

105203

## REAL ESTATE CONTRACT

THIS AGREEMENT, made and entered into this 26<sup>th</sup> day of May, 1988, by and between ROBERT K. LEICK, in his capacity as executor of the estate of Anna K. McFadyen, deceased, hereinafter called the "Seller", and FRED A. NEWMAN and DOLLY NEWMAN, husband and wife, hereinafter referred to as the "Purchasers", WITNESSETH:

That the Seller agrees to sell and the Purchasers agree to purchase the following described real estate, with the appurtenances thereon, situated in the County of Skamania, State of Washington:

The S2 of the SE4 of the SE4, Section 19, Township 3N, R8 EWM, except that part which lies northeasterly of a creek running across said land which was conveyed to Spencer Owen by deed recorded at Page 506, Book "U" of Deeds, Records of Skamania County, Washington; and ALSO

Commencing at the SW corner of the N2 of the SE4 of the SE4 of said section, township, and range; thence N 403 ft.; thence southeasterly a distance of 511 ft., more or less, to point on the S line of the N2 of the SE4SE4, said Section 19, T3N, R8 EWM, which is 264 ft. E of the POB; thence W to the POB, containing a total of approximately 20 acres.

The terms and conditions of this contract are:

1. Purchase Price:

(A) The total purchase price is THIRTY TWO THOUSAND, FIVE HUNDRED FORTY and 60/100 DOLLARS (\$32,540.00) of which TWELVE THOUSAND, FIVE HUNDRED FORTY DOLLARS (\$12,540.00) has been paid, the receipt of which is hereby acknowledged, and the balance of TWENTY THOUSAND DOLLARS (\$20,000.00) shall be paid as follows:

\$10,000.00, plus accrued interest, on or before June 15th, 1989; and \$10,000.00, plus accrued interest on or before June 15th, 1990. The unpaid principal balance shall at all times bear interest at the rate of eight percent (8%) per annum. Penalties are especially granted to purchaser to make larger payments at any time, or to pay the contract in full at any time.

FOR RECORD  
SKAMANIA CO. WASH  
BY Robert K. Leick

NOTOR

GARY M. OLSON

Real Estate Contract

(B) All payments under this contract shall be made directly to the law office of Robert K. Leick, Stevenson, Washington 98648.

2. Closing Date/Date of Possession: This real estate transaction shall be closed on the execution date of this contract, in the office of Robert K. Leick, Attorney at Law, Stevenson, Washington, and the Purchasers are entitled to physical possession of the premises on said date.

3. Taxes, Assessments and Insurance:

(A) The parties agree that the real property taxes shall be prorated as between seller and purchasers as of the date of possession.

(B) Purchasers agree to pay all all taxes and assessments legally levied against the subject property subsequent to date of closing before the same shall become delinquent.

(C) In the event Purchasers fail to make payments as herein provided, the Seller may pay such taxes or assessments and effect such insurance and any amount so paid by the Seller shall be deemed a part of the purchase price and shall become payable forthwith.

4. Inspection of Premises and Miscellaneous Provisions: Purchasers agree that a full inspection of the subject property has been made and that neither the Seller nor his assigns shall be liable under any covenants respecting the condition of the premises or for any agreement for alterations, improvements or repairs unless the covenant or agreement relied upon is in writing and is attached to and made a part hereof. Purchasers further agree to permit the Sellers, or their agents, to enter into or upon said premises at any reasonable time to inspect the same.

5. Transfer: This contract is personal to the Purchasers and they agree not to divide the property, sell, assign, hypothecate, or otherwise transfer their interest herein in any way to any other party, or parties, without first obtaining the written consent of Seller; and, in the event such consent is given it is agreed that the net profits from the sale of any portion of the property shall be applied towards the reduction of the contract balance.

6. Deed Transfer: Seller agrees that upon full payment of the purchase price in the manner hereinbefore specified, he will execute and deliver to Purchasers a warr-



anty Deed to the real property, excepting any part which may hereafter be condemned, free and clear of encumbrances.

