

18279

MTC 2211  
AGREEMENT OF SALEVol. 76 Page 13480

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of August, 1976, by and between ELMO Z. HOWARD and HELEN G. HOWARD, hereinafter called the Sellers, and LAWRENCE S. HOWARD, hereinafter called the Buyer;

WITNESSETH:

RECITALS:

WHEREAS, Sellers are the owners of that certain business commonly known as the KENO STORE located at Keno, Klamath County, Oregon, which is subject to a certain mortgage to the Western Bank, Klamath Falls, Oregon;

WHEREAS, Buyer desires to buy said business, together with the real property with the improvements thereon, and certain personal property, more particularly hereinafter described.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing recitals, which are by reference expressly made a part of this agreement, and the terms, conditions and covenants hereinafter contained on the part of the respective parties to be kept and performed, IT IS AGREED:

(1) That the Sellers agree to sell, and the Buyer agrees to purchase all of the following described property located in the County of Klamath, State of Oregon, more particularly described as follows:

(a) Real Property. Per Exhibit "A" attached hereto and incorporated herein by this reference.

(b) Personal Property. The following described personal property situate in Klamath County, Oregon, to-wit:

Pump	Shelving
Air Conditioners	Vacuum Cleaner
Refrigeration Unit,	Freezer
Cold Room	Two Signs
Frozen Food Case	Awning
Cash Register	File Cabinet
Meat Refrigeration Case	Freezer

together with the assumed business name, good will, and restrictive covenant.

MAIL TAX STATEMENTS TO:  
Lawrence S. Howard  
P.O. Box 124  
Keno, Oregon 97601

-1-AGREEMENT OF SALE

Return D. J. Hosto  
2261 So. 6th St City

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13481

(2) The purchase price for the property described in paragraph (1) above, which the Buyer agrees to pay, shall be the sum of \$85,000.00, which is allocated as follows:

- |   |             |
|---|-------------|
| (a) Real Property with improvements thereon | \$60,000.00 |
| (b) Personal Property                       | \$ 5,000.00 |
| (c) Good will                               | \$ 5,000.00 |
| (d) Restrictive Covenant                    | \$15,000.00 |

(3) The balance of \$85,000.00, shall be paid in monthly installments of \$790.14, said payments to include principal and interest at the rate of 7½% per annum on the unpaid balances, the first of such installments to be paid on the 1st day of each and every month hereafter until the entire purchase price, both principal and interest, is paid in full. It is further agreed Buyer shall pay all taxes and assessments and any other obligations incurred by the Buyer, in addition to the monthly installments set forth above.

(a) Interest on all unpaid balances shall commence the 1st day of September, 1976.

(b) Buyer may prepay all or a portion of the purchase price without penalty.

(c) In event the Buyer defaults in the payment of any taxes or liens, Sellers are authorized to make payments on said taxes or liens on behalf of Buyer, and to add such sums paid, to the principal of this contract, to be paid by Buyer, including interest at the rate of 7½% per annum.

(d) All payments shall be made to the order of Seller's by payment to the Western Bank, Klamath Falls, Oregon.

(4) The following items shall be prorated effective September 1, 1976:

- (a) Real and personal property taxes.
- (b) Fire insurance premiums.

(5) Buyer agrees to keep the buildings on said premises insured against loss by fire in an amount not less than its insurable value and to keep the personal property hereinabove described insured against loss by fire in an amount not less than its insurable value, with loss payable in each case to the parties hereto as their respective interests appear at the time of the loss. However, the Buyer shall have the election to rebuild the improvements out of the insurance proceeds, providing he elects to do so in writing with notice to the Sellers. In event he does not so elect, any amount received by the Sellers under said



13482

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 the Sellers. All uninsured losses shall be borne by the Buyer, on or after the date the Buyer is entitled to possession.

(6) Buyer shall be entitled to possession of the premises as of September 1, 1976.

(7) It is understood between the parties that there exists a store inventory and that said inventory is excluded from this sale.

(8) Buyer agrees that all improvements now located or which shall hereafter be placed on the premises, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of the Sellers. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alterations thereof, and shall maintain the property, and all the improvements thereon, and all alterations thereof, and shall maintain the property, and all the improvements thereon, and all alterations thereof, in good condition and repair. Buyer shall not otherwise make or cause any substantial improvements or alterations to the property without first giving ten days written notice to the Sellers, and upon request of the Sellers, to provide adequate evidence of sufficient financing to complete the proposed improvement or alteration.

(9) In event all or a portion of the real property described herein is taken or designated to be taken by condemnation proceedings, or is sold to an entity having the power of condemnation in lieu of condemnation proceedings, Sellers shall be entitled to retain all such proceeds and the unpaid balance of the purchase price shall be reduced to the extent of the amount of such payment.

(10) As a material part of this sale, Sellers covenant and agree not to compete with Buyer on the terms hereinafter set forth, and in consideration therefore, Buyer is to pay Sellers the sum hereinabove set forth.

