

94698

REAL ESTATE CONTRACT OF SALE
AND ASSIGNMENT OF LEASE

Date of Contract: 9-1-82, 1982.

Seller(s) - Name and Address: Harold J. Harter and Delores Harter, husband and wife, 1403 NE 126th Street, Vancouver, Washington, 98665.

Buyer(s) - Name and Address: Dennis Phillips and Janet Phillips, husband and wife, 3714 Creston, Vancouver, Washington, 98663.

Property: The legal description of the property is set forth on Exhibit "A" to this contract.

Price: 26,500.00.

Earnest money paid previously: None.

Down payment paid upon execution of this contract: \$3,000.00.

Balance Due: \$23,500.00.

Amount of regular monthly payment: \$258.76.

Date first regular monthly payment is due: OCTOBER, 1982.

Day of month of succeeding regular monthly payments are due: 1ST

Interest rate: 12%

Final due date: Date when the 240th regular monthly payment is due.

Date buyer is entitled to possession: 9-1-82

Minimum amounts of insurance required:

Hazard Insurance:

Public Liability Insurance:

Per Person:

Per Occurrence:

Property Damage:

25,000

100,000

100,000

Maximum Annual Payment of Principal (see ¶ 5):

Liens or other interests to which the property is subject at date of this contract (excluding ¶): (circle one)

(None) or Exhibit B

Liens or other interests to which the property is to be subject when fulfillment deed is: (circle one)

(None) or Exhibit C

Escrow Agent: First Independent Bank, Downtown Vancouver Branch.

1. INTRODUCTION. This contract is made on the date set forth above between the Buyer and Seller identified above. By this agreement Buyer agrees to purchase the property from Seller, and Seller agrees to sell the property to Buyer, upon the terms and conditions set forth in this document. All of the information set forth above is a part of this contract.

2. PROPERTY. The real property identified above is the property which is subject to this contract and is the property to be sold from Seller to Buyer.

3. IMPROVEMENTS. The property being sold under this contract includes the real property described above, together with all improvements to that real property, and fixtures affixed to those improvements and to the land itself. The term fixtures shall include, but not be limited to, all currently attached plumbing, irrigation, heating, water, and lighting fixtures and equipment; light bulbs; attached television and radio antennas, other attached or built-in appliances (excluding appliances attached only by water and power hookups); attached bathroom accessories, window shades, curtain and drapery rods; screens and storm windows; and wall-to-wall carpeting and other floor coverings.

4. PRICE AND PAYMENT. The price identified above is the total amount due from Buyer to Seller for the property. Buyer has previously paid to Seller the earnest money, and upon execution of this contract is paying the down payment. The balance of the price shall be paid from Buyer to Seller in regular monthly installments in the amount of the monthly payment identified above, and is due as set forth above. Regular monthly payments include both interest and principal. Amounts unpaid from time to time will bear interest at the rate set forth above, and all amounts remaining unpaid, including principal, interest, and any other amounts which may become due, are due on the final due date.

5. PREPAYMENTS. Buyers may not prepay any amounts due hereunder until after the 10th anniversary of the date of execution of this contract. During that time, the only payments permitted will be the regular payments of principal and interest plus any other expense amounts which may become due under the terms hereof. After the 10th anniversary of this contract, Buyers may prepay amounts due hereunder at any time, and in any amount, without penalty. Prepayments shall be applied in reduction of interest and any miscellaneous amounts that might then be due, and to the extent that the prepayment exceeds those amounts, to principal. They shall not relieve the Buyer from the obligation to make subsequent regular monthly payments when due, unless the parties expressly agree in writing to the contrary. The restrictions on prepayments during the first 10 years of this contract shall not impair Sellers right to accelerate upon default.

6. DEFAULT INTEREST RATE. Any amounts not paid when due shall bear interest at the maximum amount permitted by the usury laws of the State of Washington in effect from time to time while the amounts remain unpaid, but not to exceed 18 percent per year.

