

43788

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1 THIS AGREEMENT, made and entered into this 29th day of June, 1964, by and  
2 between HERBERT H. IMEL and MYRTLE M. IMEL, husband and wife, hereinafter called  
3 sellers, and L. L. STAMPER and LILLIAN M. STAMPER, husband and wife, hereinafter  
4 called buyers,

W I T N E S S E T H:

6 That the sellers agree to sell to buyers and the buyers agree to buy from  
7 the sellers all of the following described real and personal property situate  
8 in Klamath County, Oregon, to-wit:

9 The South one-half (S½) of Lots 330 and 331 in Block 111 of MILLS ADDITION  
10 to the City of Klamath Falls, Oregon, EXCEPTING THEREFROM the Easterly 25  
11 feet of Lot 330 in Block 111 of MILLS ADDITION;

12 TOGETHER WITH all of the equipment, furnishings and fixtures now used by  
13 sellers in the operation of that certain ice cream and restaurant and  
14 and dairy products business known as "Dairy Queen" at 535 East Main Street,  
15 Klamath Falls, Klamath County, Oregon, which said property is more par-  
16 ticularly described on Exhibit "A" attached hereto and made a part hereof;

17 ALSO, TOGETHER WITH all of sellers' right, title and interest in and to  
18 the assumed business name of "Dairy Queen" and that certain agreement re-  
19 lating to Dairy Queen dated January 20, 1958, said assignment of franchise  
20 is made subject to all of the terms, provisions and conditions thereof,  
21 and buyers covenant to and with sellers that they will fully comply with  
22 the same and make all payments becoming due thereunder and save and hold  
23 sellers harmless therefrom.

24 SUBJECT TO: Personal property taxes which became a lien on January 1,  
25 1964, which said taxes were pro-rated by and between the parties based  
26 on the 1963 rate and buyers will assume payment of same when due;

27 at and for a total purchase price of \$35,000.00 payable as follows, to-wit:

28 (1) \$2,174.60 by buyers assigning note secured by mortgage on parcel of real  
29 property in Jackson County, Oregon, to sellers, the said note is escrowed for  
30 collection at Medford Branch of First National Bank of Oregon. That this assign-  
31 ment shall be with recourse, that is, buyers guarantee payment of said sum; that  
32 said note and mortgage are dated May 17, 1962, and George F. and Susan L.  
Perreard, husband and wife, are maker-mortgagors, and buyers herein are payee-  
mortgagees; and

(2) \$7,825.40 at the time of the execution of this agreement, receipt of which  
is hereby acknowledged; and

(3) \$25,000.00 with interest at the rate of 6% per annum from July 1, 1964, pay-  
able in installments of not less than \$175.00 per month inclusive of interest,  
the first installment to be paid on the 1st day of August, 1964, and a further

GANONG & GANONG  
ATTORNEYS AT LAW  
KLAMATH FALLS, ORE.

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1 installment on the 1<sup>st</sup> day of every month thereafter until the full balance and  
2 interest are paid.

3 All or any portion of said purchase price may be prepaid at any time without  
4 penalty.

I

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6 Buyers covenant and agree as follows: That they will make said payments  
7 promptly on the dates above named to the order of the sellers, or the survivor of  
8 them, at First Federal Savings and Loan Association of Klamath Falls; that they  
9 will keep all of said real and personal property insured for the full amount of  
10 their insurable value in companies approved by the sellers and with loss payable  
11 to the parties as their interests may appear. Said policies shall be held by the  
12 sellers until this agreement has been completely performed; that they will pay  
13 regularly and seasonably as the same shall become payable and before the same  
14 shall become delinquent all taxes, assessments, liens and incumbrances of every  
15 nature and kind, including Dairy Queen franchise fee; that they will not suffer  
16 or permit any of said property to become subject to any taxes, assessments, liens,  
17 charges or incumbrances whatsoever having precedence over the rights of sellers  
18 in and to said property.

