

AGREEMENT OF SALE

THIS AGREEMENT OF SALE made this day by and between TOWN AND COUNTRY RESTAURANT AND COFFEE SHOP, INC., a Washington corporation, hereinafter referred to as "Seller", and PHYLLIS McDONALD, a single person, hereinafter referred to as "Buyer",

W I T N E S S E T H:

Section 1. DESCRIPTION OF PROPERTY CONTRACTED TO BE SOLD:

In consideration of the mutual covenants herein contained and the promises to be performed as set out hereinafter, the Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller the following described property:

1.1 Real Property:

County of Skamania, State of Washington:

FILED FOR RECORD PARCEL I

SKAMANIA CO. WASH
BY SKAMANIA CO. TITLE

JUN 12 2 36 PM '90

P. Lowry
AND FOR
GARY M. OLSON

lots 1 and 2, Block 6, RIVERVIEW ADDITION TO THE TOWN OF STEVENSON, according to the recorded plat in Book "A" of Plats, Page 21, Skamania County, Washington.

PARCEL II

A tract of land in Section 36, Township 3 North, Range 7 East of the Willamette Meridian, adjacent to Lot 1 of 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.

1.2 Personal Property:

All restaurant equipment and appliances and trade fixtures of the business conducted on the aforescribed premises by Seller under the name of Dari-Freeze Drive Inn and Restaurant. Said equipment and fixtures include those items set forth in Exhibit "A" attached hereto and by this reference incorporated herein.

Section 2. PURCHASE PRICE AND PAYMENTS:

2.1 The purchase price for said property is the sum of EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00) which shall be paid as follows:

a. The sum of \$15,000.00, including earnest money, shall be paid as down payment as of the date of this contract.

b. The sum of \$10,000.00, or more, shall be paid on or before June 1, 1991.

REAL ESTATE EXCISE TAX

13829

JUN 12 1990
PARCEL 119-90
JUN 12 1990
SKAMANIA COUNTY TREASURER

Registered ☒
Indexed, Cir ☒
Indirect ☒
Filed 6-14-90
Mailed

Glenda J. Lutz, Clerk, Skamania County Assessor
By: *[Signature]* Date: 6-14-90

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c. The final cash payment to Seller of \$15,000.00 shall be paid on or before June 1, 1992.

d. After payment of the aforestated monies, Buyer shall assume and pay the balance owing by Seller to Samuel P. White and Carrie A. White, husband and wife, under that certain contract dated August 31, 1978 and recorded under Skamania County Auditor's File No. 87373, Skamania County Deed Records. Said contract balance upon the date of assumption will be approximately \$45,000.00.

2.2 All payments to be made hereunder shall be made to Seller at such place as Seller may in writing direct.

2.3 In the event Buyer shall fail to make any payment on the purchase price within fifteen (15) days of its due date, then there shall be added to such payment a late charge of five (5%) percent of the delinquent payment.

2.4 There shall be no interest on that portion of the purchase price payable by Buyer directly to Seller. Interest on the contract to be assumed by Buyer shall be at the rate specified in such contract.

Section 3. ALLOCATION OF PURCHASE PRICE: Seller and Buyer agree that the purchase price of \$85,000.00 shall be allocated to the property purchased hereunder as follows:

Personal Property	\$12,000.00
Real Property	<u>\$73,000.00</u>
TOTAL	\$85,000.00

Section 4. GRANT OF SECURITY INTEREST: To secure Buyer's performance of the covenants to be performed by her, Buyer hereby grants and gives to Seller a security interest in and to the personal property sold hereunder. Buyer, who is the debtor, agrees to join with Seller, who is the secured party, in executing and filing such documents, and doing whatever may be necessary from time to time, to perfect and continue Seller's security interest in said personal property. Upon payment in full by Buyer of the cash portion of the purchase price, Seller shall execute and deliver to Buyer a release of security agreement and shall assist Buyer in doing whatever is necessary to release said security interest.