7. TAXES AND OTHER CHARGES. Buyer will pay when due all real property taxes, special assessments, charges for the services of mechanics or materialmen, and all other charges arising out of the ownership or use of the property which are or may become liens upon the property if not paid.

8. ESCROW. The parties hereby designate the escrow agent named above as their escrow agent. All payments under this contract shall be paid to the escrow agent and shall be credited by the agent to the account of the Seller pursuant to Seller's written instructions to the escrow agent. Seller has deposited with the escrow agent the deed contemplated by this contract. Upon compliance by Buyer with all other provisions of this agreement, the deed, and all other documents which may be held by the escrow agent, shall be delivered to the Buyer. If the Buyer should default in its obligations under this contract, and the Seller obtain cancellation of the contract, either judicially or by the non-judicial procedure, then all of the documents held in escrow shall be returned to the Seller, and the escrow shall be closed. Each party agrees to pay one-half of the fees of the escrow agent.

9. QUIET POSSESSION. So long as the Buyer shall comply with all of its obligations under this contract, the Buyer shall quietly enjoy possession of the property and all of the rights, privileges, and appurtenances, and all rights, issues and profits thereof, from the date of possession.

10. DELIVERY OF DEED. Upon the Buyer's compliance with all the provisions of this contract, including the payment of all amounts due hereunder, Seller shall deliver to Buyer its special warranty deed to the property. This deed will convey the property to the Buyer, free and clear of any restrictions and encumbrances, except those identified elsewhere in this agreement as to be encumbering the property when the fulfillment deed is given, and except those restrictions and encumbrances suffered by Buyer or deliberately placed upon the property by Buyer after the date of this contract. Buyer's obligations under this contract are independent of Seller's obligation to provide a deed. It shall not be a condition of Seller being able to obtain relief for any noncompliance by Buyer that Seller is not then in a position to deliver the deed, except that upon full compliance by Buyer with the contract and upon tender by Buyer of the final amounts due under the contract, then the Seller shall have the obligation to deliver the deed.

11. GOVERNMENT REGULATIONS. Buyer will comply with all applicable laws and other governmental regulations relating to the property.

12. RESTRICTIONS ON PROPERTY. The property is or may be subject to various easements, reservations, restrictions, plat dedications, restrictive covenants, and future municipal district assessments, all either of record now or evident from a visual inspection of the property. Buyer accepts the property subject to these restrictions, and the Seller's deed may except them.

13. CARE OF PROPERTY. Buyer will maintain the property, including improvements on it and accessory items such as landscaping, whether located on the property at the time of sale or subsequently placed thereon, in as good condition as they were at the time of sale or at the time subsequently installed, except for reasonable wear and tear. Buyer shall repair or replace such portions of the improvements as may fail or wear out in order to preserve the overall property in good condition.

14. HAZARD INSURANCE.

(a) Maintain Insurance. Buyer will maintain hazard insurance on any improvements now on the property and any improvements subsequently placed on the property, upon forms and with a reputable company acceptable to the Seller. The insurance will provide coverage against loss or damage by fire, wind storm, and all other casualties normally covered by "all risk" or extended coverage policies. The amount of coverage will be as set forth in the beginning of this contract. The policies will name the Seller as an insured party, with loss payable to Seller as interest may appear, and will provide that the insurance cannot be amended or cancelled without ten (10) days advance written notice to Seller. Copies of all policies, endorsements, and renewals shall be delivered to Seller. Buyer shall timely pay all premiums for such insurance.

(b) Disposition of Insurance Proceeds. In the event of damage or destruction to improvements on the property from an insured risk, the proceeds from insurance remaining after payment of the reasonable expenses of procuring those proceeds shall be used in any one of the following ways at the option of the Buyer.

(i) Buyer may decline to repair the damage or replace the destroyed improvement. In that event, the full proceeds of insurance shall be applied to amounts then due under the contract, first to outstanding interest, then to any other miscellaneous amounts which might be due, and finally to

reduction of the principal balance. This payment shall be treated as a prepayment, and the Buyer shall continue to be liable for regular monthly payments under the contract thereafter.

