

A-200816

12400

CONTRACT OF SALE
AND
SECURITY AGREEMENT

Vol. 74 Page 5149

THIS AGREEMENT, Made in duplicate this 9th day of
March, 1976, between STERLING W. ELLER and BETTY L. ELLER,
husband and wife, and GEORGE W. ELLER, JR. and ESMA ELLER,
husband and wife, hereinafter called Seller, and JACK FEEHAN
and SUSAN FEEHAN, husband and wife, hereinafter called
Purchaser.

W I T N E S S E T H :

That in consideration of the stipulations herein contained,
the covenants hereinafter exchanged, and the payments made and to
be made as hereinafter specified, the Seller hereby agrees to sell
and the Purchaser hereby agrees to purchase the following-
described property, to-wit:

LEGAL DESCRIPTION: Real Property -

Lots Eighteen (18), Nineteen (19), Twenty (20),
Twenty-one (21), Twenty-two (22), and the East
One-half (E½) of the vacated alley lying West
of and adjacent to Lots Three (3), Four (4), Five
(5) and Six (6), in Block Thirty (30), Town of
Crescent, Klamath County, Oregon EXCEPTING portions
deeded to the State of Oregon.

Personal Property -

Equipment and fixtures as set forth in Exhibit "A"
attached hereto. The inventory shall be purchased
for cash at retail sale price less 20%.

PURCHASE PRICE & PAYMENT TERMS:

Purchase Price: \$69,500.00 (prorated \$54,475.00 to the
realty, \$15,025.00 to equipment
and fixtures)
Down Payment : 15,000.00
Balance : \$54,500.00

Payable: \$600.00 on the 10th day of each month, first
payment on the 10th of the month following possession, payments
including interest at 9½% per annum from possession date, and
to continue until all principal and accrued interest are fully
paid. (See Addendum #1)

Place of Payment: Bend Title Company, 1351 NE Third,
Bend, Oregon 97701.

POSSESSION: One week after notice to Seller of O.L.C.C. application
approval (see hereinafter).

CONTINGENCY AGREEMENT:

Further performance by the parties under this contract

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is conditioned upon the issuance of a wine and beer off-premises package license by the Oregon Liquor Control Commission. The Purchaser agrees to continue diligently this very date to secure the issuance of such a license for the premises presently occupied by the Crescent Market in Crescent, Klamath County, Oregon. The approval of said application and the notification to the Seller of this fact shall commence the running of the time for possession and determine the possession and prorate dates and the beginning date for interest under this contract. The contract shall be void, however, if such approval is not obtained within 60 days from the date hereof.

STATUS OF TITLE:

All parties hereto understand that the Sellers are purchasing under a contract of sale in escrow with the Bend Title Company aforementioned, from Henry and Thelma Coyle, husband and wife, who hold title to this property. All payments will be made to the Title Company and shall be first applied on the Coyle contract. Sellers agree to keep said contract currently paid in any event.

TAXES & INSURANCE:

Purchaser agrees to keep the buildings on said premises insured against loss by fire in the amount of \$24,000.00, and the equipment and fixtures insured against loss by fire in the amount of \$24,000.00, at all times payable to the parties hereto and to Mr. and Mrs. Coyle as their interests appear at the time of loss. All policies of insurance shall be delivered to the Coyles. All uninsured losses shall be borne by the Purchaser. Existing insurance shall be prorated on closing.

Real property taxes have been currently paid. Personal property taxes for the 1976 tax year and the real property taxes will be prorated as of possession date and will be assumed by the Purchaser. Purchaser agrees to pay said taxes and all taxes and assessments hereafter levied against said property and all public or private liens which may hereafter be imposed upon said property as the same become due and before they become delinquent.

In the event that the Purchaser shall allow the taxes or other assessments upon said property to become delinquent, or shall fail to keep said property insured as herein provided, or shall fail to remove any liens imposed upon said property, the Seller, without obligation to do so, shall have the right to pay the amount due and to add said amount so paid to the principal remaining due under this agreement.