Section 5. TITLE INSURANCE: Seller is at this time procuring and delivering to Buyer a purchaser's policy of title insurance in standard form, insuring the Buyer to the full amount of the purchase price for said realty against loss or damage by reason of defect in Seller's title to said real estate as of the date of closing, and containing no exceptions other than the following:

A. Printed general exceptions appearing in said policy form.

B. An easement for slopes as disclosed by instrument recorded under Skamania County Auditor's File No. 39285.

C. An easement for sewer as disclosed by instrument recorded under Skamania County Auditor's File No. 84119.

D. A contract between Earl E. White and Phyllis A. White, husband and wife, as Seller, and Samuel P. White and Carrie A. White, husband and wife, as Purchaser, dated March 10, 1976 and recorded under Skamania County Auditor's File No. 819. The vendee's interest in said contract was acquired by Samuel P. White, a single person, by virtue of the provisions of a Decree of Dissolution of Marriage in Skamania County Superior Court Cause No. 6857.

E. A contract between Samuel P. White and Carrie A. White, husband and wife, doing business as Dari-Freeze Drive Inn and Restaurant, as Seller, and Town and Country Restaurant and Coffee Shop, Inc., as Purchaser, dated August 31, 1978, and recorded under Skamania County Auditor's File No. 87373. The vendor's interest in said contract was acquired by Samuel P. White, a single person, by virtue of a Decree of Dissolution of Marriage entered in Skamania County Superior Court Cause No. 6857.

F. A Deed of Trust executed by Samuel P. White, a single man, as Grantor, to Transamerica Title Company, as Trustee, for the benefit of Riverview Savings Association, as Beneficiary, recorded under Skamania County Auditor's File No. 100678, given to secure payment of \$8,245.35.

G. A judgment against Samuel P. White in favor of Carrie White in the amount of \$150.00 per month for child support and \$500.00 plus interest filed October 14, 1981 in Skamania County Superior Court Cause No. 6857.

H. A tax lien of the State of Washington, Department of Revenue against Town and Country Restaurant and Coffee Shop, Inc., entered December 22, 1989 as Judgment No. 89-9-00159-1.

Section 6. PRIOR ENCUMBRANCES: Seller's title to the real estate to be purchased hereunder is subject to the encumbrances identified in the preceding section. Seller covenants and agrees to pay the tax lien owing to the State of Washington Department of Revenue entered as a judgment in Cause No. 89-9-00159-1. Seller further covenants and agrees to make the payments on the Real Estate Contract between Samuel P. White and Carrie A. White, husband and wife, as Seller, and Town and Country Restaurant and Coffee Shop, Inc., as Purchaser, in accordance with the terms thereof until such time as Buyer assumes the contract as hereinabove provided. Upon Seller's default under such contract, Buyer shall have the right to make any payments necessary to remove such default. Any payments so made by Buyer shall be applied to the payments next falling due to Seller under this contract.

Except as expressly provided herein, Seller's sale of the real property and personalty contracted to be sold herein is made subject to the existing encumbrances identified in the preceding section.

Section 7. DEED AND BILL OF SALE: Seller agrees to execute and deliver to Buyer within thirty (30) days after Buyer's assumption of the Seller's obligations under the contract to Samuel P. White and Carrie A. White, a Warranty Deed conveying the aforescribed real property and a Bill of Sale conveying the aforescribed personal property to the Buyer free and clear from all encumbrances except the following:

A. Liens or other encumbrances placed or suffered by Buyer or her successors.

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B. The contract between Earl E. White and Phyllis A. White, husband and wife, as Seller and Samuel P. White and Carrie A. White, husband and wife, as Purchaser, recorded under Skamania County Auditor's File No. 819.

C. The contract between Samuel P. White and Carrie A. White, husband and wife, as Seller, and Town and Country Restaurant and Coffee Shop, Inc., as Purchaser, recorded under Skamania County Auditor's File No. 87373.

D. The Deed of Trust executed by Samuel P. White, a single man, as Grantor, to Transamerica Title Company, as Trustee, for the benefit of Riverview Savings Association, as Beneficiary, recorded under Skamania County Auditor's File No. 100678.