(11) Buyer may elect to repair the damage or replace the destroyed improvements. Buyer may only elect to do so if the insurance proceeds are sufficient to complete such repair or replacement such that afterwards the improvement will be in as good condition as it was before the damage, although the Buyer may supplement the available insurance proceeds with other funds in order to accomplish this repair or replacement.

15. PUBLIC LIABILITY, INDEMNITY AND INSURANCE. Buyer agrees to indemnify and save harmless the Seller against any liability, direct or indirect, arising out of the Buyer's use of the property during the term of this contract. Buyer will maintain public liability insurance with respect to the property with limits not less than the amounts set forth at the beginning of this contract, with Seller as a named insured. The insurance shall be the primary insurance with respect to the Seller, and shall not participate with any other available insurance. The limits of the policy shall not be considered as limiting the liability of the Buyer under this contract. All such insurance shall be in companies and on forms satisfactory to Seller. Copies of policies, endorsements, and renewals shall be delivered to the Seller. Such policies will provide that they may not be cancelled or amended without first giving ten (10) days written notice to Seller.

16. DEFAULT. Time is of the essence of this contract. With respect to the payment of amounts due hereunder, Buyer shall be in default if any of such payments are not paid within ten (10) days after they are due. Except for the payment of amounts due hereunder, either party shall be in default if at any time it fails to comply with any of its obligations under this contract, and does not cure any such failure to comply within ten (10) days after having been given written notice from the other party of the noncompliance. If the failure to comply is of such a nature that it cannot be completely remedied within the ten (10) day period, the noncomplying party will not be considered to be in default if it begins correction of the noncompliance within the ten (10) day period and thereafter proceeds with reasonable diligence and good faith to cure the noncompliance as soon as practicable.

17. REMEDIES.

(a) Remedies Cumulative. In the event of default, the non-defaulting party will be entitled to avail itself of any or all of the remedies provided for in this contract, or any other remedies which might be available at law or in equity. The remedies may be exercised consecutively or at the same time, or in any combination.

(b) Suit for Breach. The non-defaulting party may institute a suit for any amounts not paid when due, or for damages or other relief with respect to any particular default.

(c) Acceleration. Upon a default by the Buyer, the Seller may elect to declare the entire unpaid balance of the purchase price to be immediately due and payable. Seller may institute suit to collect the amount so due, or it may seek forfeiture as provided below.

(d) Forfeiture. Upon any default by Buyer, including the failure to pay the entire principal balance due after acceleration by the Seller, the Seller may elect to declare a forfeiture of and cancellation of this contract. Seller may enforce the forfeiture either by non-judicial procedure or judicially.

(i) Non-judicial Forfeiture. If it elects to proceed nonjudicially, it shall give the Buyer a written notice of its intention to declare a forfeiture and to cancel the contract, specifying in detail the particular respects in which the Buyer is in default. The notice will inform the Buyer that unless the defaults are cured within thirty (30) days from the date of the notice that the Seller will forfeit the Buyer's interest in the property and declare a cancellation of the contract. In addition to whatever payment or other action might be required of the Buyer to cure the default, the default will not be deemed to be cured unless the Buyer shall also reimburse the Seller for all of its reasonable expenses incurred in giving the notice of intention to declare a forfeiture, including reasonable attorneys fees, and shall also pay, as liquidated damages, the amount of \$50.00. If the Buyer fails to cure the default within the time provided, by curing the default and by paying the expenses, attorneys fees and liquidated damages, then the Seller may give to the Buyer a notice of declaration of forfeiture and cancellation of the contract. Effective upon the giving of that notice, all of the Buyer's rights in the contract will be deemed forfeited, of no further effect, and the Seller shall have the right to immediate possession of the property.