PRE-PAYMENT:

Purchaser shall have the right to pay any or all of the unpaid balance over and above the regular monthly payment provided for herein without penalty, provided, however, there shall be no pre-payment under any circumstances prior to January 1, 1977.

CONVEYANCE OF TITLE:

A good and sufficient deed to the real property and a bill of sale to the personal property will be placed in escrow with Bend Title Company forthwith. In case Purchaser, his representatives or assigns, shall pay the several sums of money aforesaid, punctually and at the times above specified, and shall strictly and literally perform all and singular the agreements and stipulations aforesaid according to the true intent and tenor thereof, then on demand the escrow agent will surrender

the deed and bill of sale to the Purchaser above named and close its escrow. Title Insurance in the face amount of the real property shall be furnished by Seller on closing of this sale.

IMPROVEMENTS AND REPAIRS:

All improvements placed on the said premises shall remain, and shall not be removed before final payment be made. The premises shall be kept in a workmanlike state of repair at all times.

FORECLOSURE:

In the event that the Purchaser shall fail to perform any of the terms, covenants, conditions or obligations of this agreement, time of payment and performance being of the essence, the Seller upon default shall have the right to exercise any of the following options:

- (a) To declare this agreement null and void and retain as liquidated damages the amount of the payments theretofore made under this agreement by the Purchaser, and any improvements made upon said premises, without any offer or act of the Seller to be given or performed.
- (b) To foreclose this contract by strict foreclosure in equity.
- (c) To specifically enforce the terms of this agreement by suit in equity.

If the Seller shall elect to declare this agreement null and void as provided for in subparagraph (a) above, all of the right, title and interest of the Purchaser shall revert and revest in the Seller without any declaration of forfeiture or act of re-entry or without any other act by the Seller to be performed and without any right of the Purchaser of reclamation or compensation for money paid by the Purchaser or for improvements made, as absolutely, fully and perfectly as if this agreement had never been made, and the Purchaser agrees to peaceably surrender said premises and the possession thereof to the Seller, or in default thereof, the Purchaser may, at the option of the Seller, be treated as a tenant holding-over unlawfully after the expiration of a lease and may be ousted and removed as such.

LITIGATION COSTS & FEES:

In case suit or action is instituted to in any way enforce the terms, covenants and conditions of this agreement, the parties promise and agree to pay such sum or sums as the Court may adjudge as reasonable attorneys' fees in such suit or action to the prevailing party.

EXAMINATION AND ACCEPTANCE OF PREMISES:

The Seller agrees that all equipment will be in good repair and working condition on date of possession. Other than that, Purchaser declares that he has examined this property and is buying it by reason of his own judgment and not through any representation made to him by the Seller, or agent for the Seller, as to its location, value, future value, income therefrom or as to its production. Seller has made no agreement to repair or improve said premises.

SECURITY AGREEMENT PROVISIONS:

This agreement as to the personal property shall be considered a security agreement under the terms of the Uniform Commercial Code

now in effect in Oregon, and incorporates the provisions of Exhibit B hereunto attached as though set forth herein. Both the Seller and the Purchaser shall have the right to exercise all rights and remedies afforded to each of them under said code. The Purchaser shall have the right to replace items of personal property, but such items must be replaced with an item of equal or greater value, said item to be covered under the terms of this security agreement. Purchaser agrees to execute all necessary financing statements required by law to protect the security agreement, on demand.

5152

MISCELLANEOUS:

Seller agrees to assist the Purchaser for twenty-one (21) days from possession date without charge, to acquaint them with the procedures in this retail business.

Seller agrees to retire Crescent Market as an assumed business name, which name may be assumed by the Purchaser.

Seller agrees that the necessary personal property tax return for the calendar year 1976 has been filed with the Klamath County Tax Department.

Seller agrees to transfer to the Purchaser the membership in the Crescent Water District.

No waiver of any breach of any covenant, term or condition of this agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term or condition or as a waiver of the covenant, term or condition itself.

Until a change is requested, all tax statements shall be sent to the following address:

Jack Feehan and Susan Feehan, Crescent, Oregon 97733.