NOW, THEREFORE, it is hereby agreed as follows:

Sellers agree not to re-establish or reopen any business, trade or occupation similar to the business which is being sold to Buyer by Sellers, or, in any manner, to become interested, directly or indirectly, either as an employee, owner, partner, agent, stockholder, director, officer, or otherwise, in any such business, trade or occupation, nor to aid or assist anyone entering into such business within ten miles of the City of Keno, in



13483

Klamath County, State of Oregon, for a term of 5 years from the date hereof. The payments provided herein above shall be allocated to this restrictive covenant out of principal in the sum of \$178.57 per month.

(11) Upon execution of this agreement, Seller shall deliver a title insurance policy insuring Buyer that they have marketable title, free and clear of all encumbrances herein specified.

(12) As soon as practicable following the execution of this agreement, Sellers and Buyer shall deliver in escrow to the Western Bank, Klamath Falls, Oregon, the following documents:

(a) Warranty Deed to the above described real property free and clear of all encumbrances, except as expressly specified herein, said deed to be executed by Sellers with Buyer as the grantee.

(b) An executed and recorded copy of this agreement.

(c) Bill of Sale covering the above-described personal property.

(d) UCC Form 3, Termination Statement.

(e) The expense of establishing the initial escrow shall be shared equally by the parties; the subsequent monthly escrow charge shall be deducted from the Buyer's payments provided for herein.

(13) The parties hereto hereby instruct said escrow agent to receive for Sellers' account the balance of the installment payments provided for herein. Upon payment of principal and interest provided for herein, the escrow agent shall deliver to Buyer the instruments specified above. If Buyer fails to pay any installment before the expiration of 30 days after the due date thereof, the escrow agent is authorized to surrender to the Sellers, upon demand, and without notice to the Buyer, all of the documents specified in the preceding paragraphs, thereby terminating the escrow.

(14) If Buyer shall sell said real or personal property described herein, and securing the unpaid balance of this contract, Sellers may elect to permit the subsequent Buyer to assume the balance of Buyer's obligation secured hereby, or to demand payment from the Buyers, or the transferee of said Buyer, or both (at the option of the Sellers) of such portion of the deferred balance as Sellers may consider satisfactory, or to declare the entire balance of the deferred balance due and payable. This clause cannot be waived, unless Buyer gives Sellers notice of such sale in writing and Sellers, after receipt of such written notice, accept a payment from the subsequent Buyer. The written notice provided for herein shall be deemed given when the same is deposited in the United States Mail as registered mail, addressed to the last address shown on the records of the escrow holder.



(15) Sellers may appear and defend any action or proceeding at law, in equity, or in bankruptcy, affecting in any way the security hereof, and in such event, Sellers shall be allowed and paid, and Buyer hereby agrees to pay all costs, charges and expenses, including costs of evidence of title and validity or priority of security, and attorney fees in a reasonable sum incurred in any such action or proceeding or in which Sellers may appear, which shall bear interest at the rate of 7½% per annum from date or demand therefor. Failure of Buyer to pay Sellers for such costs, charges and expenses within 90 days from date of demand therefor, shall constitute a breach of this contract.

(16) If Buyer fails to perform any of the terms of this agreement, time of payment and performance being of the essence, Sellers shall, at their option, subject to the requirements of notice as herein provided, have the following rights:

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

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

(c) To specifically enforce the terms of this agreement by suit in equity; and

(d) To declare this agreement null and void as of the date of the breach and to retain as liquidated damages the amount of the payments heretofore made upon said property. Under option (d), all of the rights, title and interest of the Buyer shall revert and revest in the Sellers without any act of re-entry or without any other act by Seller to be performed, and Buyer agrees to peacefully surrender the premises to the Sellers, or in default thereof, Buyer may, at the option of the Sellers, be treated as a tenant holding over unlawfully after the expiration of a lease and may be ousted and removed as such.

(17) Buyer shall not be deemed to be in default for failure to perform any covenant or condition of this contract, until notice of said default has been given by Sellers to Buyer and Buyer shall have failed to remedy any default within 30 days after the giving of the notice.

(18) Where notice in writing is required by Sellers to the Buyer, such notice shall be deemed given when the same is deposited in the United States Mail as certified mail, addressed to the Buyer, shown on the records of the escrow holder.

(19) No waiver by Sellers of any breach of any covenant of this agreement shall be construed as a continuing waiver of any breach of any other covenant, nor as a waiver of the covenant itself.



(20) In the event any suit or action is commenced to foreclose this contract, the Court having jurisdiction of the case may, upon motion by Sellers, appoint a receiver to collect profits arising out of the above described real property and to take possession, management and control of the same during pendency of such foreclosure proceeding or until payment of the obligations hereby secured, and apply said profits to the payment of the amounts due hereunder, first deducting all proper charges and expenses attending the execution of said receivership.

