

EXECUTORY CONTRACT OF SALE OF REAL AND PERSONAL PROPERTY

THIS CONTRACT, made and entered into this 14 day of November, 1972, between ELDON D. HELLER and J. COLLEENE HELLER, husband and wife, hereinafter called the "SELLERS", and CARL E. LEHMAN and CHERYL D. LEHMAN, husband and wife, hereinafter called the "Purchasers",

W I T N E S S E T H:

That the Sellers agree to sell to the Purchasers, and the Purchasers agree to purchase from the Sellers the real estate located in SKAMANIA County, Washington, described in EXHIBIT "A" attached hereto and by reference made a part hereof, together with the personal property located in the "RIVERSIDE GROCERY" at Rt. 2, Box 288, Washougal, Washington in Skamania County, Washington, described in EXHIBIT "B", attached hereto and by reference made a part hereof.

The terms and conditions of this contract are as follows:

The purchase price for the real and personal property described in Exhibits "A" and "B" attached hereto is the sum of Eighty three thousand, six hundred and no/100 (\$83,600.00) Dollars, of which the sum of Eighteen thousand, six hundred and no/100 (\$18,600.00) Dollars has been paid, receipt of which is hereby acknowledged, and the balance of the purchase price, to-wit: \$65,000.00, together with interest on deferred balances at the rate of 7½% per annum commencing November 1, 1972 shall be paid as follows: The sum of not less than \$450.00, including interest on December 1, 1972, and a like sum of not less than \$450.00, including interest on the first day of each month thereafter until the purchase price and interest has been paid in full, it being understood that out of the payments made each month first shall be deducted the interest due and owing and the balance applied to principal. Purchasers shall be entitled to make larger additional payments at any time; provided, however, that not more than 29% of the purchase price shall be paid during the calendar year of 1972. It is further specifically agreed between the parties that the balance

of principal and interest shall be paid in any event on or before fifteen (15) years from the date of execution of this contract.

In connection with the purchase of the above described real and personal property it is agreed between the parties that the purchase price is computed on the following basis:

Real Estate	\$ 65,000.00
Personal property, fixtures and equipment located in said building	\$ 18,600.00

It is agreed between the parties that the title to the fixtures and equipment being sold herein shall remain in the sellers until the unpaid principal balance of the purchase price has been reduced to \$50,000.00, or less, at which time the said fixtures and equipment shall be conveyed to the Purchasers. Until said fixtures and equipment are conveyed to the Purchasers, said personal property shall not be removed from its present location and Purchasers shall keep said personal property in a reasonable state of repair, but shall have the right to sell, dispose of or trade any of said personal property so long as it is replaced by property of equal value (and is unencumbered) and said replacement shall be considered subject to the terms of this agreement.

It is understood between the parties hereto that said real and personal property is subject to a mortgage and a security agreement in favor of Fred Tietz in the approximate sum of \$31,000.00, and the Sellers covenant and agree to make the payments on said mortgage and security agreement as the same become due and payable and not permit the same to become in default or delinquent; and in the event Sellers fail, refuse or neglect to make said payments, the Purchaser may apply the payments due under this Contract to said mortgage and security agreement payments, and receive credit therefor upon the monthly payments to be paid under the terms of this Contract.

The Purchasers agree, until the purchase price is fully paid, to keep the buildings now and hereafter placed on said real estate

insured to the actual cash value thereof against loss or damage by both fire and windstorm in a company acceptable to the Sellers and for the Sellers' benefit, as their interest may appear, and further agree to keep the personal property insured for the sum of not less than \$ 10,000.00 for the Sellers' benefit as their interest may appear; and to pay all premiums for said insurance and to deliver all policies and renewals thereof to the Sellers.

The Purchasers agree that full inspection of said real estate and said personal property has been made, and that neither the Sellers nor their assigns shall be held to any covenant respecting the condition of said personal property or of any improvements on said real estate, nor shall Purchasers or Sellers or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract.

The purchasers assume all hazards of damage to or destruction of any of the personal property being sold under the terms of this contract.