E. The judgment against Samuel P. White in favor of Carrie White in the amount of \$150.00 per month for child support and \$500.00 plus interest for costs and attorney's fees filed October 14, 1981, in Skamania County Superior Court Cause No. 6857.

Section 8. TRANSFER TAXES: Any sales, use or compensating tax accruing by virtue of the sale of the personal property hereunder to Buyer shall be paid by Buyer.

Seller shall pay the real estate excise tax for the transfer of the real property contracted to be sold hereunder.

Section 9. PREPAID TAXES AND INSURANCE: The 1990 real estate taxes shall be pro-rated between Seller and Buyer as of the date of this contract. Seller shall be entitled to the premium refund, if any, on the existing policy of fire insurance for the subject premises. All future personal property taxes owing shall be paid by Buyer.

Section 10. POSSESSION: Buyer shall be entitled to possession of the real estate and personalty contracted to be sold hereunder from and after the date of this contract, and during her full and proper performance of this contract.

Section 11. ADVANCES: It is understood and agreed that in the event the Buyer fails or neglects or refuses to pay any taxes, assessments, insurance premiums, or other lawful charges against

said property, the Seller may pay the same and such sums as may be so paid shall be secured by this agreement and said sums shall be repaid by Buyer to the Seller upon demand with interest thereon from each respective date of advancement until paid at the rate of twelve (12%) percent per annum.

Section 12. RISK OF LOSS: All risk of loss, injury, or damage to the real and personal property sold hereunder shall be borne by Buyer from the date she takes possession.

Section 13. RESTRICTIONS ON TRANSFER: The rights to purchase granted by this contract are personal to the Buyer, and Seller's reliance upon Buyer's ability and integrity is a part of the consideration for this agreement. Neither this contract, nor any interest herein, may be assigned or transferred by Buyer, nor shall Buyer make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of the Seller. Any attempt at assignment, sale, or transfer of any interest by Buyer in violation of the foregoing provisions may, at Seller's option, be deemed a default by Buyer and Seller may, at Seller's option, declare the remaining contract balance and any other sums owing by Buyer to Seller immediately due and payable.

Section 14. BUYER'S COVENANTS: Buyer covenants and agrees as follows:

A. To make the payments mentioned in the manner and on the dates named.

B. To keep the buildings on the premises constantly insured against loss by fire, with extended coverage, to the extent of the full insurable value thereof, with loss payable to Seller and Buyer as their respective interests may appear, and upon demand to deliver said policy to Seller. Said insurance shall carry a replacement value endorsement, and shall be cancelable only upon thirty (30) days written notice to Seller.

C. To pay the consideration agreed upon and named herein regardless of any loss, destruction, or damage to any of said property or the improvements thereon by fire, or from any other cause.

D. To make or permit no unlawful or offensive or improper use of said property or any part thereof, nor to permit any waste, destruction or damage thereto.

E. To keep said property at all times in as good a condition as the same now is, reasonable wear and tear excepted.

F. To permit the Seller or her agents to enter into or upon said property at any reasonable time to inspect the same.

G. To pay regularly and seasonably and before the same shall be delinquent, all taxes, assessments, liens and encumbrances of whatsoever nature and kind which may hereafter be lawfully imposed on said property or which may have been assumed by the Buyer in this contract.

H. Not to permit or suffer any part of said property to become subject to any assessment, liens, charge or encumbrances whatsoever having or taking precedence over the rights of the Seller in and to said property.

I. Not to alter or remove the buildings or other improvements on the property without the written consent of the Seller, nor to permit any waste, destruction or damage thereto.

J. To pay all costs for any electric, power, gas, sewer, water, refuse disposal, or other utility services furnished to or used in connection with the property contracted to be purchased hereunder.

K. To comply with all laws, ordinances, rules and regulations of every governmental authority in the operation of any business enterprise on or at the property contracted to be sold hereunder.

Section 15. LICENSES: It shall be the responsibility and duty of Buyer to obtain all necessary licenses or permits to operate any business enterprise upon the property contracted to be sold hereunder. Buyer acknowledges that Seller has made no representation or warranty as to what licenses may be required for Buyer's intended use of the property contracted to be sold hereunder. Buyer's inability to obtain any necessary licenses shall not constitute a failure of consideration under the terms of this agreement.

