

THIS AGREEMENT, made as of the 31st day of December 19 72, by and between HENRY E. MCCOLLUM and BETTY J. MCCOLLUM, husband and wife,

called "Seller," and DONNEAL HYDE and ESTHER E. HYDE, husband and wife,

called "Buyer".

In construing this contract any party may be one person or more than one person, a corporation or other entity. If context requires, the singular pronoun shall mean and include the plural, the masculine, the feminine and the neuter, and generally all grammatical changes shall be made, assumed and implied to make provisions hereof apply equally to corporations, partnerships, individuals and others.

W I T N E S S E T H:

IT IS MUTUALLY UNDERSTOOD and AGREED by and between said parties as follows:

1. DESCRIPTION: For and in consideration of all terms, provisions, covenants and conditions (hereinafter designated "provisions") herein set out, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller the following described property:

The property described in Exhibit A attached hereto and made a part hereof as if fully written herein.

The personal property described in Exhibit B attached hereto and made a part hereof as if fully written, together with the good will of the business known as "Mac's Market" and the assumed business name.

Seller agrees to release their OLCC PB License so that Buyer may make application for same.

Said real property shall hereinafter be called "property" unless land without improvements is intended, then "premises". Said property includes the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

If any personal property is covered by this contract it shall hereinafter be designated "personal property".

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2. PURCHASE PRICE: The purchase price is \$45,000.00, payable as follows:

\$2,919.00 down, receipt of which is hereby acknowledged. (Said downpayment is composed of \$100.00 cash, and by Buyer assuming the obligation owing to Medford Neon Sign of \$1,363.00, and the obligation owing to Continent Refrigeration of \$1,456.00.)

The balance of \$42,081.00 in monthly installments of at least \$400.00 each, which includes interest at 6 per cent per annum on all deferred balances. Interest commences to accrue on December 31, 1972, and the installment payments are due and payable on or before the 1st day of each and every month, commencing February 1, 1973. However, for the payments due February 1, 1973, and March 1, 1973, Buyer shall have the option to pay interest only on these two payments.

Buyer has the right at any time in any amount over ten dollars to prepay and accelerate payment of the then balance owing, and without penalty as to interest. Any prepaid or accelerated payments shall be credited against next future installment payments.

3. SURVIVORSHIP: Following applies if there are two of Seller and they are husband and wife: In event of death of either Seller payments thereafter shall be made to order of the survivor, and the survivor acquires all rights of both hereunder.

4. POSSESSION: Possession shall be delivered to Buyer on or before January 1, 1973.

5. INSURANCE: Buyer shall cause all buildings now erected on said premises, and any replacements thereof, to be constantly insured in a company or companies satisfactory to Seller against loss or damage by fire, together with extended insurance coverage. Seller shall not unreasonably withhold consent as to the company or companies selected to issue such insurance.

Such insurance shall be in amounts at least equal to the balances owing hereunder, or to the full insurable value of said buildings, whichever is the lesser.

Buyer shall deliver to Seller immediately when issued originals or copies of such policies, together with receipts showing payment of premiums thereon.

When all sums owing hereunder have been paid in full, then any then current insurance policies, copies thereof and premium receipts so delivered shall be returned to Buyer on demand.

All policies so furnished shall include a loss payable clause in favor of Seller as its interests appear hereunder.

At option of Buyer, loss proceeds from such insurance may be used in repair or reconstruction, upon condition, however, that written notice of intention so to do shall be given to Seller within 30 days from date of such loss, and upon further condition that arrangements satisfactory to Seller are made within said time to assure Seller that said proceeds will be actually used and expended for said purposes only. Otherwise, said proceeds shall be applied as a credit on the purchase price.

As long as the contract herein mentioned is outstanding, the same shall include a first loss payable clause in favor of said other contract vendors, and second loss payable clause in favor of the Seller herein.

As long as the existing contract herein mentioned is outstanding, the immediately foregoing provisions concerning use of proceeds collected from insurance are subject to rights of the contract vendors in said contract.

6. TAXES: Buyer shall pay all taxes and municipal and other public liens and assessments which hereafter may be lawfully levied, imposed or shall accrue against said property, all before the same or any part thereof becomes past due.

However, taxes against said property for the current tax year shall be prorated between the parties as of January 1, 1973.

