

AFTER RECORDING RETURN TO  
L. EUGENE HANSON  
ATTORNEY AT LAW  
P. O. BOX 417  
WHITE SALMON, WA 98672

BOOK 109 PAGE 424

105134

CONTRACT FOR SALE OF BUSINESS, REAL ESTATE, EQUIPMENT  
AND INVENTORY AND SECURITY AGREEMENT

I. SPECIFIC TERMS

Dated: April 20 1988

1. SELLER AND SECURED PARTY, TOWN AND COUNTRY RESTAURANT AND COFFEE SHOP, INC., a Washington corporation, Box 1214, White Salmon, Washington 98672, by and through its authorized officers agrees to sell to PURCHASER AND DEBTOR, DARLENE RAE MILLS, as her separate property, Box 783, Carson, Washington 98610, and Purchaser agrees to buy from Seller, the following real and personal property in Skamania County, Washington:

Lot 1, Block 6, RIVERVIEW ADDITION TO THE TOWN OF STEVENSON, according the recorded plat in Book A of Plats, Page 21 in the County of Skamania County, Washington.

ALSO a tract of land in Section 36, Township 3 North, Range 7 East, W. M., adjacent to Lot 1 of the said Block 6, described as follows:

Beginning at the northeast corner of the said Lot 1; thence North 55° 30' East 40 feet; thence South 34° 30' East 118 feet; thence South 55° 30' West 40 feet to the Southeast corner of Lot 1 of the said Block 6; thence North 34° 30' West 118 feet to the point of beginning.

SUBJECT TO Easements as recorded under Auditor's File Numbers 39285 and 84119.

TOGETHER WITH all of the restaurant equipment and appliances constituting the business fixtures of the business heretofore conducted on said premises by the Seller under the firm name of "Dari-Freeze Drive In and Restaurant" as described on Exhibit "A" attached hereto.

2. PURCHASE PRICE: The aggregate purchase price to be paid by Purchaser for the assets, properties and business of Seller shall be ONE HUNDRED FORTY-FIVE THOUSAND Dollars (\$145,000.00), allocable as follows:

Real Property	\$ 96,000.00
Fixtures and Equipment	22,000.00
Inventory and Supplies	2,000.00
Non-Competition Covenant	25,000.00
	<u>\$145,000.00</u>

3. PAYMENT: The purchase price shall be payable as follows: FIVE THOUSAND Dollars (\$5,000.00) in cash upon execution hereof, and the balance as follows:

ONE THOUSAND TWO HUNDRED EIGHTY-TWO and 21/100 Dollars (\$1,282.21), or more at Purchaser's option, commencing the 1st day of May, 1988, and continuing monthly thereafter until the entire outstanding balance of the purchase price shall have been paid in full. The outstanding balance of the purchase price shall at all times bear interest at the rate of nine and one-quarter per cent (9 1/4%) per annum from the 1st day of April, 1988. In addition, Purchaser shall pay the sum of FIVE THOUSAND DOLLARS (\$5,000.00), or more at Purchaser's option, on or before the 1st day of March and September of each year of this contract, commencing September 1, 1988, until the purchase price and interest shall have been paid in full.

All payments shall be made to the Seller at Riverview Savings Bank, Stevenson, WA Branch, or at such other place as the Seller may direct in writing.

FILED FOR RECORD  
SKAMANIA CO. WASH  
BY MT. ADAMS TITLE

MAY 12 4 01 PM '88  
E. McFarland  
AUDITOR  
GARY M. OLSON

11935  
REAL ESTATE EXCISE TAX  
MAY 12 1988  
PAID 1526.40  
J. D. DePue  
SKAMANIA COUNTY TREASURER

Registered	<u>F</u>
Indexed, Dir	<u>S</u>
Indirect	<u>S</u>
Filed	
Mailed	

Glenda J. Kimmel, Skamania County Assessor  
By: Parcel # 5-36-36-3-3-500

#### 4. TAXES AND COSTS OF SALE:

a) The excise taxes payable to Skamania County as a result of this transfer shall be divided equally between Seller and Purchaser.

b) Personal property taxes in the amount of \$228.65 for the year 1987 payable in April, 1988, shall be paid in full at closing by Seller. Personal property taxes for 1988, payable in 1989 shall be paid in full by Purchaser when required by Skamania County.

c) Real Property taxes for the year 1988 shall be allocated at closing one-fourth (1/4) to Seller and three-fourths (3/4) to Purchaser.

d) Sales taxes imposed as a result of this sale shall be the responsibility of and paid by Purchaser.

e) Costs of recording this instrument shall be the responsibility of the Purchaser; but costs of recording or filing any security instruments or other mortgage instruments shall be the responsibility of the Seller as well as for a title report on Oregon real property being pledged herein by Purchaser to Seller as additional security.

f) Any other costs incurred, such as title insurance document preparation fees and the like shall be shared equally between Seller and Purchaser.

5. SECURITY AGREEMENT: The Purchaser (Debtor) hereby grants unto the Seller (Secured Party) a security interest in and to all of the fixtures and equipment, supplies and inventory, together with the increases and proceeds thereof, until this contract shall have been fully paid. Purchaser covenants and agrees to execute any and all documents, including financing statements, the Seller might require to perfect such security interest. Purchaser shall not remove any of the secured property from the State of Washington, sell or lease the same, or intentionally reduce the same in quantity, quality or value.