The purchasers assume all hazards of damage to or destruction of any improvements now on said real estate or hereafter placed thereon, and of the taking of said real estate or any part thereof for public use; and agree that no such damage, destruction or taking shall constitute a failure of consideration. In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to Sellers and applied as payment on the purchase price herein unless Sellers elect to allow the Purchasers to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking. In case of damage or destruction from a peril insured against, the proceeds of such insurance remaining after payment of

the reasonable expense of procuring the same shall be devoted to the restoration or rebuilding of such improvements within a reasonable time, unless Purchasers elect that said proceeds shall be paid to the Sellers for application on the purchase price herein.

The sellers have delivered, or agree to deliver within fifteen days after date of closing, a purchasers' policy of title insurance in standard form, insuring the Purchasers to the full amount of said purchase price against loss or damage by reason of defect in Sellers' title to said real estate as of the date of closing.

The Sellers agree, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to the Purchasers a statutory warranty deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the Sellers, and subject to easements and restrictions of record.

Unless a different date is provided for herein, the Purchasers shall be entitled to possession of said real estate on date of closing and to retain possession so long as they are not in default hereunder. The Purchasers covenant to keep the buildings and other improvements on said real estate in good repair and not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The Purchasers covenant to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date Purchasers are entitled to possession.

In case the Purchasers fail to make any payment herein provided or to maintain insurance, as herein required, the Sellers may make such payment or effect such insurance, and any amounts so paid by Sellers, together with interest at the rate of 10% per annum thereon from date of payment until repaid, shall be repayable by the Purchasers



on Sellers' demand, all without prejudice to any other right the Sellers might have by reason of such default.

Time is of the essence of this contract, and it is agreed that in case the Purchasers shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the Sellers may elect to declare all the Purchasers' rights hereunder terminated, and, upon their doing so, all payments made by the Purchasers hereunder and all improvements placed upon the real estate shall be forfeited to the Sellers as liquidated damages, and the Sellers shall have the right to re-enter and take possession of the real estate, together with the personal property being sold herein, and no waiver by Sellers of any default on the part of the Purchasers shall be construed as a waiver of any subsequent default. Service upon the Purchasers of all demands, notices or other papers with respect to forfeiture and termination of Purchasers' rights may be made by United States Mail, postage pre-paid, return receipt requested, directed to the Purchasers at their address last known to the Sellers.

Upon Sellers' election to bring suit to enforce any covenant of this contract, including suit to collect any payment required hereunder, Purchasers agree to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, which sums shall be included in any judgment or decree entered in such suit.

If the Sellers shall bring suit to procure an adjudication of the termination of Purchasers' rights hereunder, and judgment is so entered, the Purchasers agree to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of searching records to determine the condition of title at the date such suit is commenced, which sums shall be included in any judgment or decree entered in such suit.

It is further agreed by the parties hereto that as long as

this contract is not in default Sellers will not enter into a competing business with that being sold to Purchasers in Skamania County, Washington; provided, however, that if said contract is prepaid, then in that event Sellers will not enter into a competing business with that being sold to Purchasers in Skamania County, Washington until after October 29, 1980. Provided further that if default is made in the terms of said contract and the property is repossessed by the Sellers, this non-competitive provision shall not apply.

As referred to in this contract, "date of closing" shall be November 1, 1972.

The Purchasers assume and agree to pay before delinquency all taxes and assessments that may as between Seller and Purchasers hereafter become a lien on said real estate and/or personal property.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

1674

No. \_\_\_\_\_  
TRANSACTION EXCISE TAX

NOV 16 1972

Amount Paid \$5.00  
Michael D. Lehman  
Skamania County Treasurer

By \_\_\_\_\_

Elton D. Heller  
J. Colleen Heller  
Sellers  
Carl E. Lehman  
Cheryl D. Lehman  
Purchasers

STATE OF WASHINGTON )

COUNTY OF CLARK )

:ss

THIS IS TO CERTIFY that before me, the undersigned Notary Public, on this 14 day of November, 1972, personally appeared Elton D. Heller and J. Colleen Heller, husband and wife, and Carl E. Lehman and Cheryl D. Lehman, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed the same as their own free and voluntary acts and deeds, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and date in this Certificate first above written.

[Signature]  
Notary Public in and for the State of Washington, residing at Vancouver.

