his own examination and personal knowledge of the premises and opinion of the value thereof; that Buyer has made a personal inspection of the property so as to determine its acceptability, and has personally researched and is satisfied with the ability to obtain access to the property; that no attempt has been made to influence his judgment; that no representations as to the condition or repair of said premises have been made by Seller or by an agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement;

9. **Consent to Assignment:** Buyer shall not assign this agreement, his rights thereunder, or in the property covered thereby without the written consent of Seller. Such consent shall not be unreasonably withheld.

10. **Time of Essence:** It is understood that and agreed between the parties that time is of the essence of this contract;

11. **Default:** In case Buyer shall fail to make the payments aforesaid, or them punctually and upon the strict terms and at the times above-specified or fail to keep any of the terms or conditions of this agreement, then the Seller at his option shall have the following rights;

a) To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

b) To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

c) To withdraw said deed and other documents from the escrow and/or;

d) To foreclose this contract by suit or by strict foreclosure in equity.

In any of such cases, all rights and interest created or then existing in favor of the Buyer as against the Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above-described and all other rights acquired by the Buyer hereunder shall revert to and revest in said Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of Buyer of return, reclamation or compensation for monies paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default, all payments theretofore made on this contract are to be retained by and belong to said Seller as the agreed and reasonable rent of said premises up to the time of such default. The said Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right and nothing in this contract shall preclude appointment of the Seller as such receiver;

12. **Abandonment:** Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment

of a receiver by self-help or by Court order for the purpose of protecting and preserving the property and his security interest herein, and in the event possession is so taken by Seller he shall not be deemed to have waived his right to exercise any of the foregoing rights;

13. **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 attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law;

14. **No Waiver:** Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision hereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by Seller 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;

15. **Binding on Successors:** 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, subject to the foregoing;

16. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of SEVENTEEN THOUSAND FIVE HUNDRED AND no/100ths DOLLARS (\$17,500.00) payable as follows:

(a) Buyer shall pay an initial payment in the sum of TWO THOUSAND AND NO/100THS DOLLARS (\$2,000.00), and

(b) An additional portion of the purchase price shall be paid by virtue of the Buyer assuming and agreeing to pay that certain real estate contract, described on Exhibit "A" attached hereto and incorporated by reference herein, dated May 22, 1979 wherein James F. Inman, Jr. III is vendor and Paul R. Zech and Ben Jean Zech, husband and wife, is vendee, as assigned. The parties agree that the present principal balance of the said contract is TWELVE THOUSAND TWO HUNDRED EIGHT and 86/100THS DOLLARS (\$12,208.86) together with interest on said sum from February 20, 1989; and

(c) The remainder of the purchase price in the amount of THREE THOUSAND ONE HUNDRED EIGHTY-NINE and 40/100ths DOLLARS (\$3,189.40) shall be payable in monthly installments of SEVENTY-FIVE and no/100ths DOLLARS (\$75.00) per month, including interest at the rate of ten percent (10%) per annum on the unpaid balance, which said sum includes principal and interest; together with the applicable collection escrow fees; the first of such payments shall be payable on the 20th day of April, 1989, with a further and like installment payable on the 20th day of each and every month thereafter, until the full amount of principal and interest shall have been paid in full.

17. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that the property conveyed by the within Land Sale Contract includes a certain range, refrigerator, and curtains, which said personal property items constitute an improvement to the real property conveyed by the within instrument. Buyer and Seller agree that Seller shall retain title to the said personal property items until the Land Sale Contract has been paid in full.

18. **Buyer's "Assumption" of Underlying Contract:** It is understood by and between the parties that the real property being conveyed by the within instrument is encumbered by a

certain contract, including the terms and provisions thereof, more particularly described hereinabove, owing to James F. Inman, Jr. III. It is agreed that the Buyer shall assume the said contract for purposes of making payments thereon. However, Buyer and Seller agree that, should Buyer fail to make promptly and when due, all payments due under said contract, and to perform faithfully all conditions thereof, so as to allow the same to go into default, then, and in any of such events, Buyer and Seller agree that Seller shall have full right to demand a re-assignment of any interest of Buyer in the said Contract, such demand to be at Seller's option.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first hereinabove written.