Upon any default by Purchaser of this contract, Seller shall have all the usual remedies of a Secured Party under the State of Washington's Commercial Code, and no course of dealing between the parties subsequent hereto shall be deemed a waiver of Seller's remedies unless the same shall be agreed to in writing.

6. ADDITIONAL SECURITY: Purchaser does hereby grant to Seller a First Mortgage interest in and to certain Real Property located at LaPine, Oregon, and described as:

The West one-half (1/2) of the northeast quarter of the southeast quarter of the southwest quarter of the southwest quarter of Section Four (4), Township Twenty-two (22), Range Ten (10), less access road, all as recorded in Volume 34, at page 536, of the records of Deschutes County, State of Oregon.

Purchaser agrees to execute appropriate additional documentation in a form acceptable to Seller to evidence Seller's interest hereby granted. Any default under this contract by Purchaser shall also be a default under this paragraph.

7. COVENANT NOT TO COMPETE: Seller and its officers agree, for the consideration stated, with Purchaser not to own, manage, operate or control or otherwise participate in any restaurant business for a period of five (5) years from the date hereof within a radius of twenty (20) miles from the City of Stevenson, Washington. In addition to any other remedy at law Purchaser may have for enforcement of this covenant, or for damages as a consequence of breach by Seller, Purchaser shall be entitled to injunctive relief.

8. BULK TRANSFER PROVISIONS: The parties acknowledge that this sale is subject to the provisions of RCW Chapter 62A.6 et. seq., but that no notice provided for therein are to be provided by Seller. In lieu thereof, Seller



promises to pay any and all business accounts incurred by Seller prior to the effective date herein which might become a liability of Purchaser as a result of Seller's business activities heretofore in the business herein conveyed. Seller shall cooperate with Purchaser in the orderly transfer of any supplies accounts to Purchaser.

9. ACCOUNTS, CASH AND UTILITIES: As of the effective date herein, all business accounts payable and receivable shall be the property and responsibility of the Seller, and all utilities and telephone charges due shall be paid by Seller. From and after the effective date hereof all business purchases, utility charges or other obligations incurred for the conduct of this business shall be the responsibility of the Purchaser. All cash upon the premises at the date of transfer of this business shall be the property of the Seller.

10. LICENSES: It shall be the responsibility and duty of the Purchaser to obtain all necessary licenses or permits to continue to operate the conveyed business. No pro-ration of any costs attendant thereto shall be made between Seller and Purchaser.

11. WARRANTIES: ALL PERSONAL PROPERTY AND EQUIPMENT OR FIXTURES PURCHASED HEREUNDER IS SOLD "AS IS", AFTER ADEQUATE OPPORTUNITY FOR PURCHASER TO INSPECT, AND SELLER SHALL BE HELD TO NO REPRESENTATION OR WARRANTY CONCERNING THE FITNESS OF ANY SUCH ASSET FOR ANY PURPOSE, MERCHANTABILITY, NATURE, VOLUME, QUANTITY, QUALITY, USE OR PROFITABILITY OF THE BUSINESS.

12. UNDERLYING CONTRACT: Purchaser acknowledges that the premises herein are subject to a prior contract of sale between Seller and SAMUEL P. WHITE and CARRIE A. WHITE, husband and wife, now solely owned by SAMUEL P. WHITE. Seller covenants and agrees to fully and properly fulfill the terms and conditions of that contract, and to obtain the consent required thereunder to enter into this contract.

## II. GENERAL TERMS

1. AGREEMENT OF SALE. The Seller agrees to sell and the Purchaser agrees to purchase all that certain Real Property described in this contract, subject to any of the Prior Encumbrances listed which are not required to be discharged by the Seller; and, to any rights, titles, estates, leases, encumbrances and other interest suffered or created by the Purchaser, all for the considerations and subject to the terms, covenants, and conditions herein contained.

2. PURCHASE PRICE. The Purchaser agrees to pay the Purchase Price to the order of the Seller in the manner set forth in the Specific Terms. The deferred portion of the Purchase Price which the Purchaser is to pay to the Seller shall be paid in the Installment Amounts, commencing on the First Installment Date and continuing on the same day of each Installment Period thereafter until the Final Payment Date, at which time all outstanding principal, together with accrued and unpaid interest thereon, shall be due and payable. Each payment of the Installment Amounts shall be first applied against the costs and expenses for which the Purchaser is then liable hereunder, secondly against interest, and thirdly against the principal then due to the Seller. Interest shall continue to accrue until the Seller receives all of the principal. At any time during the term of this contract, the Seller or the Purchaser shall have the right to require that all subsequent payments of Installment Amounts and sums for any tax or insurance reserve accounts be made through an escrow or collection account, the costs of which shall be borne by the requesting party unless otherwise agreed.