II

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20 Sellers covenant and agree as follows: That said real property is free and  
21 clear of all liens and incumbrances and that said personal property is free and  
22 clear of all liens and incumbrances, except 1964 personal property taxes; that  
23 they have good right to sell said real and personal property to buyers, and that  
24 they will furnish buyers with their good and sufficient bulk sales affidavit,  
25 that they have no creditors whatsoever. Sellers covenant and agree to indemnify  
26 and hold buyers harmless with respect to any and all indebtedness of sellers.

III

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28 It is expressly understood and agreed that this is a conditional sales agree-  
29 ment and that full title to all of said real and personal property, including said  
30 assumed business name shall remain in sellers until said balance and interest  
31 are paid in full. It is further understood and agreed that any and all equip-  
32 ment, furnishings and fixtures which may at any time hereafter be placed upon

1 said premises by the buyers shall become subject to the lien of this agreement  
2 as further security to the sellers for the payment and performance of this agree-  
3 ment.

4 IV

5 It is expressly understood and agreed that upon the execution of this agree-  
6 ment sellers shall make and execute in favor of buyers a good and sufficient  
7 warranty deed conveying said premises free and clear of all liens and incumbrances  
8 and a good and sufficient bill of sale conveying said personal property free and  
9 clear of all liens and encumbrances, except those set forth above, and that  
10 buyers shall execute in favor of sellers their certificate of withdrawal of the  
11 assumed business name, Dairy Queen, and that said deed, bill of sale, termination  
12 of financing statement and certificate of withdrawal shall be placed in escrow  
13 with First Federal Savings and Loan Association of Klamath Falls, and the sellers  
14 and buyers shall enter into written escrow instructions with said escrow holder  
15 instructing it that when and if the buyers shall have paid said balance of said  
16 purchase price and interest in full, it shall deliver all of said instruments to  
17 said buyers, but if the buyers shall become delinquent in any installments or  
18 interest due under this agreement for more than 30 days said instruments are to  
19 be returned to sellers, or their order, upon written demand for same, thereby  
20 terminating this escrow,

21 V

22 The real and personal property taxes and the insurance currently in force  
23 and effect on the premises will be pro-rated by and between sellers and buyers  
24 as of July 1<sup>st</sup> 1964.

25 Buyers shall be entitled to possession of said real and personal property  
26 on or about July 1<sup>st</sup> 1964.

27 Sellers shall record their certificate of withdrawal of assumed business name  
28 of Dairy Queen forthwith upon transfer of possession of said property to buyers.

29 Escrow fees shall be deducted from the first payment made hereunder. The  
30 escrow holder may deduct costs of necessary revenue stamps from the final payment  
31 made hereunder to place on said deed based on a selling price of \$20,000<sup>00</sup>.

32 PROVIDED ALWAYS, that time and the full and prompt observance of and compliance

1 with all of the covenants and agreements herein contained are of the essence of  
2 this agreement, and if buyers shall fail, refuse or neglect for a period of 30  
3 days to pay any of said installments or any of said interest, promptly as the  
4 same becomes due, or shall fail to keep or perform any of the covenants and  
5 agreements herein contained, then all of the rights of buyers in and to said  
6 property and under this agreement shall, at the sellers' option, immediately and  
7 utterly cease and determine, and the property herein described shall revert to  
8 and re-vest in the sellers without any declaration of forfeiture or act of re-entry  
9 or without any other act by sellers to be done or performed and without any right  
10 of the buyers of reclamation or compensation for money paid or for improvements  
11 made on said property as fully, perfectly and absolutely as if this agreement  
12 had never been made, and all money theretofore paid to the sellers under this  
13 agreement shall thereupon be forfeited without process of law and shall be re-  
14 tained by and belong to the sellers as the accrued and reasonable rent of said  
15 property from this date to the time of such forfeiture and the liquidated damages  
16 to the sellers for the buyers' failure to complete this agreement, and in such  
17 case the escrow holder is instructed to deliver said deed, bill of sale, termina-  
18 tion of financing statement and certificate of withdrawal of assumed business  
19 name, or either of them, upon demand for same, without notice to buyers. In case  
20 suit or action is taken to enforce any provisions of this agreement the buyers  
21 agree to pay, in addition to the costs and disbursements provided by law, such  
22 sum as the Court may adjudge reasonable for sellers' attorney fees including any  
23 appeal.

