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MTL56588-KR
LAND SALE CONTRACT
SECURITY AGREEMENT

State of Oregon, County of Klamath
Recorded 04/12/2002 3:22 p. m.
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Linda Smith, County Clerk
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THIS AGREEMENT made this 10th day of April, 2002, by and between William Vest and Carol Vest, Husband and Wife, hereinafter called "Seller", and James R Murphy and Dana M. Murphy, hereinafter called "Buyer".

WITNESSETH:

Seller agrees to sell to Buyer and Buyer agrees to purchase that certain land, and all improvements thereon, situated in Klamath County, State of Oregon, described as:

A portion of Lots 5 and 6 in Block 19 of ORIGINAL TOWN OF LINKVILLE, now City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon described as follows:

Beginning at a point on the East line of Second Street, 72 feet Southeasterly from the Southwesterly corner of said Lot 5; thence Northeasterly and at right angles to Second Street, a distance of 75 feet; thence Southeasterly and at right angles to Pine Street, a distance of 40 feet; thence Southwesterly and at right angles a distance of 75 feet to the Easterly line of Second Street; thence Northwesterly along the Easterly line of Second Street, 40 feet to the point of beginning. And together with the following personal property described in Exhibit A, attached.

I. PURCHASE PRICE AND TERMS: The purchase price of the property which Buyer agrees to pay shall be the sum of \$245,000.00 payable as follows:

A. A down payment of \$40,000.00

B. The remaining balance of \$205,000.00 is payable in monthly installments in the amount of \$1,500.00 or more, including interest thereon at a rate of SEVEN PERCENT (7%) per annum on the unpaid balance from April 12. The minimum monthly installment obligation shall increase to \$1,700.00 beginning the payment due May 1, 2007. The first monthly installment is due on or before May 1, 2002 and future monthly installments being due on the 1st day of each month thereafter. The full balance, including all principle, accrued interest and other charges and advancements under this Contract is due and payable on or before April 1, 2022.

C. The purchase price is allocated as follows:

i) Real Property and improvements	\$225,000.00
ii) Personal property	\$ 10,000.00
iii) Good Will	\$ 10,000.00.

2. PREPAYMENTS WITHOUT PENALTY: Buyer has the right at any time and in any amount to prepay and accelerate payment of the balance then owing, but no such prepayment, short of the full balance, shall excuse or defer the next future due monthly installments.

3. POSSESSION: Buyer may take possession April 12, 2002.

4. TAXES: All taxes levied against the above-described property for the current tax year shall be pro-rated between Seller and Buyer at Closing. Buyer agrees to pay when due all taxes which are hereafter lawfully imposed upon the subject real property or its improvements. If the property is now specifically classified for assessment purposes for less than true cash value, Buyer shall be responsible for any additional taxes or interest resulting from any disqualification of the property from such classification.

5. LIENS: Buyer shall keep said property free of mechanics and all other liens and save Seller harmless therefrom and reimburse Seller for all costs and attorney fees incurred by Seller in defending against such liens.

6. ADVANCEMENTS: If Buyer fails to perform or pay any act or item required to be performed or paid by him/her hereunder, Seller may do so and any expense or payment so incurred or made by Seller shall be added to and become a part of the debt secured by this Contract and shall bear interest as required hereunder, without waiver of any right arising to Seller for Buyer's breach of contract.

7. COVENANTS OF TITLE: Seller covenants that they are the owners of the above-described property free of all encumbrances, except those of record.

8. TITLE INSURANCE: Seller shall furnish to Buyer at Seller's expense a purchaser's title insurance policy in the amount of \$225,000.00 within sixty (60) days from the date hereof insuring Buyer against loss or damage sustained by Buyer by reason of the unmarketability of Seller's title, or liens or encumbrances thereon, excepting matters contained in the usual printed exceptions in such title insurance policies, easements, conditions and restrictions of record and encumbrances specified in this Contract, if any.

9. DELIVERY OF DEED: Upon payment of the entire purchase price for the property as provided herein and performance by Buyer of all other terms, conditions and provisions hereof, Seller shall deliver to Buyer a good and sufficient bargain and sale deed conveying said property free and clear of all encumbrances, except easements, conditions and restrictions of record, permitted encumbrances expressly referred to herein, and those placed upon the property or suffered by Buyer subsequent to the date of this Contract.

10. INSURANCE: Buyer agrees to keep the buildings on said real property insured against loss by fire and other casualty (including extended coverage) in an amount not less than the purchase price 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 of the purchase price and shall reduce said unpaid balance to the extent of the amount of the insurance payment received by Seller. All uninsured losses shall be borne by Buyer, on or after the date Buyer became entitled to possession. The loss payee coverage insurance shall be a standard loss payee or standard mortgagee policy and not a simple or open loss payee policy.