3. PRIOR ENCUMBRANCES. If this contract is being executed subject to any Prior Encumbrances the Seller hereby represents to the Purchaser that the execution, delivery and recordation of this contract will not cause any Prior Encumbrance to become in default or accelerated or the interest rate thereon to be adjusted above the Interest Rate stated therefor in the Specific Terms.

hereof. The Purchaser agrees with the Seller to comply with all of the terms of the Prior Encumbrances, including such obligations as may be in addition to those contained in or which may otherwise limit its rights under this contract, and the Purchaser hereby agrees to defend and indemnify the Seller from and against all losses, claims, demands and allegations arising as a result of the Purchaser's failure to comply with the Prior Encumbrances. In the event either of the parties hereto gives or receives a written notice to or from the holder of a Prior Encumbrance, it will promptly transmit a copy of such notice to the other. The Specific Terms of this contract indicate the person responsible for tendering the amounts due to the holders of the Prior Encumbrances. So long as the Purchaser is in no manner in default hereunder, the Seller shall make or cause to be made all of the payments of principal, interest and any reserve deposits required under the prior encumbrances as they become due and in accordance with their respective payment terms. The Purchaser shall not attempt to make any payment directly to the holder of any prior encumbrance or to in any way modify the terms thereof prior to the satisfaction of that portion of the indebtedness evidenced hereby which is to be retained by the Seller; provided, however, if the Seller fails to make any payment when due under any prior encumbrance the Purchaser may, upon first giving the Seller fifteen (15) days' written notice of its intent to do so and if such failure is not rectified within that period, pay the delinquent installment, and any penalties, late charges or additional interest due thereon and such other costs that are required by the holder of such prior encumbrance to cure such default, directly to the holder of the prior encumbrance in default and deduct from the Installment Amounts next due under this contract the amounts so expended, together with interest thereon at the Default Rate from the date of such payment to the date the Purchaser is reimbursed or the due date of the sum against which such offset is taken. Said notice period may be reduced if necessary to avoid the exercise of any remedy by the holder of such prior encumbrance. In the event the Seller fails to make such payments on three or more occasions, the Purchaser shall have the right to make all ensuing payments due under any of the prior encumbrances directly to the holder thereof and to deduct the same from the next Installment Amounts due under this contract by the amounts so paid. The Seller agrees to indemnify the Purchaser from and against all costs and expenses, including attorneys' fees, which are reasonably incurred by the Purchaser as a result of any failure of the Seller to perform its obligations under this paragraph.

4. PREPAYMENTS. If the prepayment is permitted by all Prior Encumbrances, or if the holders of all the Prior Encumbrances consent thereto, the Purchaser may prepay the entire amount remaining due hereunder when that portion of the prepayment which is due to the Seller is accompanied by all interest then due to the Seller and any Purchase Price Prepayment Premium.

5. RETENTION OF TITLE AND SECURITY. Except as otherwise provided herein, the Seller's title to the Property and any substitutions hereof shall remain in the Seller until the Purchaser is entitled to receive delivery of the Seller's deed. In addition thereto, the Purchaser hereby grants to the Seller a security interest in all condemnation awards and insurance proceeds relating to the Property and which hereafter become payable and all of the rights, titles and interests in the Personal Property conveyed by this contract and subsequently acquired by Purchaser in substitution thereof as security for the performance of the Purchaser's obligations herein, and the Purchaser hereby assigns to the Seller all rents and security deposits derived from or relating to the Property and, except for the initial partial month's and the last month's rent, covenants not to collect any rents which are attributable to more than one month of the unexpired lease term. The Purchaser agrees to deliver to the Seller such further assurances and UCC financing statements and statements of continuation which the Seller requests to further evidence, perfect or confirm its rights under this agreement. The Purchaser agrees with the Seller that it shall comply with the terms of all leases of the Property, and shall, upon written request, promptly notify the Seller of any alleged defaults therein by the Purchaser or any tenant. After



all sums evidenced by this contract due to the Seller have been fully paid, the Seller shall deliver its fulfillment deed and bill of sale to the Purchaser in the form and subject to the Title Exceptions referred to in the Specific Terms hereof, and any Prior Encumbrances for which the Purchaser is then responsible. In the event any escrow account is established for this contract, said deed and bill of sale shall be executed and placed with the escrow agent promptly following the opening of said account with instructions to deliver them to the Purchaser when entitled thereto.

6. POSSESSION. From and after the date of this contract, the Purchaser may enter upon and take possession of the Property and, irrespective of the assignments and security interests granted in this contract, enjoy the use, rents (to the extent permitted to be collected herein), issues and profits thereof so long as such rights have not been affected by the exercise of any remedy of the Seller.

7. TAXES AND ASSESSMENTS. In addition to the payments hereinabove provided for, and except as otherwise discharged through any reserve account, the Purchaser shall pay before delinquency all real and personal property taxes, all general and special assessments and all other charges of whatsoever kind or nature levied or assessed by any lawful authority upon or against the Property or the use thereof to the extent the same or any installments thereof are attributable to the period following the date of this contract. The prorated portion of said taxes, assessments and charges which are attributable to any period prior to the date of this contract, excluding taxes for such period assessed because of the reclassification of the use of the Property, shall be paid before delinquency by the Seller. Said period shall be determined by reference to the year in which the taxes, assessments and charges are required to be paid. If the Purchaser fails to so pay Real Property taxes or assessments and such failure is not rectified within fifteen (15) days following Seller's written demand to do so, and if such failure occurs two (2) or more times during the term of this contract, the Seller may, for the remaining term of this contract, require the Purchaser to deposit with each Installment Amount an amount reasonably estimated by the Seller to be necessary to discharge the Real property taxes and assessments next due, said estimates to be adjusted by the Seller to reflect the actual amount of such liabilities each time the Real Property is reassessed and a copy of such reassessment is given to the Seller. The amounts so paid which have not been applied against such liabilities shall be returned to the Purchaser with the delivery of the Seller's deed to the Purchaser. The Seller shall not be liable for interest on said deposits. If not retained in an escrow or collection account, said funds shall be maintained by the Seller in a segregated account and expended for no other purpose, with interest earned thereon, if any, being added to the sums so held; provided, however, this account may be commingled with any insurance reserve account under this contract. The provisions of this paragraph to the contrary notwithstanding, either party shall have the right to contest in good faith any tax or assessment which may have been or is hereafter levied against the Property or any portion thereof so long as no portion of the Property is threatened with any tax forfeiture or sale as the result of such contest. So long as such contest is pursued in good faith, the nonpayment of the amounts in dispute shall not constitute a default under this contract or afford the Seller the right to require tax reserve payments.

