

THIS CONTRACT OF SALE OF REAL AND PERSONAL PROPERTY Made this 1st day of September, 1973, between RENO A. MARCHESE and JESSIE L. MARCHESE, husband and wife, hereinafter called "VENDOR", and ALPHONSO C. CIONGOLI and MARLENE J. CIONGOLI, husband and wife, hereinafter called "PURCHASER";

W I T N E S S E T H:

Vendor agrees to sell to Purchaser and Purchaser hereby agrees to buy from Vendor, at the price and on the terms, covenants, conditions and provisions hereinafter contained, all of the real property described in Exhibit "A" and personal property described in Exhibit "B" situate in Klamath County, Oregon, which exhibits are attached hereto and thereby made a part hereof as though fully set forth hereat.

SPECIAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

The purchase price of the property, which Purchaser agrees to pay, is the sum of \$55,000.00 payable as follows:

(a) \$6,934.90 down payment, receipt of which is hereby acknowledged.

(b) \$48,065.10 deferred balance payable in monthly installments of not less than \$387.21, inclusive of interest, the first such installment to be paid on or before the 10th day of October, 1973, and a like installment on the 10th day of each month thereafter until the full balance of principal and interest are paid.

Interest on the deferred balance of the purchase price is fixed at the rate of seven (7%) per cent per annum simple interest on the declining balances of the deferred balance. Interest commences on September 1, 1973.

All installments to Vendor by Purchaser shall be paid without demand to the Escrow Holder hereinafter named and shall be applied first to interest due at the time of payment of any such installment and then to principal.

All partial payments, increased installments or prepayments shall also be applied first to interest accrued to the date thereof, and then to principal.

Purchaser may increase any installment or prepay all or any part

1 of the whole consideration at any time. No partial payment nor
2 increased installment, nor payment for a partial release by reason
3 of a condemnation, shall be credited in lieu of any regular future
4 installment nor excuse Purchaser from making the regular installments
5 specified in this contract.

6 It is expressly understood and agreed that this is a conditional
7 sales agreement and that full title of all of said real and personal
8 property, including said assumed business name of "FREMONT GROCERY",
9 shall remain in Vendor until the deferred balance and interest thereon
10 are paid in full. It is further understood and agreed that any and
11 all equipment, furnishings, fixtures and inventory which may at any
12 time hereafter be placed on said premises by the Purchaser shall
13 become subject to the lien of this agreement as further security to
14 the Vendor for the payment and performance of this agreement, and
15 that any replacements to present equipment when the same wears out
16 will also be secured hereby. Vendor shall record Vendor's certificate
17 of withdrawal of assumed business name of Fremont Grocery forthwith
18 upon delivery of possession of said property to Purchaser. Purchaser
19 shall, upon execution hereof, execute a withdrawal of assumed business
20 name which, in the event of default by Purchaser, may be used by
21 Vendor in addition to all other remedies provided for herein.

22 That the personal property herein sold is subject to terms and
23 provisions of Uniform Commercial Code of the State of Oregon, and
24 that all of the terms herein, the rights, duties, and remedies of
25 the parties hereto shall be governed by the laws of Oregon. That
26 Vendor's address is 604 Mt. Pitt, Klamath Falls, Oregon. That
27 Purchaser's address is 224 Nevada, Klamath Falls, Oregon. That
28 each demand, notice or other communication shall be served or given
29 by mail or telegram addressed to the parties at their mailing address
30 set forth herein, or by personal service upon the parties. Reason-
31 able notice, when notice is required, shall be five (5) days.
32 Purchaser agrees to join with Vendor in executing and filing a

1 financing statement as required by said Uniform Commercial Code of
2 the State of Oregon to protect and continue Vendor's security
3 interest. The parties understand that the financing statement must
4 be renewed every five (5) years.

5 That Purchaser's interest in this contract is tenancy by the
6 entirety in the real property and as joint tenants with right of
7 survivorship in the personal property.

8 The real and personal property taxes and insurance currently
9 in force and effect on the property described herein has been pro-
10 rated between the parties hereto as of September 1, 1973. Personal
11 property taxes have been prorated based upon the 1972 personal pro-
12 perty taxes and Purchaser will assume the 1973-1974 taxes when
13 payable. Real property taxes have been prorated based on 1972-1973
14 tax values and 1973 estimated tax rates.