(ii) Judicial Forfeiture. The Seller may file a suit for forfeiture of Buyer's interest. In that event, no advance notice of intention to declare a forfeiture or to file a suit is necessary. The filing of the suit will constitute notice to the Buyer of the Seller's intentions, and the court may award such relief as may be just and equitable. Should the court find the Buyer to be in default, it may provide the Seller all the relief it would have been entitled to had it sought a nonjudicial forfeiture, as provided above.

(iii) Possession After Forfeiture. After forfeiture, whether non-judicially or judicially obtained, the Seller shall be entitled to immediate possession of the property. Seller may enter upon the property and take possession of it without the use of excessive force. Seller is authorized to obtain the services of a locksmith to enter the premises or to enter in any other way which may be reasonable under the circumstances. Upon taking possession, the Seller shall store, either on or off the premises, any property of the Buyer which may be found on the property which is not subject to this contract, at Buyer's expense. The Seller may retain or sell such property of the Buyer, and shall give such notices to the Buyer, all as would be required of a secured party retaking possession of property constituting security, in accordance with the rules of the Uniform Commercial Code.

(e) Receiver. The parties agree that the earnest money and down payment paid by the Buyer to the Seller is inadequate to provide any substantial security to the Seller, and that at any time after execution of the contract the payments made may similarly be inadequate. In the event of default by the Buyer in the making of any payments or in the performance of any other obligation of Buyer under this contract, the period of time involved in repossessing the property (because of delay in the giving of notices of intention to forfeit, and in pursuing judicial remedies) could cause irreparable damage to the Seller and to the property, and possible acceleration of any underlying contracts or encumbrances. Therefore, in the event of default in the payment of any amounts due under the contract or in the performance of any other provision of this contract, the Seller shall have the right to apply to an appropriate court for the appointment of a receiver. The receiver will take charge of the property and administer it for the benefit of both parties, as their interests may appear, including collecting income, paying expenses, and renting it.

(f) Other Legal and Equitable Remedies. Either party shall be entitled to assert any other legal or equitable remedies it may have for a default by the other, including an action for damages (including consequential damages) proximately resulting from the default, and also including a suit to require the other party to specifically perform any provision of the contract.

18. WAIVER. A waiver of strict compliance with a provision of this contract by one party given to the other on a particular occasion shall not be considered a waiver with respect to any future occasion. If at any time a party has waived strict compliance with the terms of the contract, it may give written notice to the other party of its intention to require strict performance in the future, and the other shall thereafter be so obligated. The failure of a party to take action with respect to any particular default, or a delay in taking action, shall not be deemed a waiver of the default.

19. EXPENSES OF ENFORCING COMPLIANCE. In the event of a default by one party in its obligations under this contract, in addition to any other relief the other party might have with respect to the default, the prevailing party shall be entitled to recover its reasonable expenses of recovering any payments due or enforcing any other obligations of the other party. Those reasonable expenses shall include actual out-of-pocket expenses incurred, plus reasonable attorneys fees, regardless whether or not a suit or action was begun. If litigation is begun, then in addition to the foregoing, the prevailing party shall be entitled to recover reasonable attorneys fees at trial and on appeal, in an amount to be set by the court.

20. ABANDONMENT. Should Buyer abandon the property while in default, Seller may take immediate possession of the property for the purpose of protecting and preserving the property and may mitigate damages by renting or operating the property during the period of enforcement of Seller's rights under this contract without prejudicing Seller's remedies under this contract. Seller shall not be liable for any loss sustained by Buyer resulting from Seller's failure to lease the property or any portion thereof or from any other act or omission after default.

21. CONDEMNATION. In the event of the taking of all or a portion of the property by a government agency through the exercise of or under threat of the power of eminent domain, the proceeds of such condemnation shall first be paid to the Seller in reduction of amounts due under this contract. (In the event of condemnation, the restriction on the total amount to be paid in any one year shall not apply.) All amounts left over after the balance due under the contract has been paid in full shall be paid to Buyer.