8. INDEMNIFICATION AND INSURANCE. The Purchaser shall and hereby covenants and agrees to indemnify and hold the Seller harmless for any losses, damages, costs, claims and liabilities, including attorneys' fees, caused by any negligent, reckless or intentional act of or negligent or reckless failure to act by the Purchaser or any of its agents, servants, employees, independent contractors, invitees or licensees on, about or with respect to the Property, and for any breach of this contract by the Purchaser or any of such persons, and this covenant of indemnification shall survive the delivery of the Seller's deed to the Purchaser.

The Purchaser shall, at its own cost and expense, keep the Property insured against loss or damage by fire, windstorm, and all other casualties covered by



"all risk" endorsements available in the State of Washington and with such additional coverages or endorsements as the Seller may reasonably require from time to time. Said insurance shall be in an amount not less than the greater of (a) the amount of coverage necessary to avoid the insured being treated as a co-insurer, or (b) one hundred twenty percent (120%) of the then unpaid principal balance of the Purchase Price for the Property, or (c) such higher amount as may be required by the terms of any Prior Encumbrance, and shall be placed with an insurance company authorized to do business in the State of Washington. All insurance policies shall expressly include the Seller as a named insured, shall contain a waiver of subrogation clause (to the extent reasonably obtainable), and shall include provisions to the effect that they cannot be materially modified or cancelled prior to Seller receiving not less than twenty (20) days' advance written notice, and accurate and complete copies thereof shall be deposited with the Seller upon written request.

In the event of loss or damage to the Property which is required to be insured hereunder, and except as otherwise required by any Prior Encumbrance and the then holder thereof, the insurance proceeds shall, at the option of the Purchaser, be used to repair, rebuild, or replace all improvements and personal property which may have been destroyed or damaged to the extent necessary to restore and replace them to substantially the same condition which existed immediately prior to the casualty, subject to such modifications as may then be required by law or to which the Seller agrees in writing. Immediately upon receipt, all insurance proceeds, together with any other sums required to complete the repairs and restorations, shall be placed in a construction disbursement account with an escrow agent or other person jointly designated by the Seller and the Purchaser and shall be disbursed periodically in amounts corresponding to the percentage of completion of repairs; provided, however, in the event this contract is forfeited, any portion of such proceeds remaining after the payment of properly incurred repair and replacement costs due as of the date of such forfeiture shall be immediately paid to the Seller. No construction may be commenced until all sums required to pay the costs thereof have been deposited in the disbursement account. The expenses of said disbursement account and in obtaining percentage completion certificates shall be paid by the Purchaser, and the Purchaser shall be responsible for depositing in the disbursement account the amounts necessary to pay all costs of repairs, reconstruction and replacements which are not covered by the insurance proceeds. In the event the Purchaser desires to construct improvements which are materially different from those so damaged or destroyed, it shall first obtain the Seller's written consent. All repairs and replacements shall be commenced within sixty (60) days following the date the Purchaser elects to reconstruct and shall be continuously pursued with due diligence. Subject to the terms of any Prior Encumbrances, any casualty insurance proceeds which are not used to pay for repairs or replacements permitted by the terms of this paragraph shall be paid to the Seller and applied against the principal balance last due hereunder; and the Seller shall accept the same notwithstanding any prepayment restriction in this contract. The Prepayment Premium shall not be added to any payments required by this paragraph.

If (i) the Purchaser does not elect to repair the damage, or (ii) the Seller's consent to different improvements is not waived or given, or (iii) the Purchaser does not deposit into the disbursement account all sums in excess of available insurance proceeds required for reconstruction by the date construction is required to commence, or (iv) construction is not commenced when required or not continuously pursued (subject to delays beyond the reasonable control of the Purchaser), the Seller may require that all casualty insurance proceeds be immediately paid to the Seller or to the holder of a Prior Encumbrance having a valid claim thereto which is prior to the Seller's. The Purchaser shall make the elections provided for in this paragraph within sixty (60) days following the date of the casualty, and the Seller shall respond in writing to a written request to construct materially different improvements within twenty (20) days after said request. Any failure to the Purchaser to timely make any such election shall enable the Seller to apply the insurance proceeds against the principal last due under this contract, and any failure of the Seller to timely respond to any such request shall be deemed an



approval thereof.