A certificate evidencing the policy shall be delivered to Seller and shall contain a stipulation providing that coverage will not be canceled or diminished without a minimum of thirty (30) days written notice to Seller. In the event of loss, Buyer shall give immediate notice to Seller. Seller may make proof of loss if Buyer fails to do so within fifteen (15) days of the casualty.

WARNING: Unless buyer provides Seller with evidence of insurance coverage as required by the contract or loan agreement between them, Seller may purchase insurance at buyer's expense to protect Seller's interest. This insurance may, but need not, also protect buyer's interest. If the collateral becomes damaged, the coverage purchased by seller may not pay any claim made by or against buyer. Buyer may later cancel the coverage by providing evidence that buyer has obtained property coverage elsewhere. Buyer is responsible for the cost of any insurance coverage purchased by seller, which cost may be added to buyer's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date buyer's prior coverage lapsed or the date buyer failed to provide proof of coverage. The coverage seller purchases may be considerably more expensive than insurance buyer might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

Before going into possession of the Premises, Buyer shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Buyer's cost: comprehensive general liability insurance in a responsible company with limits of not less than \$500,000.00 for injury to one person, \$1,000,000.00 for injury to two or more persons in one occurrence, and \$300,000.00 for damage to property commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$1,000,000.00 and a per occurrence limit of not less than \$1,000,000.00. Such insurance shall cover all risks arising

directly or indirectly out of Buyer's activities on or any condition of the premises, whether or not related to an occurrence caused or contributed to by Seller's negligence. Such insurance shall name Buyer as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Seller prior to any change or cancellation shall be furnished to Seller prior to Buyer's occupancy of the property.

11. DEFAULT PROVISIONS:

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

- (1) Buyer fails to make any payment within fifteen (15) days after it is due.
- (2) Buyer fails to perform any other obligation imposed by this Contract and does not correct such failure within thirty (30) days after written notice from Seller specifying the manner in which Buyer is in default.
- (3) Buyer becomes insolvent, a receiver is appointed to take possession of all or a substantial part of Buyer's properties, Buyer makes an assignment for the benefit of creditors or files a voluntary petition in bankruptcy, or Buyer is the subject of an involuntary petition in bankruptcy which is not dismissed within ninety (90) days. If Buyer 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.

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

- (1) Declare the entire balance of the purchase price and interest immediately due and payable.
- (2) Foreclose this Contract by suit in equity.
- (3) Specifically enforce the terms of this Contract by suit in equity.
- (4) Exercise those forfeiture remedies as described in ORS 93.905 et seq. Should Buyer fail to peaceably surrender the property to Seller, Seller may, at their option, treat Buyer as a tenant holding over unlawfully after the expiration of a lease.

C. The remedies provided above shall be non-exclusive and in addition to any other remedies provided by law, including all those remedies given under the Uniform Commercial Code.

12. ATTORNEY FEES: In the event of suit or action between the parties to enforce this Contract or any covenant or provision contained herein or in case this Contract or any interest connected therewith is drawn into any of the Buyer's or Seller's litigation so that it is necessary or advisable for the Seller or Buyer to appear to protect or defend their rights hereunder, then in any

of such events, the Court having jurisdiction over such cause may allow the prevailing party judgement against the other for a reasonable amount of attorney's fees in addition to costs and disbursements incurred therein.

If either party is in default and the other party delivers this Contract to an attorney for suit, action or other proceeding (including any bankruptcy proceeding), or to otherwise enforce the non-defaulting party's rights hereunder, then the defaulting party shall pay the reasonable attorney's fees and costs of the attorney to whom this Contract was so delivered even though no suit, action or other proceeding is filed. "Costs" shall include, but not be limited to in addition to those costs recoverable under law, expenses incurred for foreclosure or title reports, long distance phone calls, faxing, expert witness fees, all deposition costs and court costs.

13. WAIVER: Failure by Seller at any time to require performance by Buyer of any of the provisions hereof shall in no way affect Seller's rights hereunder to enforce the same nor shall any waiver by Seller of any breach hereof be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

14. SEVERABILITY: In the event that one or more clauses of this Contract shall be declared void by a court of law or equity, all other clauses and provisions hereof shall remain in full force and effect.

15. REPRESENTATIONS, PRIOR AGREEMENTS:

A. Buyer certifies that this land sale contract is accepted and executed on the basis of their examination and personal knowledge of the property and opinion of the value thereof; that Buyer accepts the land, buildings, improvements and all other aspects of the property including but not limited to sewer or septic systems, wells, water sources, drainage, fuel storage tanks, fences and boundaries including any claims for adverse possession, in their present condition, **AS IS**, including latent defects, including any liability associated with the provisions of ORS Chapters 465 and 466, 42 USC §9601-9675 and 42 USC §6901-6992 and any other state or federal statutes or regulations relating to environmental risks and Buyer further releases and covenants not to sue Seller in relation to any liability associated with such provisions of state or federal statute or regulation, without any representations or warranties, expressed or implied, unless they are in writing signed by Seller; that no attempt has been made to influence Buyer's judgments; that no representations as to the condition or repair of the property have been made by Seller or by any agent of Seller; and that no agreement or promise to alter, repair or improve the property has been made by Seller or by any agent of Seller.