15 GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

16 The real property above described, hereby sold to Purchaser,
17 includes, all and singular, the tenements, hereditaments, rights,
18 easements, privileges and appurtenances thereunto belonging, or in
19 anywise appertaining, improvements thereon, together with the rever-
20 sions, remainders, rents, issues and profits thereof. The Vendor's
21 lien created by this agreement shall and does hereby include the
22 real property above described, together with, all and singular,
23 the tenements, hereditaments, rights, easements, privileges and
24 appurtenances thereunto belonging, or in anywise appertaining, and
25 all improvements above described, or hereafter thereon, including
26 but not limited to, the reversions, remainders, rents, issues and
27 profits thereof. In addition, Purchaser hereby agrees that the
28 Vendor's lien is superior to any and all rights of Purchaser under
29 and by virtue of any homestead, stay or exemption laws now in force,
30 or which may hereafter become laws.

31 Vendor hereby warrants that Vendor has good and merchantable
32 title to the real and personal property described above, subject

1 to the exceptions above set forth. Vendor will, upon execution
2 hereof, make and execute in favor of Purchaser, a good and sufficient
3 warranty deed conveying said real property free and clear as of this
4 date of all encumbrances, subject to the above set forth exceptions,
5 and will make and execute in favor of Purchaser, a good and suffi-
6 cient bill of sale conveying said personal property free and clear
7 as of this date of all encumbrances, subject to the above set forth
8 exceptions. Vendor will place said warranty deed, bill of sale, un-
9 filed termination of financing statement form UCC-3, and the original
10 of this agreement, in escrow at Klamath Falls Branch, United States
11 National Bank, herein referred to as "Collection Escrow Holder". Pur-
12 chaser shall execute and deliver to said Collection Escrow Holder
13 Purchaser's withdrawal of assumed business name certificate. The
14 escrow instructions to said Collection Escrow Holder shall instruct
15 said Collection Escrow Holder that when and if the Purchaser shall
16 have paid the balance of the purchase price and interest as above
17 specified and shall have complied with all other terms and conditions
18 of this agreement, to deliver all documents delivered to the Collec-
19 tion Escrow Holder to Purchaser subject to the usual printed condi-
20 tions and provisions of the standard form of escrow instructions
21 provided by said Collection Escrow Holder. The escrow instructions
22 shall also authorize the Collection Escrow Holder to deliver the bill
23 of sale, termination of financing statement and withdrawal of assumed
24 business name form when the unpaid balance of the deferred balance
25 secured by this contract is reduced to a principal balance of
26 \$20,000.00, and thereafter Vendor will be secured only by the real
27 property described herein.

28 Vendor shall furnish, at his own expense, a Purchaser's title
29 insurance policy issued by Tramsamerica Title Insurance Co. under
30 its Order No. 28-5847 insuring Purchaser's title in the above
31 described real property in the amount of \$35,000.00 subject to the
32 above set forth exceptions and the printed conditions and exceptions

1 contained in the usual form of title policy issued by said title
2 insurance company.

3 Purchaser shall be entitled to possession of the above described
4 real and personal property on the date hereof. Purchaser shall remain
5 in possession so long as Purchaser is not in default hereunder.
6 Purchaser shall and hereby agrees to keep said real property (and
7 the personal property so long as the bill of sale thereto remains
8 in escrow) in a clean, sanitary, sightly, and attractive condition;
9 to commit no waste or otherwise damage or injure said premises; to
10 maintain said premises in accordance with the laws and the ordinances
11 and regulations of any constituted authority applying to said premises
12 and to make no unlawful use thereof; to pay regularly and seasonably,
13 and before the same shall become delinquent, all taxes, assessments,
14 and charges of whatever nature levied and assessed against said real
15 and personal property and to pay and discharge all encumbrances
16 thereafter placed thereon by Purchaser; to permit no lien or other
17 encumbrance to be filed upon or placed against said premises without
18 the written consent of Vendor; and it is further understood and
19 agreed for the purposes of this provision that if Purchaser fails
20 to pay or discharge any taxes, assessments, liens, encumbrances, or
21 charges, Vendor, at his option and without waiver of default or
22 breach of Purchaser, and without being obligated to do so, may pay
23 or discharge all or any part thereof, all of which sums so paid by
24 Vendor shall become repayable by Purchaser, together with interest at the
25 rate of ten(10%) percent per annum, upon demand, payment of which is
26 part of the performance of this agreement by Purchaser and a condi-
27 tion precedent to delivery of the warranty deed by the escrow holder.