Buyer shall furnish to Seller, immediately when available, receipts showing payment of said taxes and municipal and other public liens and assessments.

7. MAINTENANCE AND IMPROVEMENTS: Buyer at its expense shall keep the buildings and other improvements on said premises, now or hereafter erected, and the yards, grounds and similar other improvements, in good condition and repair and shall not suffer or permit any waste or strip thereof or of said property otherwise.

8. LIENS: Buyer shall keep said property free of mechanics' and all other liens and save Seller harmless therefrom and reimburse Seller for all costs and attorney fees incurred by it in defending against any such liens.

9. ADVANCEMENTS: If Buyer fails to perform or pay any act or item required to be performed or paid by it hereunder, then Seller may do so, and any expense or payment so incurred or made by Seller shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to Seller for Buyer's breach of contract.

10. ATTORNEY FEES: In event of any suit, action or other proceeding instituted to foreclose this contract or to enforce any of the provisions hereof or on account of any provision hereof, then and in the same and on appeal the prevailing party shall recover from the other such sum as and for attorney fees, in addition to costs and disbursements provided by statute, as the court having jurisdiction of the matter shall deem reasonable. If either party is in default and the other party delivers this contract to an attorney for suit, action or other proceeding, or to otherwise enforce the nondefaulting party's rights hereunder, then the defaulting party shall pay the reasonable fees of the attorney to whom this contract was so delivered, even though no suit, action or other proceeding is filed.

11. TITLE: Seller warrants and covenants to and with Buyer that it is now owner in fee simple of said property free and clear of all encumbrances, excepting only encumbrances herein expressly stated, if any, and it will not create any encumbrances against the same.

12. WAIVER: Seller's failure at any time to require performance by Buyer of any of Buyer's obligations shall in no way affect Seller's right to enforce the same or otherwise to avail itself of any of its rights or remedies, nor shall any waiver by Seller of any breach of any provision be held to be a waiver of any succeeding breach of any such provision or as a waiver of the provision itself.

13. REPRESENTATIONS: Buyer agrees and warrants, as a part of the consideration for this sale to it, that it has inspected all said property on its own behalf and that in making this purchase and in executing this contract, it is not relying upon any representations, warranties, guarantees or covenants of Seller or any party acting for Seller with respect to the condition of said property, and Buyer explicitly waives any claim on that account. The parties hereto agree neither Seller nor any party acting for Seller has made any such representations, warranties, guarantees or covenants. This, however, does not detract from, limit or restrict Seller's representations, warranties, guarantees or covenants with respect to the title thereto.

14. CONVEYANCE AND ASSIGNMENT: All provisions of this contract shall bind and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties.

15. DEED: If and when Buyer has fully paid the purchase price and at the times specified and has strictly and literally performed all and singular the obligations herein on its part to be kept and performed according to the true intent and tenor thereof, Seller at its expense shall deliver unto Buyer, upon request, a good and sufficient deed of general warranty conveying said property in fee simple unto Buyer as grantee, its heirs and assigns (or, its successors and assigns, as the case may require), free and clear of all encumbrances, excepting the above-mentioned taxes and municipal and all other public liens to be paid by Buyer as herein provided and all liens and encumbrances created by Buyer, and permitted encumbrances herein expressly referred to, if any.

16. TITLE INSURANCE: By the time below mentioned, Seller shall furnish Buyer with a \$ 31,122.00 title insurance policy running in favor of Buyer issued by a reputable title insurance company doing business in Douglas County, Oregon, and insuring marketable title in and to said property free and clear of all encumbrances excepting the usual printed exceptions contained in such policies, the above-mentioned taxes and municipal and all other public liens to be paid by Buyer as herein provided, and all liens and encumbrances created by Buyer, and permitted encumbrances herein expressly referred to, if any.

Seller shall furnish said title insurance policy within 30 days from the date of this contract.