The covenants, conditions and terms of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals the day and year first above written.

Purchaser:

Jack Feehan

Susan Feehan
Susan Feehan

Seller:

Sterling W. Eller

Betty L. Eller

George W. Eller, Jr.

Esma Eller

STATE OF OREGON }
County of Deschutes }

March 9, 1976

Personally appeared the above-named Jack Feehan and Susan

Page -4- Contract & Agreement

Memorandum #1 to SECRET
 of State of Security Department
 dated 7th of MARCH 1970
 Regarding purchase and sale
 of Prescott MINNESOTA estate
 and other property owned by
 persons and their families
 including Edgar, George, John and
 George William, Jr. Williams

In the purchase and
 the described property prior to
 being paid for, the
 entire balance is due and
 payable at the time of
 Federal tax.

for Tucker, John, Jr.
 John Tucker, Betty, John
 and George William, Jr.
 George William, Jr.

EXHIBIT A.

5154

Walk in Cooler - Compressor	\$ 3,500.00
Universal Upright Freezer	1,200.00
Coke Case - one	500.00
Egg Case	200.00
Universal 3-door Chest Freezer	1,200.00
Dayton Produce & Meat Scales - 2	350.00
American Food Slicer	100.00
McCray Meat Case	2,750.00
N.C.R. Cash Register	150.00
Electric Heater	25.00
"Open" Neon Sign	100.00
Magnavox Radio AM-FM	75.00
Continent Produce Case	1,750.00
Security Mirrors 3 at \$75	225.00
Firestone Water Heater	75.00
Deep Freeze Chest Food Freezer (back room)	300.00
Chest Freezer (garage)	50.00
Hand Cart	25.00
Adding Machine - 2	100.00
Store Shelving & Fixtures	2,000.00
Misc. Small Equipment	350.00
Total Value	\$15,025.00

Exhibit A

CRAIG C. COYNER
ATTORNEY AT LAW
830 WALL STREET
BEND, OREGON 97701

ADDITIONAL PROVISIONS

Section 4. The debtor hereby further warrants and covenants that:

4.1. No financing statement covering any of the Collateral described on the reverse hereof, or the products or proceeds thereof, is on file in any public office. The debtor is the owner of said Collateral and each and every part thereof free from any prior lien, security interest or encumbrance and will defend the Collateral against the claims and demands of all persons whatsoever.

4.2. The debtor will not sell, exchange, lease or otherwise dispose of the Collateral, or any part thereof, or suffer or permit any lien, levy or attachment thereon or security interest thereon or financing statement to be filed with reference thereto, other than that of the secured party.

4.3. Debtor will maintain the Collateral in good condition and repair, and preserve the same against waste, loss, damage or depreciation in value other than by reasonable wear. The debtor will not use any of the Collateral in violation of any law or public regulation. Secured party may examine and inspect the Collateral at any reasonable times, whenever located, and for that purpose hereby is authorized by debtor to enter any place or places where any part of the Collateral may be.

4.4. Debtor will keep the Collateral fully insured against loss or damage by fire, theft and collision if applicable and such other hazards as secured party may from time to time require, with such deductible provisions, upon such terms, including loss payable and other endorsements, and in such company or companies as the secured party may approve. Debtor immediately will deliver all policies to the secured party, to be retained by the latter in pledge to secure debtor's obligations hereunder, with irrevocable authority to adjust any loss, receive and receipt for any sum payable, surrender any policy, discharge and release any insuring endorser in debtor's name any loss or refund check or draft and, in general, exercise in the name of the debtor or otherwise, any and all rights of the debtor in respect thereto or in respect to the proceeds thereof.

4.5. Debtor will pay, when due, all taxes, license fees and assessments relative to the Collateral or its use and relative to the note and obligations secured hereby. Should debtor fail in his performance of any of the foregoing, the secured party may pay any security interest having priority hereto, may order and pay for the repair, maintenance and preservation of the Collateral, or any part thereof, may place and pay for any such insurance and may pay any such taxes, the debtor agrees to pay to the secured party on demand all of the latter's disbursements for any of said purposes with interest at ten percent per annum on all sums so paid from the date of payment until repaid. Repayment of all said sums shall be secured by this Security Agreement.

