

78448

# CONTRACT FOR THE SALE OF A BUSINESS, REAL PROPERTY and PERSONAL PROPERTY

**PREFACE:** It is understood by the parties, CARL E. LEHMAN and CHERYL D. LEHMAN, husband and wife, hereinafter designated as "Sellers", and JAMES S. DULLENTY and GISELA H. DULLENTY, husband and wife, hereinafter designated as "Purchasers," that the purpose of this agreement is to contract for the sale of a grocery store business commonly known as the RIVERSIDE CAFE, a piece of real property upon which the business and other structures are located which is situated in Skamania County, in the State of Washington, and for the sale of the fixtures and personal property located on said property. It is understood that the Purchasers take said property subject to a contract between the Sellers and ELDON D. HELLER and J. COLLEENE HELLER, husband and wife. The Purchasers understand that they are assuming all the rights and responsibilities incorporated in said contract which is recorded in Skamania County, State of Washington, under Auditor's File No. 75526 at Book 64, page 728.

The following documents are attached hereto and incorporated herein by reference:

1. A legal description of the real property.
2. A list of the personal property, fixtures and equipment located on said property.
3. A separate agreement listing the inventory of the grocery store and the purchase price for said inventory along with a Bill of Sale for said inventory.
4. A copy of the Bulk Sales Agreement prepared by Sentry Guarantee & Escrow, Inc..
5. A copy of the Heller - Lehman Contract.

The terms of the sale are as follows:

Purchase Price \$120,000.00  
Allocated as follows:

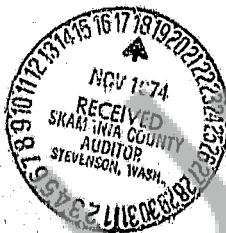
Real Property	\$86,400.00
Fixtures	\$18,600.00
Business good will & Covenant not to Compete	\$15,000.00
<b>TOTAL</b>	<b>\$ 120,000.00</b>

## PRICE AND PAYMENT:

1. Assumption of the Heller - Lehman Contract
2. \$14,900.00 in the form of contracts and notes receivable in the following amounts:

Vernon and Joyce Witt, \$1,185.70 with interest at the rate of 8% per annum.

3. Down payment in the amount of \$15,000.00



2955

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

NOV 18 1974

Amount \$14,900.00  
*Michael J. O'Connell*  
Skamania County Treasurer  
By *Shirley J. O'Connell*

REAL ESTATE CONTRACT -1-

Bruce and Ruth Vandebrake, \$2,308.91 with interest at the rate of 8% per annum.

David Leniger, \$3,950.58, with interest at the rate of 7% per annum.

John P. and Dorothy A. Williams, \$4,630.96 with interest at the rate of 9% per annum. Payments of \$20.00 a month with a 3 year cash out.

Personal note from James & Gisela Dullenty payable on January 15, 1974 in the amount of \$2,825.85.

3. Sixteen Thousand One Hundred and no/100 Dollars (\$16,100.00) plus interest at the rate of 8% per annum, in the form of a note secured by a mortgage on the property payable at \$160.00 per month including interest, and payable on the 1st day of every month commencing on the 1st day of December, 1974.

4. Five Thousand and no/100 Dollars (\$5,000.00) plus interest at the rate of 8% per annum, payable one (1) year from date of closing.

5. Five Thousand and no/100 Dollars (\$5,000.00) plus interest at the rate of 8% per annum, payable two years from date of closing. Sellers and Purchasers agree that this payment may be extended one additional year at Purchasers' option.

**CONTRACT:** It is understood between the parties that there is a contract on the above described premises executed by ELTON D. HELLER and J. COLLEENE HELLER, husband and wife, as Sellers and CARL E. LEHMAN and CHERYL D. LEHMAN, husband and wife, as Purchasers. Purchasers hereby agree to assume the balance of said contract. It is understood between Sellers and Purchasers that the payments on the original contract and the payments heretofore set out under Price and Payment of this contract shall be made through Riverview Savings & Loan Assn., Camas, Washington, and said bank shall apply payments toward the original contract and this contract as their interests shall appear.

**PERSONAL PROPERTY, FIXTURES AND EQUIPMENT:** The purchase price of the fixtures is \$18,600.00. A list of said property is attached hereto and incorporated herein by reference. Since the Heller-Lehman contract provides that the personal property, fixtures and equipment being sold therein 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 personal property, fixtures and equipment shall be conveyed to the Purchasers and the remaining principal balance is approximately \$54,000.00, it is understood that the Sellers (Lehman) cannot grant or convey a free title to said property. The Purchasers (Dullenty) agree to assume the rights and responsibilities of the Sellers (Lehman) as stated on the Heller-Lehman contract. The Sellers (Lehman) agree to execute an agreement releasing any interest they might have in said property upon \$18,600.00 being paid upon the principal balance of the purchase price.