17. BREACH OR DEFAULT: In the event Buyer shall fail for more than thirty (30) successive days to make any installment payment under Paragraph 2 aforesaid, then, while such default continues, or if Buyer fails to keep any of the obligations herein on its part to be kept and performed, time of payment and strict performance being expressly declared to be of the essence of this contract, then Seller may, at its option:

21933

(a) Declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable, and then bring action at law for all or any portion of said purchase price without in any way forfeiting any security; or

(b) Strictly foreclose this contract by suit in equity. In any such case, all rights and interests created or then existing in favor of Buyer as against Seller hereunder shall utterly cease and determine and right to possession and all rights acquired by Buyer hereunder shall revert to and revest in Seller without any act of re-entry, or any other act of Seller to be performed and without any right of Buyer of return, reclamation or compensation for moneys paid on account of the purchase price as absolutely, fully and perfectly as if this contract and such payments had never been made; and all payments theretofore made are to be retained by and belong to Seller, and Seller shall have right immediately, or at any time thereafter, to enter into possession; or

(c) Pursue any other right or remedy at law, in equity or otherwise, no above right or remedy being exclusive, and each being cumulative, and the exercise of any one or more remedies shall not exclude or prevent Seller from at the same time, or at any other time, resorting to or exercising any other right or remedy on account of the same or any other breach or default.

In case an action at law for any portion of the purchase price, or a suit to foreclose this contract, or any other action, suit or other proceeding in pursuit of any other right or remedy is brought, then the court may, upon motion of the Seller, appoint a receiver to take immediate possession and collect the rents and profits arising during the pendency of such case and while any judgment or decree entered therein remains unsatisfied, and apply the same to the payment of the amount due Seller hereunder or as may be determined by any such court, first deducting all proper charges and expenses attending the execution of said trust.

18. ENTIRE AGREEMENT: This contract embodies the entire agreement of the parties with respect to the transaction herein set out, and there shall be no modification or alteration of the same unless it be in writing subscribed to by all parties hereto.

19. CONDEMNATION: Should the above-described premises, or any part thereof, be taken by condemnation, Seller is empowered to collect and receive all compensation which may be paid for any property taken, or for any damages to property not taken, and all condemnation moneys so received shall be applied, at Seller's election, to the reduction of the indebtedness secured hereby or to repair or restoration of any property so damaged, and any excess over the amount of the indebtedness shall be delivered to Buyer or his order.

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Professional Center
Roseburg, Oregon

20. If any personal property is covered by this contract, then the following apply, as well as other applicable provisions:

- (a) Reference in the following paragraphs to "property" includes both the real property and personal property covered by this contract: 6, 8 and 13.
- (b) Seller warrants and covenants to and with Buyer that it is the owner of said personal property free and clear of all encumbrances, excepting only encumbrances herein expressly stated, if any, and it will not create any encumbrances against the same.
- (c) Duty to carry insurance, set out in Paragraph 5 above, shall include said personal property, and all subsequent references to insurance matters in said paragraph shall be so construed.
- (d) Buyer may sell or otherwise dispose of personal property items, if they become worn out or obsolete, provided the items are immediately replaced with other similar items, of equal or greater value, paid for in full. Replacement items shall then constitute part of the personal property covered hereby, the same as if originally included herein.

If any inventory held by Buyer is covered by this contract, Buyer may sell or process the same in the regular course of Buyer's business as long as Buyer is not in default hereunder and provided Buyer at all times maintains such inventory at the place where it is now held and at least equal in quantity and quality to that covered by this contract. The replacement inventory shall also be covered hereby.

- (e) Buyer shall at its expense keep said personal property in good condition and repair.
- (f) Duties of Buyer with respect to personal property throughout this contract apply only as long as Seller retains legal title thereto.
- (g) Buyers shall not remove said personal property from said premises

- (h) ~~After the principal balance of the purchase price has been reduced to \$0.00, unless otherwise immediately and automatically thereafter title in and to the same shall automatically vest in the Buyer from the Seller. Until such time legal title in and to the same shall remain in the Seller as conditional sales contract vendor, per as referred herein~~

(h) ~~After the principal balance of the purchase price has been reduced to \$0.00, the title shall immediately and automatically thereafter vest in the Buyer from the Seller, and the same shall remain in the Seller as conditional sales contract until the same is secured~~

Page 7 SALES CONTRACT
LKW 372

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Roseburg, Oregon

21935

21. It is understood and agreed between Seller and Buyer that the real property described in this contract has been valued at \$31,122.00, and the personal property referred to in this contract has been valued at \$13,878.00.