B. Buyer agrees that they have ascertained from sources other than Seller the applicable zoning, building, housing and other regulatory ordinances and laws; 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 that Seller has made no representations with respect thereto. This contract does not guarantee that any particular use may be made of the subject real property. Buyer

waives any right or causes of action they may have against Seller if the subject property is a lot or minor land partition created without approval by the appropriate city or county authorities.

C. This document is the entire, final and complete agreement of the parties pertaining to the sale and purchase of the property; it supersedes 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. This document shall not be interpreted against the drafter.

D. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

E. **LEAD-BASED PAINT HAZARD DISCLOSURE/WARNING STATEMENT:**

EVERY PURCHASER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IN WHICH A RESIDENTIAL DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL PROBLEMS AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE BUYER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR INSPECTIONS IN THE SELLERS' POSSESSION AND NOTIFY THE BUYER OF ANY LEAD-BASED PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS RECOMMENDED PRIOR TO PURCHASE.

Purchaser acknowledges receipt of the pamphlet "Protect Your Family from Lead in Your Home" and waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. Purchaser also acknowledges that since seller is a personal representative in an estate he has no knowledge of lead-based paint and/or lead-based paint hazards in the housing nor any reports or records pertaining to lead-based paint or lead-based paint hazards in the housing. This representation concerning lack of knowledge or reports is not considered by purchaser to be a material representation concerning this real estate transaction.

16. 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 address as either party may designate by written notice to the other.

17. SUCCESSOR INTERESTS AND ASSIGNMENTS: This Contract shall be binding upon and inure to the benefit of the parties, their successors, heirs and assigns, but no interest of Buyer shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily without Sellers' consent. It is the intent of the parties that should Buyer assign, subcontract or otherwise transfer, voluntarily or involuntarily, their interest herein, without Seller's consent, the balance owed to Seller shall be paid in full. Consent to one transfer shall not constitute consent to other transfers or a waiver of this section.

Seller may consider the following factors in determining whether consent to a transfer will be given: creditworthiness of the potential assignee, business experience of the potential assignee and any other factors determined by Seller to be relevant. The evaluation of the factors by Seller shall be in their own, unfettered discretion and not subject to review. All of the professional fees such as accountants and attorneys incurred by Seller in evaluating the proposed transfer shall be paid by Buyer.

In the event that a transfer is authorized by Seller any future extensions or modifications or releases will not in any way release, discharge, or otherwise affect the liability of any persons at any time obligated under the Contract.

18. CONDEMNATION: Should the above-described premises or any part thereof be taken by condemnation, Seller is empowered to collect and receive all compensation which may be paid for any property taken, and all condemnation monies so received shall be applied at Seller's election to the reduction of the indebtedness secured hereby or to repair or restoration of any property so damaged, any excess over the amount of the indebtedness shall be delivered to Buyer or their order.

19. RECEIVER: In the event of suit or action to enforce Seller's rights under this Contract, Seller shall have the right to appointment of a receiver to immediately take possession of said premises, and to collect the rentals and incomes therefrom pending said foreclosure suit, and to hold the proceeds therefrom for the benefit of the prevailing party in said suit. Buyer waives any right to object to the appointment of a receiver.

20. IMPROVEMENTS, ALTERATIONS, REPAIRS AND WASTE:

A. Buyer agrees that all improvements which may hereafter be placed on said real property shall remain a part of the real property and shall not be removed at any time prior to the expiration of this Contract without the written permission of Seller.

B. Buyer shall keep all buildings, other improvements, timber and landscape now existing

or which shall hereafter be placed on the property in good condition and repair and shall not permit any waste or removal thereof nor make any substantial improvements or alterations without the prior written consent of Seller.

C. Buyer shall 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 shall promptly make all required repairs, alterations and additions.

D. Seller shall have the right to enter upon the property at all reasonable times to inspect the property.

21. RIGHT OF SURVIVORSHIP: In the event of the death of either seller, payments thereafter shall be made to the order of the survivor and the survivor acquires all rights of both hereunder. It is the intent of both sellers that their interests in the real property and contract rights hereunder shall not be in common, but with right of survivorship; that is, that the fee or whole interest in the contract and real property shall rest in the survivor of the two sellers.

22. MISCELLANEOUS:

A. An original of this Contract along with appropriate deeds shall be tendered to AmeriTitle to hold in a collection escrow, instructions for which are issued simultaneously with this contract. Buyer is to pay the monthly collection charges for said escrow. The collection escrow shall also provide for a tax and insurance reserve account wherein Buyer will contribute on a monthly basis funds to pay the taxes and insurance annually.