28 Purchaser agrees to keep the buildings now on or hereafter placed
29 upon the above described real property insured against loss by fire
30 or other casualty in an amount not less than maximum insurable value
31 total insurance and shall obtain, at his own expense, said insurance
32 in the name of Vendor as the primary insured with an endorsement

1 thereon providing for loss payable to Vendor and Purchaser as their
2 respective interests may appear. The policy or policies of insurance
3 shall be delivered to Vendor, or, in lieu thereof, a certificate of
4 such insurance may be provided by Purchaser and delivered to Vendor.
5 If a loss should occur for which insurance proceeds shall become
6 payable, the Purchaser may elect to either rebuild or repair the
7 portion of the building so destroyed, or apply the proceeds to pay-
8 ment of the then unpaid balance of the purchase money. If the
9 Purchaser elects to rebuild, he shall sign such documents as may
10 be required by Vendor to guarantee the application of the insurance
11 proceeds to the cost of such rebuilding or repair.

12 In the event any governmental agency or entity having the power
13 of eminent domain acquires by eminent domain, or by negotiated sale
14 in lieu of eminent domain, all, or any portion, of the real property
15 described in this contract, Vendor may require Purchaser to apply
16 all proceeds received by Purchaser from such acquisition (remaining
17 after payment by Purchaser of attorney fees, appraiser fees, and
18 related necessary and reasonable costs in connection with securing
19 said proceeds) which proceeds are hereinafter called "net proceeds"
20 toward the payment of the sums secured by this contract. Upon receipt
21 of said net proceeds, Purchaser shall notify Vendor of the amount of
22 said net proceeds and Vendor shall, within ten (10) days after such
23 notification, notify Purchaser in writing if Vendor elects to have
24 said net proceeds applied toward payment of the sums secured by this
25 contract. If Vendor fails to so notify Purchaser of such election,
26 Vendor shall conclusively be deemed to have elected not to require
27 Purchaser to apply said net proceeds toward the sums secured by this
28 contract. If Vendor elects to have said net proceeds applied toward
29 payment toward the sums secured by this contract, the amount to be
30 received by Vendor shall not exceed the total of the principal plus
31 accrued interest to the date of receipt thereof by Vendor, and all
32 such sums shall be paid to the Escrow Holder named herein. Regardless

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1 of whether Vendor elects to have said net proceeds applied to the
2 sums secured by this contract, Vendor will join in any conveyance
3 required by the governmental agency or entity acquiring a portion
4 or all of the real property described herein by eminent domain,
5 but Vendor shall not be required to partially convey more property
6 than that which is acquired by such governmental agency or entity.
7 Vendor shall not be obligated to participate in any negotiations
8 with such governmental agency or entity. Any notice or notices
9 required to be given by Purchaser to Vendor pursuant hereto shall
10 be in writing, and shall be deemed given when the same is deposited
11 in the United States mail as certified mail, postage prepaid,
12 addressed to Vendor at the last address of Vendor shown on the
13 records of the Escrow Holder.

14 If Purchaser shall sell said real property described herein
15 and securing the unpaid balance of this contract, Vendor may elect
16 to permit the subsequent Purchaser to assume the balance of Pur-
17 chaser's obligation secured hereby, or to demand the then unpaid
18 balance of principal and interest from Purchaser, or the transferee
19 of said Purchaser, or both, at the option of Vendor. This clause
20 cannot be waived, unless Purchaser gives Vendor notice of such sale
21 in writing and Vendor, after receipt of such written notice, accepts
22 a payment from the subsequent Purchaser. The written notice pro-
23 vided for herein shall be deemed given when the same is deposited
24 in the United States mail as certified mail, addressed to the last
25 address of Vendor shown on the records of the Escrow Holder.

26 Vendor may appear in or defend any action or proceeding at law,
27 in equity, or in bankruptcy, affecting in any way the security hereof,
28 and in such event, Vendor shall be allowed and paid, and Purchaser
29 hereby agrees to pay, all costs, charges and expenses, including
30 costs of evidence of title or validity and priority of the security
31 and attorney fees in a reasonable sum, incurred in any such action
32 or proceeding in which Vendor may appear, which shall bear interest

1 At ten (10%) percent from date of demand therefor. Failure of Purchaser
2 to pay Vendor for such costs, charges and expenses within ninety (90)
3 days from date of demand therefor shall constitute a breach of this
4 contract.

5 If Purchaser shall fail to perform any of the terms of this agree-
6 ment, time of payment and performance being of the essence, Vendor shall,
7 at his option, subject to the requirements of notice as herein provided,
8 have the following rights:

9 (a) To foreclose this contract by strict foreclosure in equity;

10 (b) To declare the full unpaid balance of the purchase price
11 immediately due and payable; and

12 (c) To specifically enforce the terms of this agreement by suit
13 in equity.

14 Purchaser shall not be deemed in default for failure to perform any
15 covenant or condition of this contract, other than the failure to make
16 payments as provided for herein, until notice of said default has been
17 given by Vendor to Purchaser and Purchaser shall have failed to remedy
18 said default within thirty (30) days after the giving of the notice.