Damage to or destruction of the Property or any portion thereof shall not constitute a failure of consideration or provide a basis for the rescission of this contract, nor shall such circumstances relieve the Purchaser of its obligation to pay the remaining Installment Amounts when due. In the event of any failure of the Purchaser to obtain or timely pay any premiums for any insurance required by this paragraph, and if such failure is not rectified within any required notice period for remedial advances under this contract, the Seller may require the Purchaser to deposit with each Installment Amount an amount reasonably estimated by the Seller to be necessary to discharge the next ensuing premiums for said policies, said estimates to be adjusted by the Seller upon receipt of the premium invoices to reflect the actual amount of such liabilities. The Payments so made which have not been applied against such liabilities shall be returned to the Purchaser with the delivery of the Seller's deed to the Purchaser. The Seller shall not be liable for interest on said deposits. If not retained in an escrow or collection account, said funds shall be maintained by the Seller in a segregated account and expended for no other purpose, with interest thereon, if any, being added to the sum so held; provided, however, this account may be commingled with any tax reserve account under this contract.

9. UTILITIES. The Purchaser shall pay for the costs of any electric, power, gas, sewer, water, telephone, cable television, refuse disposal service, and any and all other utilities furnished to or used or consumed in, on, or about the Property by the Purchaser or by any person following the date of this contract, and Purchaser shall contract for the same solely in its own name. Any such services used prior to the date hereof by any person other than the Purchaser shall be the responsibility of the Seller.

10. CONDITION OF PROPERTY. Except as may be otherwise provided in any written agreement between the parties hereto which is intended to survive the execution of this contract, the Purchaser hereby accepts the Property in the condition existing on the date of this contract and confirms that neither the Seller nor any agent or representative of the Seller has given or made any warranty or representation whatsoever concerning the physical condition thereof or the uses or purposes to which the same may now or hereafter be placed.

11. RISK OF LOSS. The Purchaser shall bear the risk of loss for the complete or partial destruction or condemnation of the Property after the date of this contract, but any loss, damage or destruction of all or part of the Property shall not relieve the Purchaser from its obligation to observe and perform all of the terms covenants and conditions of this contract. Each of the parties hereto releases the other from all liability for damage caused by any act or neglect of the other party, its agents, servants and employees, to any property which is the result of fire or other casualty covered by insurance carried at the time of such casualty; provided, however, the releases herein contained shall not apply to loss or damage resulting from the willful or premeditated acts of either of the parties hereto, their agents, servants or employees; and provided further, nothing in this paragraph shall be interpreted or have the effect of relieving or modifying any obligation of any insurance company, and to the extent any such obligation is so relieved or impaired this provision shall be ineffective.

12. COMPLIANCE WITH LAWS AND RESTRICTIONS. The Purchaser shall faithfully observe, perform and comply with all laws, ordinances, rules and regulations of every governmental authority affecting the Property; all easements, reservations, restrictions, covenants and conditions of record affecting or pertaining to the Property; and any condominium, planned unit development, or cooperative declarations, articles, bylaws, rules, regulations and other documents which have been or are hereafter adopted with respect to the Property. The Purchaser shall not use or permit any person to use the Property for or in connection with any unlawful purpose or in any manner which causes a nuisance.

13. CONDEMNATION. If the Property or any part thereof is condemned or taken by power of eminent domain by any public or quasi-public authority, the Seller or the Purchaser or both may appear and defend or prosecute in any such proceeding. All compensation or awards received from the condemning authority by either the Seller or the Purchaser shall, subject to the requirements of any Prior Encumbrances, be applied first to the payment of the expenses of litigation, next to the acquisition and installation costs of any replacements or restorations of condemned property requested by the Purchaser in writing not later than fifteen (15) days following the date possession is required to be surrendered by the condemning authority; next to the reduction of the unpaid balance of this contract in the inverse order of its maturity, next to any other sums then due to the Seller (including accrued and unpaid interest and reimbursable advances and expenses), and the surplus, if any, shall be paid to the Purchaser. The Prepayment Premium shall not be added to any payments required by this paragraph. All of the replacements and restorations shall have the same purpose and function as the condemned property, and, except as otherwise consented to by the Seller in writing and except to the extent necessitated by the condemnation or then applicable law, none of the replacements or restorations may be materially different from the condemned property. Any condemnation awards used to restore or replace any of the Property shall be deposited in a disbursement account and disbursed in the manner specified herein for insurance proceeds following an insured casualty. No total or partial taking of the Property by condemnation shall constitute a failure of consideration or provide a basis for the rescission of this contract.

14. TRANSFER OF PURCHASER'S INTEREST. No transfer of Purchaser's interest or subletting shall be made without the express written permission of Seller.

15. PURCHASER'S DEFAULT. The Purchaser shall be in default under this contract if it (a) fails to observe or perform any term, covenant or condition herein set forth or those of any Prior Encumbrances, or (b) fails or neglects to make any payment of principal or interest or any other amount required to be discharged by the Purchaser precisely when obligated to do so, or (c) becomes or is declared insolvent or makes an assignment for the benefit of creditors, or files any debtor's petition or any petition is filed against it under any bankruptcy, wage earner's, reorganization or similar act, or (d) permits the Property or any part thereof or its interest therein to be attached or in any manner restrained or impounded by process of any court, or (e) abandons the Property for more than thirty (30) consecutive days, or (f) conveys the Property or a portion thereof without any prior written consent required herein of the Seller.