24 PROVIDED, FURTHER, that the personal property herein sold is subject to terms  
25 and provisions of Uniform Commercial Code of the State of Oregon, and that all  
26 of the terms herein, the rights, duties and remedies of the parties shall be gov-  
27 erned by the laws of Oregon. That sellers' address is 2441 Orchard Way, Klamath  
28 Falls, Klamath County, Oregon. That buyers' address is 535 East Main St.,  
29 Klamath Falls, Klamath County, Oregon. That each demand, notice or other communi-  
30 cation shall be served or given by mail or telegram addressed to the party at  
31 their mailing address set forth herein, or by personal service upon the party.  
32 Reasonable notice, when notice is required, shall be five days. Buyers agree to

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1 join with sellers in executing and filing a financing statement as required by  
2 said Uniform Commercial Code to protect and continue sellers' security interest.  
3 IN WITNESS WHEREOF, the parties hereto have executed this agreement the day  
4 and year first hereinabove written.

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Hebert H. Greer (SEAL)  
Myrtle M. Greer (SEAL)  
Sellers  
L. J. Stamper (SEAL)  
Lillian M. Stamper (SEAL)  
Buyers

1 The following is list of equipment, furnishings and fixtures used by Herbert  
2 H. Imel and Myrtle M. Imel, husband and wife, in carrying on and conducting that  
3 certain ice cream and restaurant and dairy products business known as Dairy  
4 Queen at 535 East Main Street, Klamath Falls, Klamath County, Oregon, which said  
5 owners have sold to L. L. Stamper and Lillian M. Stamper, husband and wife:

- 6 1 Misty Machine and flavor kit
- 1 4 wheeled table
- 7 1 Topping pail and milk pump, -6 pumps,  
9 ladels, 15 jars
- 8 2 Electric window signs
- 1 6 Hole dip top machine, electric
- 9 1 Hot fudge pot
- 1 Stool
- 10 2 Duke ice cream machines
- 1 4 Hole deep freezer (narrow)
- 11 1 10 Hole deep freezer
- 1 6 Hole deep freezer
- 12 1 2-Gallon can holding box - 40°
- 1 Malt machine
- 13 1 5 Spindle shake machine
- 1 2 Spout root beer machine
- 14 1 Coke single machine
- 5 Wagner measure<sup>rite</sup> dispensers
- 15 2 Cone displays
- 1 Coke clock
- 16 1 Root beer clock
- 1 Kitchen clock
- 17 1 Cast iron grill
- 1 Hood Fan and Hood
- 18 ~~1 French Fryer, 2 basket~~
- 1 Coffee pot
- 19 1 Refrigerator, left hand door
- 1 6x6 foot walk-in and compressor unit
- 20 1 21 cubic foot, stand-up deep freeze
- 1 Electric hot water heater
- 21 1 Two compartment sink, stainless steel
- 2 Work tables
- 22 1 Water cooler
- 1 Steel desk
- 23 2 Scales
- 1 Dairy Queen electric sign
- 24 1 Sno-cone machine
- 1 Automatic gas heater
- 25 1 Fire extinguisher
- 2 Electric french fryers
- 26 Various kitchen utensils

*B.M. Barry*  
*U S Natl Bank*

EXHIBIT "A"

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 9th day of  
June A.D., 19 78 at 3:13 o'clock P.M., and duly recorded in Vol. M78,  
of Deeds on Page. 12352.

FEE \$10.00

WM. D. MILNE, County Clerk  
By Bernice G. G. G. G. Deputy