22. RESTRICTIONS ON TRANSFER.

(a) Transfer Requires Consent of Seller. The rights granted under this contract are personal to the Buyer. Seller is relying upon Buyer's personal ability and integrity, and those characteristics are a part of the consideration for this contract. Neither this contract nor any interest therein, nor the possession of the property, may be assigned or transferred by the Buyer, nor may the Buyer's interest in the property be encumbered, nor may the Buyer make any contract for the sale of the property or any interest therein, without the prior written consent of Seller. Seller's consent will not be unreasonably withheld.

(b) Effect of Transfer Without Consent. Any transfer which violates the provisions of the preceding sub-paragraph will constitute a default under this contract. Notwithstanding, any transferee will be as fully bound as is provided below with respect to a transfer with Seller's consent.

(c) Transfer With Seller's Consent. Any transfer of Buyer's interest in this contract, or the property subject to it, upon the written consent of the Seller, shall constitute an assumption by the transferee of the Buyer's obligations hereunder. The Seller shall have the right to enforce any such obligation against the assignee directly, whether or not the Seller releases the Buyer from its obligation under the contract. This provision shall be self-operating and shall not require the execution of a formal assumption agreement by the transferee. The consent of the Seller to a transfer by the Buyer, or to any subsequent transfer, shall not result in the release of the Buyer, or any subsequent transferor, of its liability under this contract, unless there is a separate written statement to that effect.

23. LIMITATION OF WARRANTIES. Buyer is acquiring the property "as is." Seller has not previously made, and does not now make any representations or warranties as to the property or its condition, except as expressly elsewhere set forth in this contract. Without limiting the generality of the foregoing, the Buyer acknowledges that he has made his own independent investigation respecting the property, including a physical inspection of the property and the improvements, and he relies entirely on his own investigation and on the advice of his own consultants.

24. NOTICES. Any notice to be given by any party to the other shall be in writing and transmitted to the other party by either personally delivering the notice or by certified mail, return receipt requested, addressed to the party as their

addresses appear at the beginning of this contract. Any party may change its address by giving written notice to the other party in the manner provided above. The giving of the notice shall be deemed complete either upon personal delivery, or three days after the notice is placed in the United States Mail, properly addressed and postage prepaid.

25. SELLER TO PROVIDE INFORMATION AND GIVE NOTICES TO THIRD PARTIES. When requested to do so from time to time by Buyer, Seller will confirm in writing that Seller continues to own the vendor's interest under this contract; that Seller has received notice of assignment by the Buyer; that the contract is in good standing, has not been modified, and sets forth the entire understanding of the parties; the correct unpaid balance due under the contract; and such other matters as may reasonably be requested. Seller will also give to any third party with an interest in the property reasonable written notice of any default hereunder and a reasonable opportunity to cure the default before exercising any of its remedies under the contract.

26. ADDITIONAL PROVISIONS. This contract includes the additional provisions set forth on Exhibit "D" attached hereto. The parties acknowledge that these provisions were attached prior to the time that they signed this contract and that those provisions are to be a part of it.

27. MISCELLANEOUS.

(a) Gender and Number. As used in this contract, the masculine, feminine, or neuter gender, and the singular or plural number, shall be deemed to include the others whenever the context so indicates.

(b) Community Obligations. Each person signing this contract does so in his or her individual capacity, and on behalf of any marital community of which he or she is a member, except in cases where an individual is signing as an officer or an agent of another individual or organization.

(c) Entire Agreement. This contract constitutes the entire agreement of the parties and may not be amended or modified except by a document in writing, signed in the same manner as the original contract.

(d) Binding Effect. The terms and provisions of this contract shall be binding upon and shall inure to the benefit of the legal representatives, successors and assigns of the parties.

SELLER(S)

HAROLD J. HARTER

BUYER(S)

DENNIS E. PHILLIPS

Delores Harter
DELORES HARTER

Janet Phillips
JANET PHILLIPS

STATE OF WASHINGTON)

ss:

County of Clark)

On this day personally appeared before me Harold J. Harter and Delores Harter to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 4 day of August, 1982.