A tract of land located in Section 6, Township 1 North, Range 5 E. W. M., and in Section 31, Township 2 North, Range 5 E. W. M., described as follows:

Beginning at a point which is an iron pipe in the center line of a 30 foot road, said pipe being 198.4 feet south and 159 feet west of the section corner common to Sections 31 and 32, Township 2 North, Range 5 E. W. M., and Sections 5 and 6, Township 1 North, Range 5 E. W. M.; thence south 02° east 351.9 feet to an iron pipe on the river bank; thence following the meanderings of the Washougal River north 31° 22' west 344 feet to a point; thence north 42° 05' west 192 feet to a point; thence north 51° 25' west 106.1 feet

to a point; thence north 64° 59' west 174 feet to a point; thence south 67° 54' west 160.1 feet to a point in the center line of the bridge over the Washougal River; thence following the center line of the highway north 08° 31' east 137.8 feet to a point in the road intersection; thence following the center line of the county road north 48° 05' east 389.2 feet to an iron pipe at the intersection of a 30 foot road; thence following the center line of said 30 foot road south 66° 24' east 132.1 feet to a point; thence south 40° 41' east 171.7 feet to a point; thence south 05° 17' east 200.2 feet to a point; thence south 34° 42' east 216.4 feet to the point of beginning;

EXCEPT that portion thereof described as follows: Beginning at a point marked by an iron pipe which was formerly the center line of a 30 foot road, said pipe being 198.4 feet south and 159 feet west of the section corner common to Sections 31 and 32, Township 2 North, Range 5 E. W. M., and Sections 5 and 6, Township 1 North, Range 5 E. W. M.; thence south 02° 00' east 351.9 feet to an iron pipe on the river bank; thence following the meanderings of the Washougal River downstream north 31° 22' west 344.0 feet, to a point; thence north 42° 05' west 192.0 feet to a point; thence north 51° 25' west 106.1 feet to a point; thence north 64° 59' west 174.0 feet to a point; thence south 67° 54' west 160.1 feet to an iron pipe; thence departing from meanderings of said river north 48° 54' east 260.2 feet to an iron pipe; thence north 46° 45' east 185.0 feet to an iron pipe in the center of a 30 foot used roadway; thence following the center line of said road south 66° 24' east 134.1 feet to an iron pipe; thence south 40° 41' east 171.7 feet to an iron pipe; thence departing from said roadway south 05° 17' east 200.2 feet to an iron pipe; thence south 34° 42' east 216.4 feet to the point of beginning.

Reservations and rights of way for public roads over and across the real estate under search; and reservation of a private roadway as described in deed dated May 16, 1952, and recorded August 19, 1952, at page 384 of Book 35 of Deeds, Records of Skamania County, Washington, by which Fritz W. Tietz and Velma I. Tietz, husband and wife, acquired title to the real estate under search and other property, as follows:

"... said 30 foot road herein described is to be held and used for road purposes for the common use of the property herein described and adjacent thereto."

One National Cash Register # S 152817K-452  
 One Burroughs Adding Machine # B 31084  
 One 8' Super Cold Meat Case and Compressor # D 6597  
 One Scale 15 lb. capacity # 509487  
 One Koldmaster Weber Cabinet - 8 ft. # IR 22484  
 One Koldmaster Weber Cabinet - 8 ft. # IR 22518  
 One Perfectcold Cabinet Cooler # 5655  
 One 9 ft. Hussman Dairy Cooler # 2/N A 460013  
 One 8 ft. Supercold Vegetable Case # 1686  
 One 4 ft. Coca Cola Cooler # 075641909  
 One U. S. Slicing Machine # 520 HC 867  
 One Tokheim Dual Product Gas Pump # S/N 4 -34830  
 One McCaskey Safe # 284127  
 One Air Compressor to Tank  
 Islands and Shelves

(All above Freezer units are self-contained)

One (1) Fountain Freezer  
 One Ice Maker (Nice Wonger)  
 One Taylor Ice Cream Machine # 74711  
 One Raytheon Oven # 2844  
 One Grill # 1532361  
 One Chicken Fryer # 327621  
 One French Fryer -Star Mite # 1102234

Misc. shelving; tables, chairs, and equipment