16. SELLER'S REMEDIES. In the event the Purchaser is in default under this contract the Seller may, at its election, take the following courses of action:

(a) Suit for Delinquencies. The Seller may institute suit for any Installment Amounts or other sums due and payable under this contract as of the date of the judgment and any sums which have been advanced by Seller as of said date pursuant to the provisions of this contract, together with interest on all of said amounts at the Default Rate from the date each such amount was advanced or due, as the case may be, to and including the date of collection;

(b) Acceleration. Upon giving the Purchaser not less than fifteen (15) days' written notice of its intent to do so (within which time any monetary default may be cured without regard to the acceleration), and if the default is in the nature of a failure to timely pay any principal, interest, insurance premium, tax, or other sum of money required to be paid herein or any failure to obtain any consent of the Seller herein required for a conveyance of the Purchaser's Title to the Property, or if the Purchaser commits waste on the Property, the Seller may declare the entire unpaid balance of the Purchase Price and all interest then due thereon and the Prepayment Premium to be immediately



due and payable and institute suit to collect such amounts, together with any sums advanced by the Seller pursuant to the provisions of this contract, and together with interest on all of said sums at the Default Rate from the due date or date of each such advance to and including the date of collection;

(c) Forfeiture and Repossession. The Seller may cancel and render void all rights, titles and interest of the Purchaser and its successors in this contract and in the Property (including all of Purchaser's then existing rights, interests and estates therein and timber, crops and improvements thereon) by giving a Notice of Intent to Forfeit pursuant to RCW 61.30.040-070, and said cancellation and forfeiture shall become effective if the default therein specified has not been fully cured within ninety (90) days thereafter and the Seller records a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract the Seller may retain all payments made hereunder by the Purchaser and may take possession of the Property ten (10) days following the date this contract is forfeited and summarily eject the Purchaser and any person or persons having possession of the said Property by, through or under the Purchaser who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Purchaser or any person or persons claiming by, through or under the Purchaser who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture remain in possession of the Property more than ten (10) days after such forfeiture, the Purchaser, or such person or persons, shall be deemed tenants at will of the Seller and the Seller shall be entitled to institute an action for summary possession of the Property, and may recover from the Purchaser or such person or persons in any such proceedings the fair rental value of the Property for the use thereof from and after the date of forfeiture, plus costs, including the Seller's reasonable attorneys' fees;

(d) Specific Performance. The Seller may institute suit to specifically enforce any of the Purchaser's covenants hereunder, and the same may include redress by mandatory or prohibitive injunction;

(e) Property Rental. In the event this contract is forfeited as herein provided, or in any other manner permitted by law, or by mutual agreement of the Purchaser and the Seller, and the Purchaser shall thereafter remain in possession of the Property beyond any period otherwise permitted by law, the Purchaser agrees that it will occupy the Property as a tenant at will, and the Purchaser shall be obligated to pay, and hereby promises to pay, during the period of such tenancy at will, a fair market rental in the amount then agreed to by the parties, or in the absence of such agreement or until such agreement is reached, an amount equal to two (2) times the Installment Amount as and when provided for in the Specific Terms hereof, and the Seller shall have, in addition to all other remedies for the collection of rentals and the recovery of possession that are available to landlords under the laws of the State of Washington, the right to institute and maintain an action for summary possession of the Property as provided by law.

17. PURCHASER'S REMEDIES. In the event the Seller should default in any of its obligations under this contract and such default continues for fifteen (15) days after the Purchaser gives the Seller written notice specifying the nature thereof and the acts required to cure the same, the Purchaser shall have the right to specifically enforce this contract, institute suit for its damages caused by such default, or pursue any other remedy which may be available to the Purchaser at law or in equity.

18. REMEDIAL ADVANCES. If either party to this contract shall fail to timely pay and discharge any payments or sums for which it has agreed to be responsible herein and said failure constitutes a default under this contract, or shall by any other act or neglect violate the terms and any conditions of this contract or of any Prior Encumbrance, the other party hereto may pay, effect or discharge such sums as are necessary to cure such

default. Upon affording the party required to make such payment not less than fifteen (15) days' prior written notice (except in any instance in which the Purchaser fails to obtain or maintain any insurance required herein or when immediate payment is required to avoid immediate hazards to persons or property or any foreclosure of or a similar action against or affecting any portion of the Property, in which cases such notice may be given concurrently with or immediately following such payment). The party making such payment may recover from the defaulting party, upon demand, or through offsetting the same against existing or future debts, the full cost and expense of so doing, including its reasonable attorneys' fees and together with interest on said expenditures and fees at the Default Rate from the date of expenditure to an including the date of collection or the due date of any sum against which such offset is effected.

19. CUMULATIVE REMEDIES; WAIVERS. The remedies stated herein are cumulative and not mutually exclusive and the Seller or the Purchaser may pursue any other or further remedies to enforce their respective rights under this contract; provided, however, except as provided in this contract with respect to the Purchaser's transfer of the Property, the Seller shall not have the right to accelerate the remaining balance of the Purchase price in the event the Seller elects to forfeit the Purchaser's interest in the Property and such forfeiture is being enforced or is completed. In any action or proceeding to recover any sum or to enforce any remedy provided for herein, no defense of adequacy of security or that resort must first be taken against any particular security or any other person shall be asserted, and the Purchaser hereby expressly waives any legal or equitable rights that the purchaser may have with respect to marshaling of assets. The Seller shall not be required to tender its deed or bill of sale as a condition precedent to the enforcement of any remedy hereunder. In the event any check is tendered which is not honored upon first presentation because of any stop payment directive or insufficient funds, the payee's rights shall be reinstated as if such check had not been delivered. No waiver of any rights of either party under this contract shall be effective unless specifically evidenced in a written agreement executed by the waiving party. Any forbearance, including, without limitation, a party's acceptance of any payment after the due date or any extension thereof, shall not be considered a waiver of such party's right to pursue any remedy hereunder for subsequent defaults of the same or a different nature or for breach of any other term, covenant or condition hereof.