Harold J. Harter
NOTARY PUBLIC in and for the State of Washington, residing at Vancouver.

STATE OF WASHINGTON)

ss:

County of Clark)

On this day personally appeared before me Dennis Phillips and Janet Phillips to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 4 day of August, 1982.

Dennis R. Phillips
NOTARY PUBLIC in and for the State of Washington, residing at Vancouver.

EXHIBIT "A"

Cabin site number Seventeen (17) of Swift Development area, as shown in red on Exhibit "A-1" attached hereto (all distances being approximations), being part of Lot four (4) of Section thirty-five (35), Township seven (7) North, Range six (6) East of the Willamette Meridian, Skamania County, Washington, lying Northwesterly of and above one thousand (1,000) feet elevation, United States Coast and geodetic survey datum.

EXHIBIT "D"

== Additional provisions to contract between HAROLD J. HARTER and DELORES HARTER, Seller, and DENNIS PHILLIPS AND JANET PHILLIPS, Buyer.

1. Building Only. This contract relates to a building located on the property described in Exhibit "A". The land itself is not owned by the Sellers, rather, it is leased as described more fully below. By this contract the Sellers are assigning to the Buyers all of the Sellers' interest as lessee in that lease and they are also conveying to the Buyers the building located on the land and all other improvements located on the land in question.

2. Assignment of Lease. The real property which is the subject of this contract is subject to a certain lease between Robert T. Curry, Lessor, and the named Sellers under this contract, as Lessees. The lease is dated October 22, 1965; a copy of the lease has been provided to Buyers. By this instrument Sellers hereby assign to Buyers all of their interest as lessees in the lease. Buyers accept the assignment from Sellers, and agree to be bound as lessees in all respects from the date of this agreement, as fully as if they had signed the original lease.

3. Representations as to Leased Land. The Buyers acknowledge that the interest of Robert T. Curry as Lessor under the Sellers' lease is in fact only that of a lessee under a lease originally from the Northern Pacific Railway Company, which the parties now understand to be controlled by the Burlington Northern Railway Company. None of these facts are representations by the Sellers. Buyers acknowledge that Sellers have made no representations about the status of their title to the land nor about the title of any of the predecessor lessors. Buyers take it upon themselves to fully satisfy themselves as to the interest they are acquiring under the leasehold. Sellers do represent that they constructed the building on the premises and that they are the sole owners of the building, and that it is not encumbered.

4. Condition that Buyers Obtain Title or Lease. This contract is expressly made conditional upon the events described in this paragraph. The lease from Mr. Curry terminates on August 31, 1983, and is further subject to a possible right in the original lessor to terminate it at any time sooner. The Buyers' obligation to continue with the contract purchase of the property is conditioned upon their being able, upon termination of the existing lease on August 31, 1983, to either then purchase the land outright, to enter into a binding agreement to

purchase the land outright, or to enter into a further lease of the land for a period of not less than one year. If the Buyers are able to do any one of those three alternatives, then this condition shall be deemed satisfied, and their obligation to continue to purchase in accordance with the provisions of this contract shall be absolute. If the Buyers are unable to satisfy the condition, then they will be entitled to return the building and any other improvements to the Sellers, and the contract will thereupon terminate. All property to be returned must be returned in as good a condition as when received; reasonable wear and tear excepted. Upon termination of the contract, Sellers shall refund to Buyer the down payment of \$3,000.00 received upon execution of this contract, less any amounts which may be due Sellers and yet unpaid, or any damages which may be owing from Buyers to Sellers. If the contract is terminated, the regular monthly payments due to Sellers from Buyers shall be deemed to be rent, and may be retained by the Sellers without any further adjustment.


HAROLD J. HARTER


DENNIS PHILLIPS


DELORES HARTER


JANET PHILLIPS