22. With reference to Parcel 1 of the real property described in this contract, said property is presently being purchased by Buyer from TOMMY FORREST COBLE and ULDEAN COBLE under land sale contract. Buyer shall continue to make the payments on said contract and shall perform all the terms and conditions of said contract and hold Seller harmless thereon.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year herein first above written.

Henry E. McCollum
Henry E. McCollum

Betty J. McCollum
Betty J. McCollum

SELLER

Donneal Hyde
Donneal Hyde

Esther E. Hyde
Esther E. Hyde

BUYER

Page 8 SALES CONTRACT
LKW 1071

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Roseburg, Oregon

The following described real property in Klamath County, Oregon: **21936**

PARCEL 1:

Beginning at a point on the Easterly right-of-way line of the Dalles-California Highway, which point bears South along the Section line, 1667.8 feet, and East, 491.6 feet from the Section corner common to Sections 17, 18, 19 and 20, Township 28 South, Range 8 East of the Willamette Meridian; thence South 16° 53' 30" West, along the Easterly right-of-way line of said highway, 100 feet; thence South 73° 06' 30" East 150 feet; thence North 16° 53' 30" East parallel to the highway, 100 feet; thence North 73° 06' 30" West, 150 feet to the point of beginning; being a portion of the W 1/2 NW 1/4 of Section 20, Township 28 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2:

The North one-half of the following described real property, to wit:

Beginning at a point on the Southeasterly right-of-way boundary of the Dalles-California Highway in the SW 1/4 NW 1/4 of Section 20, Township 28 South, Range 8 East of the Willamette Meridian; which point of beginning is North, 940.3 feet; thence East 482.9 feet; and thence South 16° 55' West 70.1 feet from the one-quarter corner common to Sections 19 and 20 in said Township and Range; thence South 16° 55' West along said right-of-way boundary a distance of 50 feet; thence South 73° 05' East 150 feet; thence North 16° 55' East 50 feet; thence North 73° 05' West 150 feet, more or less, to the point of beginning, being a portion of the SW 1/4 NW 1/4 of Section 20, Township 28 South, Range 8 East of the Willamette Meridian.

Subject to:

1. An easement created by instrument, including the terms and provisions thereof, dated November 11, 1966, recorded November 29, 1966 in Book M-66 at page 12044, Microfilm Records, in favor of Crown Zellerbach Corporation, a Nevada corporation for right of way over subject property.
2. An easement created by instrument, including the terms and provisions thereof, dated November 18, 1970, recorded April 2, 1971 in Book M-71 at page 2756, Microfilm Records, in favor of Beaver State Telephone Company for right of way over subject property.
3. Reservations, restrictions and conditions as set forth in deed from TOMMY FORREST COBLE and ULDEAN COBLE, husband and wife, to HENRY E. MCCOLLUM and BETTY J. MCCOLLUM dated July 20, 1971, recorded in Volume M-71, page 7793, Book of Records, Klamath County, Oregon, Instrument No. 54675.

21937

Equipment:

- ✓ D-2 Caterpillar Tractor
- ✓ 2 Tokheim Gas Pumps
- ✓ Air Compressor
- ✓ Toledo Scales
- ✓ Oak Candy Case
- ✓ Carrier Air Conditioner
- ✓ Heavy Duty Canister Vacuum Cleaner
- ✓ Electrolux Floor Polisher
- ✓ Frigidaire Ice Machine
- ✓ Tyler Walk-in
- ✓ Sears Upright Deep-Freeze
- ✓ Sears Chest Deep-Freeze
- ✓ Tyler Reach-in
- ✓ Tyler Dairy Case
- ✓ Schaefer Ice Cream Freezer
- ✓ Electric Circulating Fan 20
- ✓ Electric Exhaust Fan
- ✓ Victor Automatic Calculator
- ✓ McCaskey Cash Register
- ✓ File Cabinet (4-drawer)
- ✓ Royal Electress Typewriter
- ✓ Fire Check Protector
- ✓ Keep/Safe Safe
- ✓ Continent Chest Freezer } *new type*
- ✓ Medford Neon Sign

Mac's Market
State Rte 807/124
Chemult, Or. 97731

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record ~~XXXXXX~~

this 14th day of September A. D. 1979 at 2:15 clock P.M., and

fully recorded in Vol. M79, of Deeds on Page 21928

Wm D. MILNE, County Clk

By Bernice J. Ketch

Fee \$31.50