20. COSTS AND ATTORNEYS' FEES. If either party shall be in default under this contract, the nondefaulting party shall have the right, at the defaulting party's expense, to retain an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this contract. The defaulting party hereby promises to pay all costs and expenses so incurred by the nondefaulting party, including, without limitation, arbitration and court costs, collection agency charges, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation), and the failure of the defaulting party to promptly pay the same shall in itself constitute a further and additional default. In the event either party hereto institutes any action (including arbitration) to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for its court costs and reasonable attorneys' fees, including such costs and fees that are incurred on appeal. All reimbursements required by this paragraph shall be due and payable on demand, may be offset against any sum owed to the party so liable in order of maturity, and shall bear interest at the Default Rate from the date of demand to and including the date of collection or the due date of any sum against which the same is offset.

21. NOTICES. Any notices required or permitted by law or under this contract shall be in writing and shall be sent by first class certified or registered mail, return receipt requested, with postage prepaid, to the parties' addresses set forth in the Specific Terms of this contract. Either party may change such address for notice and, if payments are not made to an escrow or collection account, the Seller may change the address for payments,



by designating the same to the other party hereto in the manner hereinabove set forth and by causing a copy of such change to be properly recorded. All notices which are so addressed and paid for shall be deemed effective two (2) business days following the deposit thereof in the U. S. mail, irrespective of actual receipt of such notice by the addressee.

22. TIME OF PERFORMANCE. This is specifically declared to be of the essence of this contract and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

23. PARAGRAPH HEADINGS. The underscored word or words appearing at the commencement of paragraphs and subparagraphs of this contract are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those paragraphs or subparagraphs.

24. GENDER AND NUMBER. The use of any gender or neutral term shall include all genders, and the use of any number shall be construed as singular or plural, as the case may require. The terms "Purchaser" and "Seller" refer to either the singular or the plural, as the case may be.

25. DEFINITIONS. As used herein the term "Property" means all of the estate, right, title and interest currently held and hereafter acquired by the Seller in and to the Real Property described herein and the rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, together with all timber and crops thereon and any repairs, improvements, replacements and additions thereto whether made, erected or constructed by the Seller or the Purchaser prior or subsequent to the date hereof. All capitalized terms of this contract shall have the meanings ascribed herein or set forth opposite the same in the Specific Terms of this contract. References to the Seller's deed or fulfillment deed herein shall include assignments of a vendee's interest under a prior real estate contract; provided, however, any form of conveyance shall contain the warranties to which the Purchaser is entitled under this contract or other agreement with the Seller.

26. INVALIDITY. In the event any portion of this contract should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof. The intention of the Seller is to charge the Purchaser a lawful rate of interest, and in the event it is determined by any court of competent jurisdiction that any rate herein provided far exceeds the maximum permitted by law for a transaction of the character evidenced by these presents, the amount so determined to be above the legal rate shall be applied against the last installments of principal due hereunder or, if such principal has been paid, or otherwise at the discretion of the then holder of this contract, said excess shall be refunded to the Purchaser on demand without interest, and the interest rates specified hereunder shall be reduced to the maximum rate then permitted by law for the type of transaction to which this contract pertains. The intention of the parties hereto is to assess a legal rate of interest on default, and if the Default Rate is determined by any court of competent jurisdiction to exceed the maximum rate of interest permitted by law for such purposes, the Default Rate shall be reduced to the highest rate so permitted, with any excess theretofore paid being applied against any debt of the defaulting party in inverse order of maturity, or if in excess of such debt, being refunded upon demand without interest.

27. LEGAL RELATIONSHIPS. The parties to this contract execute the same solely as a seller and a buyer. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable to the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such

persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefitted by this contract. Any married person executing this contract hereby pledges his or her separate property and marital communities in satisfaction hereof.

28. SUCCESSORS. Subject to the restrictions contained herein, the rights and obligations of the Seller and Purchaser shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors in trust and assigns; provided, however, no person to whom this contract is pledged or assigned for security purposes by either party hereto shall, in the absence of an express, written assumption by such party, be liable for the performance of any covenant herein. Any assignee of any interest in this contract, or any holder of any interest in the Property, shall have the right to cure any default in the manner permitted and between the time periods required of the defaulting party, but except as otherwise required by law, no notices in addition to those provided for in this contract need be given.

29. APPLICABLE LAW. This contract shall be governed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought to interpret or enforce any provision of this contract shall be laid in the county in which the Real Property is situated. All sums herein referred to shall be calculated by and payable in the lawful currency of the United States.

30. ENTIRE AGREEMENT. This contract contains the entire agreement of the parties hereto and, except for any agreements or warranties otherwise stated in writing to survive the execution and delivery of this contract, supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither the Seller nor the Purchaser shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this contract, except to the extent that the same are expressed in this instrument. This contract may be amended only by written instrument executed by the Purchaser and the Seller subsequent to the date hereof.