**DEED AND TITLE INSURANCE:** The title to the real property herein described shall remain in the Seller until the purchase

price together with interest thereon has been paid in full.

Upon full payment of the purchase price and interest as herein provided, the Sellers shall execute a Statutory Warranty Deed, conveying the premises heretofore described to Purchasers, free and clear of any liens and encumbrances except as set forth in this contract; provided that they shall not warrant against any encumbrances or liens placed against said premises by Purchasers, or against any encumbrances, liens or defects or title indicated in this contract.

Sellers agree within thirty (30) days from the date hereof to furnish Purchasers with Title Insurance Policy showing good and merchantable title.

**TAXES:** The Purchasers assume and agree to pay before delinquency all taxes and assessments that may herein become a lien upon said premises and property. The taxes for this year have been adjusted between the parties.

**FIRE INSURANCE AND ASSUMPTION OF RISK:** Purchasers shall keep all buildings and improvements upon the premises herein conveyed insured to their full insurable value against loss or damage by fire, said fire insurance to be carried in a reputable company and bearing an endorsement in Sellers favor as their interests shall appear.

The Purchasers assume all risk of damage to any improvements upon the premises, or of the taking of any part of the property for public use; and no such damage or taking shall constitute a failure of consideration, but in case of such damage or taking, all moneys received by the Sellers by reason thereof shall be applied as a payment on the purchase price of the property, less any sums of money which the Sellers may be required to expend in procuring such money, or at the election of the Sellers, to the rebuilding or restoration of such improvements.

**WASTE:** Purchasers shall not commit or suffer to be committed any waste upon the property herein sold and Purchasers agree to maintain said premises in as good condition as the same are now less reasonable wear and tear during the term of this contract. No buildings or improvements on said premises shall be removed therefrom, torn down or destroyed without first having obtained written consent of the Sellers, and no major alterations shall be made without first having obtained Sellers written consent.

New buildings or improvements placed upon the real property above described shall become a part of such real property and Purchasers agree that they will not allow any liens to accumulate or to be filed against said property and that any such liens shall be considered to be a breach of the terms of this contract; provided Purchasers shall have a reasonable time to pay or dispose of any lien so filed.

**INSPECTION:** It is understood that the Purchasers have made full inspection of the real estate and that no promise, agreement or representation respecting the condition of any building or improvement thereon, or relating to the alteration or repair thereof, or the placing of additional improvements thereon, shall be binding unless the promise, agreement or representation be in writing and made a part of this contract.



**POSSESSION:** The Purchasers shall have the right to the possession of said property on the date of closing, provided however, that the Purchasers shall, upon default hereunder, and upon demand of the Sellers, surrender to the Sellers, peaceable possession of said premises.

**DEFAULT:** Time is of the essence hereof. In the event the Purchasers shall fail to comply with or perform any condition or agreement hereof promptly at the time and in the manner herein required, the Sellers may elect to declare all of the Purchasers rights hereunder terminated, and upon the Sellers doing so, all payments made by the Purchasers hereunder and all improvements placed upon the premises shall be forfeited to the Sellers as liquidated damages, and the Sellers shall have the right to reenter and take possession of the property; and if the Sellers, within six months after such forfeiture shall commence an action to procure an adjudication of the termination of the Purchasers rights hereunder, the Purchasers agree to pay the expense of searching the title for the purpose of such action; together with all costs and a reasonable attorney's fee. In the event taxes, liens, fire insurance premium, or any other charges which are agreed to be paid by Purchasers remain unpaid, or if Purchasers fail to perform any covenant or agreement as herein set out and Sellers elect to pay such charges, the Sellers may at their option make such payment, which charges will be added to the amount to be paid by Purchasers under this contract, and shall be treated as part of the total purchase price to be paid by Purchasers to Sellers. Any notice of default may be sent by registered mail to Purchasers at the following address:

3216 NE 112th Avenue, Van Couver, WA

**NON-WAIVER PROVISION:** The failure of the Sellers to strictly enforce any term, provision or condition of this contract shall not be deemed a waiver of the right of the Sellers to enforce the term, provision, or condition. The granting by the Sellers of a waiver, deferment, or extension of any term, provision, condition, or performance provided in this contract shall not be deemed to constitute a subsequent waiver, deferment, or extension of the term, provision, condition, or performance, and shall not deprive the Sellers from enforcing this contract in any manner or fashion.

**SALE OF BUSINESS:** It is understood that this contract is subject to the attached Bulk Sales Agreement, prepared by Sentry Guarantee & Escrow, Inc. The price of the business is to be \$15,000 which shall include the business name "Riverside Grocery", the good will of the business and a covenant on the part of the Sellers not to compete with the Purchasers in the grocery store or tavern business.

