

38-11345

21234

AGREEMENT OF SALE

Vol. *M* Page

17539

1 THIS AGREEMENT, made and entered into this 18th day of
2 October ~~of~~, 1976, by and between LAWRENCE I. WORLEIN and PAULINE E.
3 WORLEIN, husband and wife, hereinafter referred to as "Sellers",
4 and, JOHN W. HOWELL and PAT HOWELL, husband and wife, hereinafter
5 referred to as "Buyers",

6 WITNESSETH:

7 Sellers agree to sell to Buyers and Buyers agree to purchase
8 from Sellers for the price and on the terms and conditions set
9 forth below, that certain real and personal property, and all im-
10 provements, situated in Klamath County, Oregon, described as
11 follows:

12 REAL PROPERTY:

13 Lots 8 and 9 in Block 28 of HOT SPRINGS ADDITION to
14 the City of Klamath Falls, Klamath County, Oregon.

15 SUBJECT TO: 1976-77 real property taxes which are now
16 a lien, but not yet payable, and all future real pro-
17 perty taxes and assessments; reservations, restrictions,
18 easements and rights of way of record, and those apparent
19 on the land, and

20 SUBJECT, FURTHER, to a Trust Deed, including the terms
21 and conditions thereof, dated 11/25/64 and recorded
22 12/23/64 in Book 228, page 32, official records of
23 Klamath County, Oregon, wherein First Federal Savings
24 and Loan Association of Klamath Falls, Oregon, a corp-
25 oration is beneficiary, approximate balance at this
26 time of \$10,000.00, which Buyers do not assume but which
Sellers assume and agree to pay punctually and hold
Buyers harmless therefrom.

PERSONAL PROPERTY:

- 23 a. All that certain personal property more particularly
24 described and set forth on Exhibit "A" which is
25 attached hereto and by this reference made a part
26 hereof;
- b. Inventory on hand shall be determined prior to

PRENTISS M. PUCKETT, P.C.
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS
& LOAN BUILDING
KLAMATH FALLS, ORE.

Page (1) Agreement of Sale
Worlein to Howell

1 closing at retail less 20%. The parties hereby
2 establish a price for said inventory of \$9,500.00,
3 provided, the respective appropriate parties shall
4 on closing pay any difference in cash in the event
5 said inventory shall be less or more than the above
6 designated amount.

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

9 John W. Howell, et ux
10 1842 Portland Street
11 Klamath Falls, Oregon 97601

12 PURCHASE PRICE

13 1.

14 Buyers promise and agree to pay as the total purchase price,
15 subject to adjustment for inventory as above provided, for the
16 above real and personal property, the sum of \$64,500.00, which sum
17 shall be paid as follows:

- 18 a. The sum of \$28,000.00 which represents Buyers'
19 equity in a residence located in Placer County,
20 California, and which Buyers agree to convey to
21 Sellers upon closing, subject to encumbrance of
22 approximately \$14,500.00;
- 23 b. The balance of \$36,500.00 and interest shall be
24 payable in monthly installments of \$350.00 each,
25 including interest, the first such monthly in-
26 stalment to be paid on the 1st day of November,
1976, and subsequent and like payments to be paid
on or before the 1st day of each month there-
after until said balance and interest is paid
in full.

Each payment shall be applied first to interest to the date
of the payment and the balance to principal.

INTEREST

1.

1 Interest on all deferred balances shall commence October 18,
2 1976, and shall be computed at the rate of 8% per annum.

3 PRE-PAYMENT

4 1.

5 Buyers have the right to prepay any deferred balance at any
6 time without penalty.

7 POSSESSION

8 1.

9 Buyers shall be entitled to possession of said real and per-
10 sonal property on October 18, 1976, provided, however, that Sellers
11 may enter upon the real property at reasonable times during the
12 term hereof for the purpose of inspection.

13 BILL OF SALE

14 1.

15 Sellers shall execute and place in the escrow hereinafter pro-
16 vided for a Bill of sale to said personal property with instructions
17 to deliver said Bill of Sale to Buyers at such time as the deferred
18 balance of the purchase price is reduced to \$30,000.00.

19 ESCROW

20 1.

21 Sellers agree that upon the execution hereof they shall make
22 and execute in favor of Buyers a good and sufficient deed conveying
23 said real property free and clear of all liens and encumbrances ex-
24 cept as herein set forth and will place said deed, together with
25 one of these agreements and said Bill of Sale in escrow at First
26 Federal Savings and Loan Association of Klamath Falls, Klamath Falls,

1 Oregon, and the parties hereto agree to enter into written escrow
2 instructions in form satisfactory to said escrow holder and the
3 parties hereto whereby the escrow holder is instructed that at such
4 time as the Buyers have paid the purchase price in accordance with
5 the terms and conditions of this agreement, said escrow holder shall
6 deliver said deed and Bill of Sale to Buyers, but in case of de-
7 fault by Buyers said escrow holder shall, on demand, surrender said
8 deed and Bill of Sale to Sellers, or either of them.