4.6. The debtor agrees to notify the secured party promptly in writing of any change in his business or residence address and in the location where the Collateral is kept.

4.7. In the event of any assignment by the secured party of this agreement or his rights hereunder, debtor will not assert as a defense, counter claim, set off or otherwise against secured party's assignee any claim, known or unknown, which debtor now has or claims to have or hereafter acquires against the secured party. However, notwithstanding any such assignment, secured party shall be liable to the debtor as if such assignment had not been made.

4.8. The debtor will join with the secured party in exercising, filing and doing whatever may be necessary under applicable law to perfect and continue the secured party's security interest in the Collateral all at debtor's expense.

4.9. Debtor hereby consents to any extension of time of payment and to any substitution, exchange or release of Collateral and to the addition to or release of any party or person primarily or secondarily liable for the obligations, or part thereof.

Section 5. General Provisions

5.1. The note which this agreement secures is a separate instrument and may be negotiated, extended or renewed by the secured party without releasing the debtor, the Collateral or any guarantor or co-maker.

5.2. All of the terms herein and the rights, duties and remedies of the parties shall be governed by the laws of Oregon. Any part of this agreement contrary to the law of any state having jurisdiction shall not invalidate other parts of this agreement in that state.

5.3. All of the benefits of this agreement shall inure to the secured party, his successors in interest and assigns and the obligations hereunder shall be binding upon the debtor, his legal representatives, successors and assigns.

5.4. If there be more than one debtor or a guarantor or co-maker of the note or this agreement, the obligation of each and all shall be primary and joint and several.

5.5. The secured party shall not be deemed to have waived any of his rights under this or any other agreement executed by the debtor unless the waiver is in writing signed by the secured party. No delay in exercising secured party's rights shall be a waiver nor shall a waiver on one occasion operate as a waiver of such right on a future occasion.

5.6. Each notice from one to the other party to this agreement shall be sufficient if served personally or given by U.S. registered or certified mail or by telegraph, addressed to the other party at his address as set forth on the reverse hereof, or at his said address may be changed by written notice to the other party pursuant to this paragraph. Reasonable notice, when notice is required, shall be deemed to be five days.

5.7. In construing this security agreement the masculine pronoun shall include the feminine and the number and the singular shall include the plural, as the circumstances may require.

Section 6. Default

6.1. Time is of the essence hereof. The debtor shall be in default under this agreement upon the happening of any of the following events or conditions:

- Debtor's failure to pay, when due, the principal of or interest on said note or obligations;
- Debtor's failure to keep, observe or perform any provision of this agreement or any other agreement between him and the secured party;
- The discovery of any misrepresentation or material falsity of any warranty, representation or statement made or furnished by debtor to the secured party whether or not in connection with this agreement;
- Loss, theft or destruction of or substantial damage to any of the Collateral;
- The secured party deems or has reasonable cause to deem himself insecure;
- Failure or termination of the business of, or commencement of any insolvency or receivership proceedings by or against the debtor, or if the debtor dies or becomes insolvent, and if debtor is a partnership, the death of any partner.

Section 7. Remedies of Secured Party

7.1. Upon debtor's default, secured party shall have each and all of the rights and remedies granted to him by the Uniform Commercial Code of Oregon, by the said note and by this agreement and may declare the note and obligation immediately due and payable and may require debtor to assemble the Collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. The debtor agrees to pay the secured party's reasonable counsel fees and legal and other expenses incurred by the latter in retaking, holding, preparing for sale and realizing on said Collateral as well as the attorney's fees and court costs provided in said note and all said sums shall be included in the obligations secured hereby.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 12th day of APRIL, A.D., 19 76 at 3:27 o'clock P.M., and duly recorded in Vol. M 76 of DEEDS on Page 5149.

FEE \$ 24.00

WM. D. MILNE, County Clerk

By Hazel Milne Deputy

exhibit "B"