**COVENANT NOT TO COMPETE:** It is expressly covenanted and agreed that the Sellers shall in no way compete with the Purchasers in the grocery or tavern business or in any way interfere or hinder the Purchasers in the operation of the grocery and tavern business. Sellers agree not to compete in said business within a five mile radius of the existing business for a period of five (5) years.

IN WITNESS WHEREOF, the parties hereto set their hands this 14<sup>th</sup> day of November, 1974.

Robert E. Blinn  
Seller

Cheryl D. Blinn  
Seller

James L. Dullenty  
Purchaser

Carla H. Dullenty  
Purchaser

STATE OF WASHINGTON )  
COUNTY OF CLARK ) ss.

On this day personally appeared before me CARL E. LEHMAN and CHERYL D. LEHMAN, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged to me that they signed the same as their free and voluntary acts and deeds for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14<sup>th</sup> day of November, 1974.

*By J. Davis*  
Notary Public in and for the State of Washington; residing at Vancouver.

STATE OF WASHINGTON )  
COUNTY OF CLARK ) ss.

On this day personally appeared before me JAMES S. DULLENTY and GISELA H. DULLENTY, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged to me that they signed the same as their free and voluntary acts and deeds for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14<sup>th</sup> day of November, 1974.

*By J. Davis*  
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 East of the Willamette Meridian, and in Section 31, Township 2 North, Range 5 East of the Willamette Meridian, 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 East of the Willamette Meridian, and Sections 5 and 6, Township 1 North, Range 5 East of the Willamette Meridian; 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 138.1 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 <sup>South and 159 feet</sup> the center line of a 30 foot road, said pipe being 198.4 feet West of the section corner common to Sections 31 and 32, Township 2 North, Range 5 East of the Willamette Meridian, and Sections 5 and 6, Township 1 North, Range 5 East of the Willamette Meridian; 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 69.7 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 36°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 34.1 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.

SUBJECT TO: Easements and rights of way for public roads over and across the real estate under search; and reservations 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 # 5152817K-452  
 One Burroughs Adding Machine # 831084  
 One 8' Super Cold Meat Case and Compressor # 05597  
 One Scale 15 lb. capacity # 309487  
 One Koldmaster Weber Cabinet - 8ft. # 1R22484  
 One Koldmaster Weber Cabinet - 8ft. # 1R22518  
 One Perfectcold Cabinet Cooler # 0655  
 One 9ft. Hussman Dairy Cooler # 2/K A 450013  
 One 8ft. Supercold Vegetable Case # 1686  
 One U.S. Slicing Machine # 320 MC 267  
 One Tokheim Dual Product Gas Pump # 144-34130  
 One McCaskey Safe # 284427  
 One Air Compressor 1/2 HP

#### Islands and Shelves

(All above freezer units are self-contained)

One Fountain Fryer  
 One Ice Maker (Nico Monger)  
 One Taylor Ice Cream Machine # 74711  
 One Grill # 1532301  
 One Chicken Fryer # 327621  
 One French Fryer - Star Mix # 1102234  
 One Coffee Maker

Misc. shelving, tables, chairs, and equipment

One Reach in ice cream freezer  
 One Pool table coin-op  
 One 10x20 walk in and reach in cooler  
 One NCR cash register  
 One french fryer  
 One under counter cooler  
 One McCaskey cash register  
 One beer tap  
 One ASI coffee maker

Miscellaneous kitchen utensils

*E. D. L. Co.*



EXECUTOR, 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. COLLEEN HELLER, husband and wife, hereinafter called the "SELLERS", and CARL E. LEHMAN and CHERYL D. LEHMAN, husband and wife, hereinafter called the "Purchasers".

## 4 1 1 1 3 0 2 2 1 1 6

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 284, Wapinitia, 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 twenty three thousand, six hundred and no/100 (\$23,600.00) 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: \$4,000.00, together with interest on deferred balance at the rate of 7 1/2% per annum commencing November 1, 1972 shall be paid as follows: The sum of not less than \$450.00 including interest on November 1, 1972, and on the 1st day 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 25% of the purchase price shall be paid during the calendar year of 1972. It is further specifically agreed between the parties that the balance

SD P. D. L. C.

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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 for 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, 1960. 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

for  
TRANSACTION EXCISE TAX

NOV 16 1972

Amount \$150.00

Shirley L. Lohman  
Skamania County Treasurer

By \_\_\_\_\_

STATE OF WASHINGTON )  
COUNTY OF CLARK ) ss

THIS IS TO CERTIFY that before me, the undersigned Notary Public, on this 16th day of November, 1972, personally appeared Eldon D. Heller and J. Colleen Heller, husband and wife, and Carl E. Lohman and Cheryl D. Lohman, 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.