9 TAXES AND INSURANCE

10 1.

11 Buyers shall pay promptly all indebtedness incurred by their
12 acts which may become a lien or purported lien, upon said property,
13 and shall regularly and before the same shall become delinquent,
14 pay all taxes, including adjustment of same for any reason, assess-
15 ments, liens, purported liens, and encumbrances of whatsoever kind
16 affecting said property after the date hereof, provided, all such
17 taxes, assessments and charges for the current year shall be pro-
18 rated as of the date hereof and in the event Buyers shall fail to
19 so pay, when due, any such matters or amounts required by Buyers
20 to be paid hereunder, or to procure and pay seasonably for insur-
21 ance, Sellers may pay any or all such amounts and any such payment
22 shall be added to the purchase price of said property on the date
23 such payments are made by Sellers and such amount shall bear inter-
24 est at the rate herein provided, without waiver, however, of any
25 right arising to Sellers for Buyers' breach of contract, and, in
26 such event or events, the escrow holder is hereby directed and

1 authorized to so add such amounts to the contract balance upon
2 being tendered a proper receipt therefor.

3 2.

4 Buyers shall keep the buildings on said property insured
5 against loss or damage by fire or other casualty in an amount not
6 less than the insurable value thereof with loss payable to the
7 parties hereto and the interests herein reflected, all, as their
8 interests appear at the time of loss, all uninsured losses shall
9 be borne by Buyers on or after the date Buyers become entitled to
10 possession.

11 ALTERATIONS AND IMPROVEMENTS

12 1.

13 Buyers agree that all improvements now located or which shall
14 hereafter be placed on the property, shall remain a part of the real
15 property and shall not be removed at any time prior to the expira-
16 tion of this agreement without the written consent of Sellers.
17 Buyers shall not commit or suffer any waste of the property, or any
18 improvements thereon, or alteration thereof, and shall maintain the
19 property, improvements and alterations thereof in good condition and
20 repair, provided, Buyers shall not make or cause to be made any
21 major improvement or alteration to the property without first ob-
22 taining the written consent of Sellers.

23 INDEMNIFICATION AND LIABILITY INSURANCE

24 1.

25 Buyers shall during the term hereof indemnify and defend
26 Sellers from any claim, loss or liability arising out of or related

1 to any activity of Buyers on the subject property or any condition
2 of the property and shall maintain public liability and property
3 damage insurance in a responsible company with limits of not less
4 than \$100,000 for injury to one person and \$300,000 for injury to
5 two or more persons in one occurrence, and \$50,000 for damage to
6 property.

7 ALLOCATION

8 1.

9 The parties do hereby agree that the sum of \$7,500.00 shall be
10 allocated to the above described personal property and equipment,
11 and, the sum of \$47,500.00 shall be allocated to the real property
12 and improvements.

13 TITLE INSURANCE

14 1.

15 Sellers shall furnish, at Sellers' expense, a Purchaser's
16 Policy of Title Insurance in the amount of \$47,500.00 within thirty
17 days from the date of closing, insuring Buyers against loss or dam-
18 age sustained by Buyers by reason of the unmarketability of Sellers'
19 title, or liens or encumbrances thereon, excepting matters herein
20 expressly covered and further excepting matters contained in the
21 usual printed exceptions in such title insurance policies.

22 CONDITION OF PROPERTY

23 1.

24 Buyers accept the land, buildings, improvements, and all other
25 aspects of the property in their present condition, as is, including
26 latent defects, without any representations or warranties, expressed

1 or implied, unless they are in writing signed by Sellers. Buyers
2 agree that they have ascertained, from sources other than Sellers
3 the applicable zoning, building, housing, and other regulatory
4 ordinances and laws and that they accept the property with full
5 awareness of these ordinances and laws as they may affect the pre-
6 sent use or any intended future use of the property, and Sellers
7 have made no representations with respect thereto.

8 ASSIGNABILITY

9 1.

10 Buyers agree that they will not assign, sell, transfer or dis-
11 pose of their interest in this agreement or the said land, improve-
12 ments or personal property covered herein without first obtaining
13 the written consent of Sellers to so do, provided, however, that
14 Sellers agree that they will not unreasonably withhold such consent.

15 EXISTING MORTGAGE

16 1.