Section 16. REMEDIES: Time is of the essence of this agreement, and if the Buyer shall fail, refuse or neglect to pay any of the purchase price installments or any other payment due, or shall fail to keep and/or perform any of the covenants and agreements herein contained on the part of the Buyer to be performed, then Buyer shall be deemed to be in default and Seller may, at its election, exercise any of the following remedies:

A. Forfeiture: Seller may cancel and render void all right, title and interest of the Buyer and her successors in this contract, and in the real estate which is the subject of this contract by giving a Notice of Intent to Forfeit Pursuant to RCW 61.30, 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. Upon forfeiture of this contract, the Seller may retain all payments made hereunder by Buyer and may take possession of the property ten (10) days following the date this contract is forfeited, and may summarily eject the Buyer and any person or persons having possession of said property by, through or under the Buyer who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Buyer or any person or persons claiming by, through or under the Buyer 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 Buyer, 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 Buyer 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 Seller's reasonable attorney's fees.

B. Suit for Delinquencies: Seller may, at Seller's option, bring an action or actions on any intermediate overdue installments,

or on any payment or payments made by the Seller and repayable by the Buyer, it being stipulated and agreed that the covenant to pay intermediate installments or to repay items repayable by the Buyer are independent of the covenant to make a deed.

C. Acceleration: Seller may, at its option, declare the entire unpaid balance of principal and interest immediately due and payable, and thereupon institute suit for payment of such balance and to have this Agreement of Sale foreclosed as a mortgage as is provided in Chapter 61.30, Revised Code of Washington.

D. Specific Performance: Seller may, at its option, institute suit to specifically enforce any of the Buyer's covenants hereunder, and the same may include redress by mandatory or prohibitive injunction.

E. Repossession: Seller may, at its option, exercise all rights and remedies of a secured party under the Uniform Commercial Code, and without limiting the generality of the foregoing, shall be entitled as follows:

1. Buyer agrees to put Seller in possession of the property on demand and at the request of Seller to deliver the property to Seller at a place designated by Seller which is reasonably convenient to both parties; and

2. Seller is authorized to enter any premises where the property is situated or may be found and take possession of the property, together with all additions, equipment and accessories thereto, without notice or demand and without legal proceedings. Buyer waives all claims for damages due to or arising from or connected with any such taking; and

3. Any notification of intended disposition of property required by law shall be deemed reasonable and proper if given by mail at least five (5) days before such disposition, postage prepaid, addressed to Buyer at her last known address.

The remedies stated herein are cumulative and not mutually exclusive, and such remedies may be exercised singularly, concurrently, or successively.

Section 17. REPRESENTATIONS AND WARRANTIES: Buyer has inspected the property sold herein and has found the same to be to her satisfaction, and she agrees that no promises, representations, statements, or warranties, expressed or implied, shall be binding upon the Seller unless expressly stated herein. Buyer expressly acknowledges that she has placed no reliance whatsoever upon any representations not set forth in this agreement.

Buyer agrees that she has had the opportunity to review all federal, state and local regulations, including but not limited to zoning regulations and standards affecting various permit applications, and the effect such regulations and requirements may have upon the above-described property, including the effect of the same on any prospective and intended use or uses of Buyer. Buyer further acknowledges that Seller has made no representations concerning any such regulations and standards.

ALL PERSONAL PROPERTY AND EQUIPMENT AND FIXTURES PURCHASED HEREUNDER ARE SOLD AS IS, AFTER ADEQUATE OPPORTUNITY FOR BUYER TO INSPECT, AND SELLER SHALL BE HELD TO NO REPRESENTATION OR WARRANTY, IMPLIED OR EXPRESS, CONCERNING THE MERCHANTABILITY OF ANY SUCH PERSONAL PROPERTY OR OF ITS FITNESS FOR ANY INTENDED USE.