SELLER:

Roberta Evon Burns
Roberta Evon Burns

BUYER:

Jack L. Kelly
Jack L. Kelly
Cyrena L. Kelly
Cyrena L. Kelly

STATE OF TEXAS /County of TARRANT)ss:

PERSONALLY APPEARED BEFORE ME the above-named ROBERTA EVON BURNS, and acknowledged the foregoing Land Sale Contract to be her voluntary act and deed.

DATED this 23RD day of March, 1989.

Delora E. Sighart
NOTARY PUBLIC FOR TEXAS
My Commission Expires: 11/25/93

STATE OF OREGON/County of Klamath)ss.

PERSONALLY APPEARED BEFORE ME the above-named JACK L. KELLY and CYRENA L. KELLY and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 21ST day of March, 1989.

Danella J. Garcia
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8-16-92

GRANTOR'S NAME AND ADDRESS

Roberta Evon Burns
1205 SOTOGRANDE #214
EULESS, TX 76040

GRANTEE'S NAME AND ADDRESS

Jack L. & Cyrena L. Kelly
1938 Wantland
Klamath Falls OR 97601

AFTER RECORDING, RETURN TO:

NTC

UNTIL A CHANGE IS REQUESTED
TAX STATEMENTS SHOULD BE
SENT TO:

Grantee

STATE OF OREGON/County of Klamath)ss:
I CERTIFY that the within instrument was received for record on the _____ day of _____, 19____ at _____ o'clock _____ M. and recorded in Book _____ on Page _____ or as File/Reel number _____, Records of Deeds of said County.
WITNESS MY HAND AND SEAL OF COUNTY AFFIXED.

Recording Officer
By: _____

EXHIBIT "A"
LAND SALE CONTRACT, BURNS to KELLY

"All that certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

"Lots 31 and 32 in Block 2, INDUSTRIAL 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."

SUBJECT TO: Trust Deed, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;

Dated: July 10, 1978
Recorded: July 13, 1978
Volume: M78, Page 15074, Microfilm Records of Klamath County, Oregon.
Amount: \$10,000.00
Grantor: James F. Inman Jr. III and Claudette S. Inman, husband and wife.
Trustee: William Sisemore
Beneficiary: Klamath First Federal Savings & Loan

SUBJECT TO: Real Estate Contract, including the terms and provisions thereof;

Dated: May 22, 1979
Recorded: May 22, 1979
Volume: M79, page 11707, Microfilm Records of Klamath County, Oregon.
Vendor: James F. Inman, Jr. III
Vendee: Paul R. Zech and Ben Jean Zech, husband and wife.

The Vendee's interest in said Real Estate Contract was assigned by Assignment of Contract and Deed,

Dated: August 14, 1981
Recorded: August 14, 1981
Volume: M81, page 14539, Microfilm Records of Klamath County, Oregon.
From: Paul R. Zech and Ben Jean Zech, husband and wife
To: Daniel F. Burns and Roberta E. Burns, husband and wife.

Quitclaim Deed, including the terms and provisions thereof,

Dated: December 5, 1984
Volume: M84, page 20475, Microfilm Records of Klamath County, Oregon.
Grantor: Daniel Franklin Burns
Grantee: Roberta Evon Burns

A Decree of Dissolution of Marriage was filed December 10, 1984 in Klamath County Circuit Court File No: 84-770-DI, wherein Roberta E. Burns and Daniel F. Burns are co-petitioners, which said Real Estate Contract the Buyers agree to assume, to pay, and to hold Seller harmless therefrom, in accordance with the terms and provisions hereof.

STATE OF OREGON, ss.
County of Klamath

Filed for record at request of:

20/03A - EXHIBIT "A"

Mountain Title Co.
on this 24th day of March A.D., 1989
at 12:34 o'clock P.M. and duly recorded
in Vol. M89 of Deeds Page 4994
Evelyn Biehn County Clerk
By Daniel F. Burns
Deputy.

Fee, \$33.00