17 It is understood that the above subject real property is sub-
18 ject to an existing mortgage in favor of First Federal Savings and
19 Loan Association of Klamath Falls, Oregon. Sellers agree that
20 \$250.00 from each monthly payment received by them will be applied
21 toward the payment of said existing mortgage. Sellers further
22 agree to promptly pay in full said mortgage before or at the time
23 Buyers shall have paid in full this agreement.

24 MISCELLANEOUS

25 1.

26 This document is the entire, final, and complete agreement of

1 the parties pertaining to the sale and purchase of the property,
2 and supercedes and replaces all written and oral agreements hereto-
3 fore made or existing by and between the parties or their represent-
4 atives insofar as the property is concerned.

5 FIXTURES AND EQUIPMENT

6 1.

7 Buyers shall at all times during the term hereof keep said
8 personal property insured against loss or damage by fire and theft
9 with extended coverage in the sum of not less than \$7,500.00, or
10 insurable value, and, pay the premiums therefor, said policies to
11 reflect the interests of Sellers and Buyers as their interests may
12 appear.

13 Buyers hereby covenant to and with the Sellers that they will
14 at all times during the term hereof, keep said personal property
15 clean and in good repair and working order; that they will not sell
16 or dispose of any such property or permit the same to be removed
17 from the above premises and real property without first obtaining
18 the written consent of Sellers; that if replacement of any such
19 item of personal property shall become necessary, Buyers shall re-
20 place the same with items of like quality, value and utility, free
21 from any encumbrance, and, that any such replacement or substitute
22 items shall, immediately upon acquisition by the Buyers, be subject
23 to all of the terms and conditions of this agreement.

24 Buyers hereby grant to Sellers a security interest in said
25 personal property, together with all accessories, substitutions,
26 additions, replacements, parts and accessories affixed to or used

1 in connection therewith, herein called "collateral" and shall con-
2 temporaneously herewith execute and deliver unto Sellers financing
3 statements covering said property.

4 INSURANCE

5 1.

6 Buyers further agree that during the term hereof they shall
7 carry Workmens' Compensation from the Oregon State Industrial
8 Accident Commission or from a responsible private carrier and in
9 the event they obtain private insurance such insurance shall pro-
10 vide the schedule of employee benefits required by law and shall
11 provide employer's liability coverage with limits of at least
12 \$250,000 for injury to one person and \$1,000,000 for injury to two
13 or more persons in one occurrence.

14 CREDITORS

15 1.

16 Sellers agree to pay all creditors of the business through
17 October 18, 1976, promptly and when billed. Buyers assume and
18 agree to pay promptly all creditors of the business after October
19 18, 1976, during the term hereof and so long as they operate said
20 business.

21 Sellers and Buyers agree to cause to be notified all creditors
22 of the business of the change of ownership promptly after October
23 19, 1976.

24 Buyers shall assume responsibility for all utilities, licenses
25 and assessments after October 18, 1976, and so long as they
26 operate said business.

1 ASSUMED NAME

2 1.

3 In the event Sellers have an assumed business name on file
4 with respect to the operation of the present business located on
5 the subject real property they shall on closing this transaction
6 cause the same to be released to Buyers.

7 DEFAULT

8 PROVIDED, FURTHER, that in case Buyers shall fail to make the
9 payments aforesaid, or any of them, punctually and upon the strict
10 terms and at the times above specified, or within thirty days from
11 the due date thereof, or fail to keep any of the other terms or
12 conditions of this agreement, time of payment and strict perform-
13 ance being declared to be the essence of this agreement, then Sellers
14 shall have the following rights: (1) to foreclose this contract by
15 strict foreclosure in equity; (2) To declare the full unpaid bal-
16 ance immediately due and payable; (3) To specifically enforce the
17 terms of this agreement by suit in equity; (4) To declare this con-
18 tract null and void, and in any of such cases, except exercise of
19 the right to specifically enforce this agreement by suit in equity,
20 all the right and interest hereby created or then existing in favor
21 of Buyers derived under this agreement shall utterly cease and
22 determine, and the premises aforesaid shall revert and revest in
23 Sellers without any declaration of forfeiture or act of re-entry,
24 and without any other act by Sellers to be performed and without
25 any right of Buyers of reclamation or compensation for money paid
26 or for improvements made, as absolutely, fully and perfectly as if

1 this agreement had never been made.

2 Should Buyers, while in default, permit the premises to become
3 vacant, Sellers may take possession of same for the purpose of pro-
4 tecting and preserving the property and their security interest
5 herein, and in the event possession is so taken by Sellers they
6 shall not be deemed to have waived their right to exercise any of
7 the foregoing rights.