B. SECURITY. As security for the timely performance of all of Buyer's obligations under this Agreement, Seller retains and, effective at closing, Buyer grants to Seller, until the obligation is paid in full, in addition to the security in the real property as evidenced by the Contract, a security interest in the following property ("Collateral"):

(1) Inventory. All inventory acquired from Seller under this Agreement and subsequently acquired by Buyer after closing.

(2) Accounts Receivable. All Buyer's accounts arising after closing that are proceeds of Buyer's inventory.

(3) Contract Rights. All Buyer's contract rights acquired from Seller and arising after closing.

(4) Equipment. All the equipment and other personal property listed on Exhibit A, together with all accessories, substitutions, additions, replacements, parts, and accessions affixed to

or used in connection with such items.

- (5) Proceeds and Products. Proceeds and products of all the foregoing.
- (6) The name Crater Hotel.

At Closing, Buyer shall join with Seller in executing appropriate UCC financing statements for public filing and all other documents reasonable necessary to give Seller a perfected security interest in the Collateral. Buyer shall pay all fees and other costs incurred in connection with the filing of financing statements and transfer of title and registration.

C. AGREEMENTS CONCERNING SECURITY. After closing and until the obligation is paid in full, Buyer covenants and agrees as follows:

(1) Buyer's Operation of the Business. Buyer will maintain and operate the business acquired pursuant to this Agreement in the manner heretofore operated on a continuous and regular basis in accordance with all local, state, federal, and other laws and regulations governing the conduct of the business. This provision, however, shall not be construed to preclude Buyer from interrupting the operation of the business temporarily for a reasonable time for the purpose of making repairs, remodeling, or constructing improvements, or because of any emergency or conditions reasonably beyond Buyer's control and reasonably requiring temporary cessation of operation of the business.

(2) Maintenance of Equipment. Buyer will maintain the Collateral in good condition and repair, reasonable wear and tear excepted.

(3) Insurance. Buyer will keep the Collateral fully insured against loss or damage by fire, theft, vandalism, and such other hazards as Seller may from time to time require, upon such reasonable terms and in such company or companies as Seller may approve. Seller or Seller's successors and assigns shall be named as an additional insured on all such policies, and each policy shall contain an enclosure providing for 30 days' written notice to Seller before cancellation by the carrier. Buyer will immediately deliver to Seller a copy of all such policies, or certificates thereof, evidencing the required coverage and, from time to time at Seller's request, shall furnish evidence that the policies remain in force. In the event of damage or loss covered by Buyer's insurance, Buyer shall have the option of repairing, restoring, or replacing the damaged or lost Collateral or of applying the proceeds to the Note; provided that, if Buyer is in default under this Agreement at the time that the proceeds are received, then Seller may require that all proceeds be applied to the balances due.

(4) Taxes. Except for amounts being contested in good faith, Buyer will pay, before delinquency, all taxes, license fees, and assessments relative to the Collateral or its use and shall pay any and all other taxes, liens, assessments, and charges relative to Buyer's conduct of the business

(5) Liens. Buyer will keep the Collateral free of all liens and encumbrances except the lien of Seller's security interest and except for those being contested in good faith.

J.R.M.
D.M.M.
Q.S.
W.V. (6) ~~Right of Inspection. Seller or its agents shall have the right at all reasonable times during Buyer's business hours to inspect the Collateral and inspect, audit, and copy any books and records of Buyer relating to the Collateral and the operation of the business by Buyer.~~

23. PREPARATION OF CONTRACT - NOTICE TO BUYER: This land sale contract has been prepared by Stephen W. Kaser of the law firm of Lee & Kaser, P.C., P.O. Box 486, Roseburg, Oregon 97470, telephone (503) 672-0800, at the specific request of Seller. Any and all legal advice or representations from Stephen W. Kaser have been made and rendered on behalf of Seller only. Buyer expressly acknowledges that they have been advised that they may and should obtain their own legal representation in regard to this transaction and this land sale contract.

SELLER:

William L. Vest
William Vest

Carol Vest
Carol Vest

BUYER:

James R. Murphy
James R. Murphy

Dana M. Murphy
Dana M. Murphy

STATE OF OREGON]

AK County of ~~Douglas~~ Klamath] ss.

PERSONALLY APPEARED the above named William Vest and Carol Vest and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

Kristil L. Redd
Notary Public for Oregon
My Commission Expires: 11/16/2003



21833

STATE OF OREGON



County of ~~Douglas~~ *Klamath*

ss.

4/10/2002

PERSONALLY APPEARED the above named James R. Murphy and Dana M. Murphy and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME:

Kristi L. Redd
Notary Public for Oregon
My Commission Expires: *11/16/2003*