Buyer acknowledges that she has been informed that Seller has reacquired the property to be sold hereunder by virtue of a forfeiture proceeding conducted against a prior purchaser from Seller. Seller has no information concerning trade creditors of the party against whom the forfeiture proceeding was conducted, and makes no representations or statements concerning the claims, if any, of such trade creditors. Seller has not given any notice that might be required under the provisions of Washington's bulk transfer law. The parties expressly agree that Seller shall have no obligation to pay or indemnify Buyer from the claims of any such trade creditors.

Section 18. NOTICES: Any notice required to be given by either party by mail or otherwise shall be sufficient if it is in writing and deposited in the United States Mail, certified mail, return

receipt requested, with postage fully prepaid, addressed to the parties at their last known addresses. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof within seventy-two (72) hours, exclusive of Sundays and legal holidays, after deposit thereof in said U.S. Mail.

Section 19. MODIFICATION: This agreement constitutes the entire agreement between the parties, and no alteration or modification of this agreement shall be effective unless such modification shall be in writing and signed by the parties.

Section 20. WAIVER: No assent, expressed or implied, by Seller to any breach of Buyer's covenants or agreements shall be deemed to be a waiver of any succeeding breach of the same or other covenants.

Section 20. 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 "Seller" and "Buyer" shall refer to either the singular or the plural, as the case may be.

Section 21. PARAGRAPH HEADINGS: All paragraph headings 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.

Section 22. ATTORNEY'S FEES AND COSTS: If Buyer shall be in default under this contract, the Seller shall have the right, at Buyer's expense, to retain an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect or enforce her rights under this contract. Buyer hereby promises to pay all expenses and costs so incurred by Seller, with or without arbitration or litigation, which expenses and costs shall include, but not be limited to, notice expenses, title search expenses, and reasonable attorney's fees. The failure of Buyer 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

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party in such action shall be entitled to reimbursement by the other party for its court costs and reasonable attorney's fees, including the cost of searching the title for the purpose of any such action, and any costs and fees that incurred on appeal.

Section 23. CONSTRUCTION OF AGREEMENT: This agreement has been executed at Camas, Washington, and shall be construed of the laws of the State of Washington.

DATED this 11th day of June, 1990.

TOWN AND COUNTRY COFFEE SHOP
AND RESTAURANT, INC.

By:

Alice G. Clark, President

Phyllis McDonald

STATE OF WASHINGTON)

COUNTY OF CLARK)

ss.

On this 11th day of June, 1990, before me personally appeared ALICE G. CLARK, to me known to be the President, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
Notary Public in and for the State of
Washington, Residing at
My appointment expires: 7-10-93

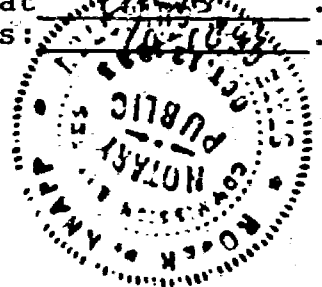


EXHIBIT "A "

- 1 - Stainless Steel Cart 4'x3'
- 1 - Stainless Steel Cart - Double Shelf
- 1 - Mixer - KitchenAid
- 1 - Hood - Auto. system stainless with shelf
- 1 - Waffle iron - double
- 1 - Clock
- 1 - Chest Freezer
- 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 coolers and compressors
- 1 - 4x6 aluminum shelf (kitchen)
- 1 - System 7 - chicken broaster
- 2 - Garbage cans
- 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 - 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 - 4-door - 1 drawer built-in reach-in refrigerator unit (cook's station)
- 2 - Fryers - 1 gas, 1 electric
- 1 - 9' freezer on deck outside
- 1 - 8 compartment storage (above cook station)
- 1 - 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 - 16 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 and 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 - 10 compartment potato chip - gum display
- 1 - 32 oz. cone scale
- 1 - 1 Air conditioner and heat units
- Dishes, glasses, cups, utensils, silverware, pots, pans, banking 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 - Scottmanns ice machine - EB40-#5C330191
- 1 - Taylor double barrell - Mod. 8756-33 - #H6042539