19 If Purchaser shall fail to make payments as herein provided and
20 said failure shall continue for more than thirty (30) days after the
21 payment becomes due, Purchaser shall be deemed to be in default and
22 Vendor shall not be obligated to give notice to Purchaser of a declara-
23 tion of said default. The parties understand and agree that the real
24 and personal property described herein is subject to a contract lien
25 by reason of that certain contract dated April 1, 1970, wherein
26 William J. Worden and Doris G. Worden, husband and wife, are Sellers,
27 and Reno A. Marchese and Jessie L. Marchese, husband and wife, are
28 Buyers. Purchaser does not assume said contract lien and obligation.
29 Vendor, therefore, covenants and agrees with Purchaser, with regard
30 to said contract lien, to:

31 (a) Pay and perform the terms thereof as provided in said
32 contract.

(b) Not to increase the amount of the contract lien by incurring
any further indebtedness and to reduce the present unpaid balance of

1 \$28,452.71 by paying the same according to the terms thereof promptly
2 and when due. In the event of a prepayment in full of this contract
obligation, Vendor will pay in full the aforesaid contract obligation.

3 (c) To hold Purchaser harmless from and indemnify Purchaser
4 against any and all liabilities, loss or damage Purchaser might
5 otherwise suffer by reason of said contract lien, including, but not
6 limited to, claims, costs, demands, attorney fees, or judgments, and
to defend Purchaser from any claims brought or suits or actions filed
against Purchaser by reason of the aforesaid contract.

7 If Vendor neglects or fails to pay the sums due or to become due under
8 the aforesaid contract, or fails to perform any of the terms, covenants
9 and conditions of said contract or his covenants contained in this
10 portion of this contract, and said failure is not occasioned by reason
11 of any default on the part of Purchaser, Vendor agrees to pay to Pur-
12 chaser all sums paid or incurred by Purchaser in protecting Purchaser's
13 rights acquired by this contract, including, but not limited to, costs,
14 charges and expenses, including costs of evidence of title, or validity
15 of Purchaser's interest in said real property and reasonable attorney's
16 fees, with or without trial and if trial, both at trial and on appeal,
17 incurred by Purchaser; which sums shall bear interest at the rate of
18 ten (10%) percent per annum from date of demand therefor. If Vendor
19 fails to pay Purchaser the sums due Purchaser under this provision
20 of this contract within 90 days from date of demand therefor, Purchaser
21 shall be entitled to either offset the same from Purchaser's obliga-
22 tions to Vendor secured by this contract, or to institute such suit
23 or action as may be necessary to recover the sums due Purchaser under
24 this provision of this contract or to pursue such other remedies as
25 may be allowed by law or by equity under the premises.

26 Where notice in writing is required by Vendor to the Purchaser,
27 such notice shall be deemed given when the same is deposited in the
28 United States mail as certified mail, addressed to the address of
29 Purchaser shown on the records of the Escrow Holder.

30 No waiver by Vendor of any breach of any covenant of this agree-
31 ment shall be construed as a continuing waiver of any subsequent
32 breach of such covenant nor as a waiver of any breach of any other
33 covenant nor as a waiver of the covenant itself.

1 In the event any suit or action is commenced to foreclose this
2 contract, the court having jurisdiction of the case may, upon motion
3 by Vendor, appoint a receiver to collect the rents and profits arising
4 out of the above described real property and to take possession,
5 management and control of the same during pendency of such fore-
6 closure proceeding or until payment of the obligations hereby secured,
7 and apply said rents and profits to the payment of the amount due
8 hereunder, first deducting all proper charges and expenses attending
9 the execution of said receivership.

10 Upon the commencement of any suit or action to collect the
11 indebtedness or disbursements secured hereby, or any part thereof,
12 or to enforce any provision of this contract by specific performance,
13 foreclosure or otherwise, there shall become due, and Purchaser agrees
14 to pay to Vendor, in addition to all statutory costs and disbursements,
15 any amount Vendor may incur or pay for any title report, title search,
16 insurance of title, or other evidence of title subsequent to the date
17 of this contract on any of the real property above described and
18 this contract shall be security for the payment thereof.

19 In the event any suit or action is instituted to collect the
20 indebtedness or disbursements secured hereby, or any part thereof,
21 or to enforce any provision of this contract by specific performance,
22 or foreclosure, or otherwise, the prevailing party, at trial, or on
23 appeal, shall be entitled to such reasonable attorney's fees as
24 shall be fixed by the court having jurisdiction of the case, in
25 addition to statutory costs and disbursements.