(21) Upon the commencement of any suit or action to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this contract by specific performance, foreclosure, or otherwise, there shall become due, and Buyer agrees to pay to the Sellers, in addition to all statutory costs and disbursements, any amount Sellers may incur or pay for any title report, title search, insurance of title, or other evidence of title subsequent to the date of this contract on any of the real property above described, and this contract shall be security for the payment thereof.

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

(23) Buyer certifies that this contract of purchase is accepted and executed on the basis of their own examination and personal knowledge of the premises and opinion as to the value thereof; that no attempt has been made to influence his judgment; that no representations as to the condition of repair of said premises has been made by Sellers or any agent of the Sellers; that no agreement or promise to alter, repair, or improve the premises has been made by the Sellers or any agent of the Sellers; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement.

(24) This agreement contains the full understanding of the parties with respect to the subject hereof and no modification hereof shall be given effect unless the same be in writing subscribed by the parties hereto or their successors in interest.

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



13486

WITNESS, the hands and seals of the parties hereto the day and year first above written.

Elmo Z. Howard (SEAL)  
ELMO Z. HOWARD, Seller

Helen G. Howard (SEAL)  
HELEN G. HOWARD, Seller

Lawrence S. Howard (SEAL)  
LAWRENCE S. HOWARD, Buyer

STATE OF OREGON )  
County of Klamath ) ss.

August 27, 1976

Personally appeared ELMO Z. HOWARD and HELEN G. HOWARD, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:  
(OFFICIAL SEAL)

[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 11-28-77

STATE OF OREGON )  
County of Klamath ) ss.

August 27, 1976

Personally appeared LAWRENCE S. HOWARD, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:  
(OFFICIAL SEAL)

[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 11-28-77

After recording return:

D. J. Noob  
2261 206th  
City



## EXHIBIT "A"

## DESCRIPTION

13487

## PARCEL 1:

The following described real property in Klamath County, Oregon:

Beginning at the intersection of the Westerly line of Brighton Avenue and the Northerly line of River Street in the Town of Doten, reference being made to the duly recorded plat thereof, and running; thence

North 33° East along the Westerly line of said Brighton Avenue 103.56 feet more or less to a point which is 105 feet distant, when measured along said Brighton Avenue, from the intersection of the Southerly line of Klamath River, said point being also a corner of that certain tract of land conveyed by T. J. Prather, a widower, to George W. Ager by deed dated August 31, 1946, and recorded November 1, 1946, in Volume 198, page 21 of Deed Records of Klamath County, Oregon; thence

running Westerly at right angles to Brighton Avenue and parallel to River Street 52.5 feet to a point; thence

running South 33° West 103.56 feet more or less to the Northerly line of said River Street; thence

running in an Easterly direction along the Northerly line of said River Street to the place of beginning being a portion of Lot 1 of Section 31, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

## PARCEL 2:

The following described real property in Klamath County, Oregon:

A parcel of land in Section 31, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

Note: This parcel is Northeast of the original plat of the Town of Doten, Volume 1, page 19, Town of Plats recorded May 26, 1887 in County Clerk's Office-County Surveyors Certificate-by Frank Howard, October 13, 1949.

Beginning at intersection of the Westerly line of Brighton Avenue (also Highway #66) and the Northerly line of River Street; thence North 74° 00' West 52.50 feet to 5/8" iron rebar on the Northeasterly right of way of River Street; thence North 33° East 103.56 feet to true point of beginning; thence North 33° 00' East 36.44 feet to 5/8" iron rebar, also parallel to Brighton Avenue, known as State Highway #66; thence South 57° 00' East 52.50 feet to 5/8" iron rebar; also the Northwest right of way of Brighton Avenue; thence South 33° 00' West 36.44 feet to a point along the Northwesterly right of way of Brighton Avenue; thence North 57° 00' West 52.50 feet to point of beginning.

## PARCEL 3:

A tract of land situated in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the intersection of the Northeasterly right of way line of River Street and the Northwesterly right of way line of Brighton Street also known as State Highway No. 66, thence North 33° 00' East 140 feet to the true point of beginning; thence North 57° 00' West 52.50 feet, thence North 33° 00' East 85 feet, more or less, to the Westerly Bank of Klamath River; thence South 57° 00' East along said Westerly bank to the Northwesterly right of way line of Brighton Street; thence South 33° 00' West along said right of way 85 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM any portion lying within the boundaries of State Highway No. 66.

STATE OF OREGON; COUNTY OF KLAMATH; ss. XXXXXXXXXXXX

I hereby certify that the within instrument was received and filed for record on the 30th day of AUGUST 1976 at 9:10 o'clock A.M., and duly recorded in Vol. M 76

of DEEDS on Page 13480.

FEE \$ 24.00

WM. D. MILNE, County Clerk

By *Harold Knapp* Deputy