THE SELLER AND THE PURCHASER HEREBY AGREE TO THE TERMS HEREINABOVE SET FORTH AND THE COVENANTS AND CONDITIONS CONTAINED IN THE GENERAL TERMS, ALL OF WHICH ARE INCORPORATED BY THIS REFERENCE. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE SPECIFIC TERMS (INCLUDING ANY EXHIBITS ATTACHED) AND THE GENERAL TERMS, THE FORMER SHALL CONTROL.

IN WITNESS WHEREOF, the Seller and the Purchaser have executed this agreement as of the date first above stated.

Seller:

Purchaser:

TOWN & COUNTRY RESTAURANT, INC.

By:



  
DARLENE RAE MILLS

By: \_\_\_\_\_



STATE OF WASHINGTON )

County of Klickitat )<sup>SS</sup>

I certify that I know or have satisfactory evidence that Alice G. Clark, signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President of TOWN & COUNTRY RESTAURANT, INC. to be free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: April 20, 1988.

Betty Lou Hunsaker  
Notary Public for Washington  
residing at White Salmon, therein.

My appointment expires 1-10-89

STATE OF WASHINGTON )

County of Klickitat )<sup>SS</sup>

I certify that I know or have satisfactory evidence that DARLENE RAE MILLS, signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: April 20, 1988.

Betty Lou Hunsaker  
Notary Public for Washington  
residing at White Salmon, therein.

My appointment expires 1-10-89

## EXHIBIT "A"

EQUIPMENT, APPLIANCES and FIXTURES  
DARI-FREEZE DRIVE IN AND RESTAURANT

- 1 - Stainless Steel Cart 4' x 3'
- 1 - Stainless Steel Cart - Double Shelf
- 1 - Mixer - KitchenAid
- 1 - Hood - Auto. system stainless with shelf
- 1 - Waffle iron - double
- 3 - Clocks
- 4 - Chest Freezers
- 1 - Beverage air Upright freezer chic. freezer
- 1 - Upright refrigerator
- 1 - Upright - freezer and refrigerator
- 1 - Hobart Chopper - 5 QT.
- 1 - Automatic Globe Slicer
- 1 - Inside Cooler
- 2 - Outside Cooler and Compressors
- 1 - 4 x 6 Aluminum shelf (kitchen)
- 1 - knife holder (10 slot)
- 1 - System 7 - Chicken Broaster
- 4 - Garbage cans
- 1 - 9' Rubber mat
- 2 - Swamp Coolers - (cook and prep. station)
- 1 - (4) compartment stainless sink
- 1 - 5' orange shelf
- 1 - Kit. Chopping Board Table (8')
- 1 - 1 - 1 Wolf gas grill with legs and shelf
- 2 - 1 Electric Broil and Grill - table and legs
- 1 - 4 slice toaster
- 1 2 slice toaster
- 2 - 2 compartment steam table - containers and lids
- 1 - 4 compartment steam table - containers and lids
- 1 - 32 oz Scale (kitchen)
- 1 - Comc. Micro Wave
- 1 - 4-door - 1 drawer built in reach-in refrigerator unit (Cooks station)
- 2 - Fryers - 1 gas, 1 electric
- 1 - 9' freezer on deck outside
- 1 - 8 compartment storage (above cook station)
- 1 - desk and chair
- 1 - Adding Machine (Victor)
- 1 - 12 compartment book case above desk
- 1 - built-in safe
- 1 - Stainless Spindle
- 1 - Jackson Dishwasher & Stainless Table at end
- 1 - sink and 1 - sprayer
- 1 - 9' dining room table
- 5 - Tables - 20 Ind. Chairs
- 2 - Counters, 7 - Stools (2 spare in basement)
- 8 - Booths and tables
- 1 - 7' Waitress station - Pepsi and water dispenser with ice bin
- 4 - Light fixtures - Dining & Booth
- 1 - 3' Lern Pie display case
- 1 - 3' donut display case
- 1 - 4 Burner gas stove and oven
- 1 - French fry Cutter
- 1 - Royal E. R. 135 Cash Register - Serial No. 75008597
- 1 - B & E Cash Register - R120A - 79K 72027
- 1 - Swenden Shake Machine - M-1-295 - #124685
- 1 - Double Unit Jet Spray
- 1 - 6' Cone & Cup Dispenser
- 1 - Fountain Refrigerator-Freezer Counter with Stainless sink - Shelves, storage, fountain syrup dispensers
- 1 - 2' ice cream cone display lighted
- 2 - Hamilton Shake beaters
- 1 - Helmo Lacy Hot Fudge - double unit
- 1 - 3 compartment dip dispenser
- 1 - Astro Blender - M9 - 8 H-1 AQ
- 1 - 10 Compartment potato chip - gum display
- 1 - 32 oz Cone Scale
- 1 & 1 Air Cond. & Heat units
- dishes, glasses, cups, utensils, silverware, pots, pans, baking pans bowls, etc.
- 1 - Kenmore Washer - #72983100 - #C-93415018
- 1 - Kenmore Dryer - #M83609146
- 1 - Clipper Furnace - Propane Gas M-90CCU - #901420
- 3 - 2 Gal. Stainless shake syrup tanks
- 5 - folding chairs
- 2 - fire extinguishers
- 1 - dolly
- 1 - Scottmanns Ice Machine - EB40-#5C330191
- 1 - Taylor double Barrell - Mod. 8756-33 - #H6042539

TOWN & COUNTRY - MILLS  
Contract for Sale of Business  
Exhibit "A"