26 Upon delivery of any partial conveyance from Vendor to Purchaser,
27 as provided herein, and the payment of the full consideration therefor,
28 the terms, covenants, conditions and provisions of this contract shall
29 not extend to, nor be binding upon, the real property conveyed by
30 such partial conveyance.

31 This agreement contains the full understanding of the parties
32 with respect to the subject hereof and no modification hereof shall

1 be given effect unless the same be in writing subscribed by the
 2 parties hereto or their successors in interest. Purchaser has made
 3 an independent investigation and inspection of the real property herein
 4 described and has entered into this contract without relying on any
 5 statement or representation or covenant not specifically embodied in
 6 this contract, and accepts the property described in this agreement
 7 as is, in its present condition, and requires no work of any kind to
 8 be done on said property by Vendor.

9 This agreement shall bind and inure to the benefit of, as the
 10 circumstances may require, the parties hereto, and their respective
 11 successors, heirs, executors, administrators and assigns.

12 In construing this agreement, the singular shall include both
 13 the singular and the plural and the masculine both the masculine and
 14 the feminine.

15 Witness our hands the day and year first above written.

16 Reno A. Marchese
 17 Reno A. Marchese

18 Jessie L. Marchese
 19 Jessie L. Marchese
 20 Vendor

21 Alphonso C. Ciongoli
 22 Alphonso C. Ciongoli

23 Marlene J. Ciongoli
 24 Marlene J. Ciongoli
 25 Purchaser

26
 27 STATE OF OREGON)
 28 County of Klamath) ss.

29 On the 14th day of September, 1973, personally appeared
 30 the above named Reno A. Marchese and Jessie L. Marchese, husband and
 31 wife, and acknowledged the foregoing instrument to be their

12015

1 voluntary act and deed.

2 Before me:

3
4 (SEAL)

Alameda E. Giacomini
Notary Public for Oregon
My commission expires: Aug 5, 1974

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6
7 STATE OF OREGON)
8 County of Klamath) ss.

9 On the 14th day of September, 1973, personally appeared the
10 above named Alphonso C. Ciongoli and Marlene J. Ciongoli, husband and
11 wife, and acknowledged the foregoing instrument to be their voluntary
12 act and deed.

13 Before me:

14
15 (SEAL)

Alameda E. Giacomini
Notary Public for Oregon
My commission expires: Aug 5, 1974

12696

EXHIBIT "A"

Lots 3 and 4, Block 50, BUENA VISTA ADDITION to the City of Klamath Falls, Oregon.

SUBJECT TO: Reservations and restrictions contained in the dedication of Buena Vista Addition; Easement, including the terms and provisions thereof, to the City of Klamath Falls, dated April 28, 1930, recorded June 12, 1930, in Deed Volume 91, page 335, records of Klamath County, Oregon; Easement, including the terms and provisions thereof, to the City of Klamath Falls, dated April 22, 1930, recorded June 12, 1930 in Deed Volume 91, page 350, records of Klamath County, Oregon; Contract dated April 1, 1970, between William J. Worden and Doris G. Worden, husband and wife, as Sellers, and Reno A. Marchese and Jessie L. Marchese, husband and wife, as Buyers.

12696

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12697

EXHIBIT "B"

- 1 Penguin Cooler for Milk, 7', self-contained
- 1 Penguin Cooler for Milk, 8', self-contained
- 1 Sherrer Cooler for Meat, self-contained
- 1 Albert Ross Vegetable Cooler Case, self-contained
- 1 Sherrer Upright Cooler Case for Beer, self-contained
- 1 Sherrer Freezer
- 2 R. C. A. Adding Machines
- 5 Junior Size Store Service Carts
- 1 Cash Register
- 1 Protecto Mirror
- 1 Walk-in Cooler, Motor with Unit
- 1 Exhaust Fan
- ~~1 Soft Drink Cooler, "Popet-Cola"~~ *RM ac mc*
- 1 Scales
- 7 Islands
- ~~Book~~ *RM ac mc.*
- Shelving
- 1 Cold Spot Freezer
- 1 Drug Rack
- 1 Houseware Rack
- 1 School Supply Rack

STATE OF OREGON, }
County of Klamath } ss.

Filed for record at request of
Transamerica Title

on this 19 day of Sept 19 A. D., 19 73
at 10:25 o'clock PM and duly
recorded in Vol. M-73 of deeds
Page 12684

WM. D. MILNE, County Clerk

Fee 28.00 By Raymond H. Hargis Deputy.

Contract of Sale
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EXHIBIT "B"

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