7. Purchasers' Default: The Purchasers shall be in default under this contract if they (a) fail to observe or perform any term, covenant or condition herein set forth or those of any prior encumbrances, or (b) fail or neglect to make any payment of principal or interest or any other amount required to be discharged by the Purchasers precisely when obligated to do so, or (c) become or are declared insolvent or make an assignment for the benefit of creditors, or files any debtors' petition or any petition is filed against them under any bankruptcy, wage earner's, reorganization or similar act, or (d) permit the property or any part thereof or their interest therein to be attached or in any manner restrained or impounded by process of any court, or (e) abandon the property for more than thirty (30) consecutive days (unless the property is otherwise occupied), or (f) convey the property or a portion thereof without any prior written consent required herein of the Seller.

8. Seller's Remedies: In the event the Purchasers are in default under this contract the Seller may, at his election, take the following courses of action:

(A) Forfeiture. The Seller may cancel and render void all rights, titles and interests of the Purchasers and their successors in interest in this contract and in the property (including all of Purchasers' then existing rights, interests and estates therein 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 record 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 Purchasers and may take possession of the property ten (10) days following the date this contract is forfeited and summarily eject the Purchasers and any person or persons having possession of the said property by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Purchasers or any person or persons claiming by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture, remains in possession of the property more than ten (10) days after such forfeiture, the Purchasers, 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 Purchasers 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 Sellers' reasonable attorneys' fees;

(B) Acceleration. Upon giving the Purchasers not less than fifteen (15) days' written notice of their 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 Purchasers' title to the property, or if the Purchasers commit 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) Specific Performance. The Seller may institute suit to specifically enforce any of the Purchasers' covenants hereunder, and the same may include redress by mandatory or prohibitive injunction;

(D) 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 Purchasers and the Seller, and the Purchasers shall thereafter remain in possession of the property beyond any period otherwise permitted by law, the Purchasers agree that they will occupy the property as tenants at will, and the Purchasers shall be obligated to pay, and hereby promise 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 an action for summary possession of the property as provided by law.

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

10. Remedial Advances. If either party to this contract shall fail to timely pay and discharge any payments or sums for which they have 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 Purchasers fail 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 their reasonable attorneys' fees and together with interest on said expenditures and fees at the default rate from the date of expenditure to and including the date of collection or the due date of any sum against which such offset is effected.

11. Cumulative Remedies/Waivers. The remedies stated herein are cumulative and not mutually exclusive and the Sellers or the Purchasers 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 Purchasers' 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 Purchasers' 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 Purchasers hereby expressly waive any legal or equitable rights that the Purchasers may have with respect to marshaling of assets. The Seller shall not be required to tender their 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 payees' 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.

12. 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, 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 to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for their 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.

13. Notices. Any notices required or permitted by law or under this contract shall be in writing and shall be sent by first class certified 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.

14. Time of Performance. Time 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.

15. 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 Purchasers a lawful rate of interest, and in the event it is determined by any court of competent jurisdiction that any rate herein provided for 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 Purchasers 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.

16. 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 Purchasers 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 Purchasers and the Seller subsequent to the date hereof.



IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first set out hereinabove.

Estate of Anna K. McPadyen, Deceased  
by: *Robert K. Leick*  
ROBERT K. LEICK, Executor  
P.O. Box 247  
Stevenson, WA 98648  
Ph. (509) 427-4594

*Fred A. Newman*  
FRED A. NEWMAN - Purchaser

*Dolly Newman*  
DOLLY NEWMAN - Purchaser

STATE OF WASHINGTON )  
County of Skamania ) ss.

On this day personally appeared before me ROBERT K. LEICK and FRED A. NEWMAN and DOLLY NEWMAN, to me known to be those persons respectively described in and who executed the foregoing instrument, and acknowledged that they each signed the same as their free and voluntary act and deed for the uses and purposes set out therein.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 26<sup>th</sup> day of May, 1988.  
*Shirley A. Little*  
Notary Public in and for the State of Washington, residing at Stevenson

