

NTC #23745-DN

AGREEMENT OF SALE

THIS AGREEMENT, Made and entered into this 23rd day of August, 1933, by and between HARRY J. FREDRICKS and MILDRED J. FREDRICKS, husband and wife, herein called "sellers", and CHARLES WHITTICORE and BONNIE J. WHITTICORE, husband and wife, herein called "buyers";

W I T N E S S E T H:

WHEREAS, sellers are the owners of real property located at 1900 Main Street, Klamath Falls, Oregon, and

WHEREAS, sellers have a hot water well on said premises, and

WHEREAS, buyers own the Greystone Apartments located at 2012 Main Street, Klamath Falls, Oregon, and

WHEREAS, buyers wish to buy from sellers and sellers are willing to sell to buyers hot water from sellers' well mentioned above for the purpose of heating the Greystone Apartments.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

1. Sellers agree to sell to buyers not to exceed 35 gallons of water per minute from sellers' well at 1900 Main Street, Klamath Falls, Oregon, for the purpose of heating the Greystone Apartments at 2012 Main Street, Klamath Falls, Oregon.

2. Buyers agree to pay therefor the sum of ONE THOUSAND DOLLARS per year, payable in advance on or before the 1st day of November, each year.

3. The term of this agreement shall be for ten years ending on their heirs and assigns October 31, 1939. Buyers are granted the sole and exclusive right and option to renew this agreement at the same price for a further five-year term ending on October 31, 1934. Written notice of buyers' election to exercise said option shall be given to sellers not less than six months prior to the end of the term hereof and while buyers are not in default in the performance of any of the terms and provisions of this agreement on their part to be kept and performed.

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4. Buyers, at their sole cost and expense, shall provide all materials and labor to attach a line to sellers' pump and to run the line on a course, as sellers shall direct, to buyers' property line. The course of the line may be partially in the adjoining alley if permission can be obtained from the City of Klamath Falls. Buyers shall have access where the line crosses sellers' property for inspection, maintenance and repair thereof. Buyers covenant and agree to repair and replace all asphalt or concrete which may be disturbed by installation of the line immediately after installation and in the same condition the asphalt or concrete was in prior to such installation. Buyers shall not block or unreasonably restrict the use of sellers' parking lot for more than 12 hours during construction and installation of said line and shall give sellers not less than 72 hours' prior notice of any excavation to be done on sellers' parking lot.

5. This is a sale of ground water only and buyers shall have no interest in the well or the water therein except to the extent of the water agreed to be sold hereunder.

6. All installations required to transport the water from sellers' well to buyers' property line shall be constructed strictly in accordance with all statutes, ordinances, rules, regulations and codes applicable thereto. Buyers, at their sole cost and expense, shall secure all required permits and inspections for construction and maintenance of the water line.

7. Sellers shall not be liable for any defect in the line from the pump nor shall sellers be liable to buyers or buyers' tenants for any interruption of the flow of water due to mechanical failure, interruption of electrical service or by reason of diminution of the supply of, or heat in, the water source.

8. Buyers covenant and agree that the water purchased shall be used solely for heating 8 residential units at the Greystone Apartments and will not be used for any commercial, industrial or agricultural purposes whatsoever and that all water, after use by buyers, shall be disposed of strictly in accordance with all applicable statutes, ordinances, rules, regulations and codes.

9. Buyers covenant and agree to indemnify and save sellers harmless of and from all damages, claims, penalties and expenses, including sellers' reasonable attorney fees, incurred in connection with or arising out of the sale and distribution of water to buyers under this agreement.

10. Notwithstanding the provisions of Paragraph 3 above, in the event any statute, ordinance, rule, regulation or code shall be enacted by any governmental body having jurisdiction in the matter which regulates or restricts the selling and distribution of excess hot water, sellers may, at their option and upon 30 days' written notice to buyers, cancel this agreement.

11. In the event buyers shall fail or refuse to make the annual payments heretofore provided for, promptly and when the same become due, or shall fail or neglect to perform any other obligation on the part of buyers to be kept and performed under the terms of this agreement, sellers may, on 10 days' written notice to buyers, terminate the within agreement.

12. At the termination of this agreement or any extension thereof, buyers shall not remove any pipe or other equipment installed for the purpose of distribution of said water and such shall become the property of sellers.

13. In the event of an early termination of this agreement as heretofore provided, sellers shall not be liable to buyers in any manner except for the obligation to return to buyers the unused portion of the purchase price for said water, prorated as of the date of cessation of service.

14. In the event of an interruption of service, sellers shall be liable only for the per diem price for said water for the period during which the interruption shall continue.

15. Any notices to be given on which are required under this agreement shall be given to the parties at their addresses below or to such other address as either may designate in writing.

Sellers' Address: 1919 Benson Avenue
Klamath Falls,
Oregon 97601

Buyers' Address: P.O. Box 654
Klamath Falls, Oregon 97601

16. In case action or appeal therefrom is taken to enforce any provision of this agreement, the prevailing party in such action or appeal shall be entitled to recover from the other party, in addition to the costs and disbursements allowed by law, such sum as the court may adjudge reasonable for attorney fees therein.

17. Heirs, successors, representatives and assigns of the parties hereto are hereby declared to be bound and benefited by the terms hereof.

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

Harry J. Fredricks
 HARRY J. FREDRICKS
Mildred J. Fredricks
 MILDRED J. FREDRICKS
Charles D. Whittemore
 CHARLES D. WHITTEMORE
Bonnie J. Whittemore
 BONNIE J. WHITTEMORE

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 29th day
 of June A.D., 19 90 at 2:54 o'clock P.M., and duly recorded in Vol. M90
 of Deeds on Page 12864.

FEE \$43.00

Evelyn Biehn County Clerk

By Pauline Mullendore

Return: M.T.C