8 In the event suit or action is instituted to enforce any of
9 the terms of this contract, the prevailing party shall be entitled
10 to recover from the other party such sum as the court may adjudge
11 reasonable as attorney's fees at trial or on appeal of such suit
12 or action, in addition to all other sums provided by law.
13 Buyers further agree that failure by Sellers at any time to require
14 performance by Buyers of any provision hereof shall in no way affect
15 Sellers' right hereunder to enforce the same, nor shall any waiver
16 of any succeeding breach of any such provision, or as a waiver of
17 the provision itself.

18 This agreement shall bind and inure to the benefit of, as the
19 circumstances may require, the parties hereto and their respective
20 heirs, executors, administrators, successors and assigns, subject
21 to the foregoing.

22 WITNESS the hands of the parties the day and year first herein
23 written.

24 SELLERS: Lawrence I. Worlein
Lawrence I. Worlein
25 Pauline E. Worlein
Pauline E. Worlein
26

17610

1 BUYERS:

John W. Howell
John W. Howell

Pat Howell
Pat Howell

2
3
4 STATE OF OREGON)

5 County of Klamath)

ss.

October
September 18, 1976

6 Personally appeared the within named LAWRENCE I. WORLEIN and
7 PAULINE E. WORLEIN, husband and wife, and, JOHN W. HOWELL and PAT
8 HOWELL, husband and wife, and acknowledged the foregoing instrument
to be their voluntary act and deed.

9 BEFORE ME:

Kathy R. Mallams
Notary Public for Oregon
My Commission expires: 6-13-80

10
11
12 A D D E N D U M

13 The above Sellers and Buyers further agree that the within and
14 foregoing Agreement is subject to and contingent upon the approval
15 of the Oregon State Liquor Control Commission and the transfer of
16 the present license of and pertaining to the existing business
17 located upon the above described real property.

18 Lawrence I. Worlein
19 Pauline E. Worlein
20 John W. Howell
21 Pat Howell

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24
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26
PRENTISS K. PUCKETT, P.C.
ATTORNEY AT LAW
FIRST FEDERAL SAVINGS
& LOAN BUILDING
KLAMATH FALLS, ORE.

Page (12) Agreement of Sale
Worlein to Howell

17611

ADDENDUM TO "CREDITORS" SECTION OF AGREEMENT OF SALE

Sellers further agree to hold Buyers harmless and indemnify them as to any loss resulting from Sellers failure to pay Creditors of the business through September 30, 1976, as heretofore provided; in the event legal action is taken by said Creditors of the business on any account incurred on or before September 30, 1976, Sellers agree to assume the defense of said legal action.

DATED: October 18, 1976

Lawrence S. Worlein
Pauline S. Worlein
John W. Howell
Pat Howell

QUALITY FOOD MART
Equipment List

17812

- All wall shelving (store room)
- All store shelving (basement)
- Approximately 500 ft. metal shelving
- 1 Vegetable Dry Stand
- 1 Vegetable Estimating Scales
- 2 Standard Counting Scales (1 licensed)
- 1 Hand truck
- 1 Laminated Marble Work Table
- 1 Tyler Self Service Vegetable Case,
Serial No. 300866
- 1 Tecumseh Compressor, Serial No. 1882025
- 1 8 ft. Tyler Self Service Meat Case
- 1 General Electric 1 1/2 HP Compressor
Serial No. RH411203
- 5 door walk-in
- 1 Kelvinator 1 1/2 HP Compressor
Serial No. 5D873946
- 1 Cold Air Blower
- 1 Continent Refrigerated Checkout Counter
(self contained)
- 1 7 ft. Weber Self Service Freezer (self contained)
Serial No. F200091
- 1 1971 Model FF-2 two door Frozen Food Upright Freezer
(self contained) Unit No. 70E01388
- 1 Star Spot Cooler
- ✓ 1 Masterbuilt Spot Freezer
- 1 Stoelting Slush Machine
- 1 Morris Safe
- 1 Model 41012-10 Remington Adding Machine
Serial No. 729798
- 1 Model 40711-10 Remington Adding Machine
Serial No. 739422
- 1 Model 133301 Remington Cash Register
Serial No. 433298
- 1 Nutone Intercom
- 4 Grocery Carts
- 1 Counter Top
- 1 Regina Heavy Duty Carpet Shampooer
- 1 Anti-shoplifting Round Mirror
- 12 Oblong Mirrors
- 1 Tape Dispenser

EXHIBIT "A"

Per Trans:

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 4th day of
NOVEMBER A.D., 19 76 at 4:00 o'clock P.M., and duly recorded in Vol. 76
of DEEDS on Page 17599.

FEE \$ 42.00

WM. D. MILNE, County Clerk

By *Hazel K. Hargis* Deputy