

SK-15213/ES-775
01-05-18-0-0-0405-00

REAL ESTATE CONTRACT

THIS CONTRACT, made and entered into this 3RD day of JULY, 1989, between **JACK L. RANDALL** and **CHERYL RANDALL**, husband and wife, hereinafter called the "sellers", and **STEVEN M. ELKINS** and **JOLENE A. ELKINS**, husband and wife, hereinafter called the "purchasers".

Unless the context requires otherwise, references to the singular shall include the plural and references to the plural shall include the singular.

WITNESSETH: That the sellers agree to sell to the purchasers and the purchasers agree to purchase from the sellers the following described real estate, with the appurtenances, in Skamania County, State of Washington:

LOT THREE (3) of SHARLEEN JAMES SHORTPLAT, recorded under Auditor's File No. 98081, Book 3, Page 65, of records of Skamania County, Washington.

Together with water rights to existing spring.

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is Ninety-one Thousand Five Hundred and No/100 Dollars (\$91,500.00), of which \$27,000.00 has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price shall be paid as follows:

a. Nine Hundred Dollars, or more at purchasers' option, on or before August 1, 1989 and \$900.00 or more at purchasers' option, on or before the first day of each succeeding calendar month thereafter until the balance of said purchase price shall have been fully paid. The amount of the final payment shall be the total of the principal and interest remaining unpaid at the time of the final payment.

b. The purchasers further agree to pay interest on the diminishing balance of said purchase price at the rate of twelve per cent (12%) per annum from the first day of July, 1989, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.

c. The parties understand and agree that this sale is subject to an existing real estate contract between Sharleen Ann James, as seller, and Jack L. Randall and Cheryl Randall, husband and wife, as purchasers, dated August 1, 1984 and recorded August 28, 1984 in Book 83 at page 839, records of the Skamania County under Auditor's Number 98102 (hereinafter referred to as the "James Contract"), which shall become due and payable in full on June 1, 1994. Purchasers agree that, upon not less than thirty days written notice from sellers, purchasers shall make an additional payment hereunder in the amount of \$20,000.00, all of which shall be applied to the principal balance of this contract. Sellers agree that they shall fulfill all of the purchasers' obligations under the aforesaid James Contract on or before June 1, 1994, including particularly payment in full of all principal and interest due the seller under said contract.

Glenda J. Kimmel, Skamania County Assessor
By: *DM* Parcel # 1-5-18-405

12870
REAL ESTATE EXCISE TAX
JUL 7 1989
PAID 1171.20
J. J. DeWitt
SKAMANIA COUNTY TREASURER

Registered	<i>6</i>
Indexed, Dir	<i>6</i>
Indirect	<i>6</i>
Filmed	
Marked	

2. As referred to in this contract, "date of closing" shall be JULY 3, 1989.

3. Purchasers may at their option pay the entire balance of the purchase price remaining due, or any part of such balance, at any time before maturity, without notice to sellers and without penalty.

Late Charges

4. If any payment on the purchase price is not made by the 8th day of any calendar month, purchasers agree to pay a late charge of \$100.00. Such late payment charge shall be in addition to all other remedies available to sellers and the first amounts received from purchasers after such late charges are due shall be applied to the late charges.

Closing Costs

5. Purchasers agree to pay all escrow fees.

6. Sellers agree to pay all real estate excise taxes.

Inspection

7. The purchasers agree that full inspection of said real estate has been made and that neither the sellers nor their assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the 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.

a. Purchasers are acquiring the property "as is" and sellers make no representations or warranties except as to title as set forth herein. Without limiting the generality of the foregoing, purchasers acknowledge that they have made their own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant they may retain. Purchasers may not rely upon any representation of any party whether or not such party purports to act on behalf of sellers, unless the representation is expressly set forth therein or in a subsequent document executed by sellers. All representations, warranties, understandings, and agreements between purchasers and sellers are merged herein and shall not survive closing.

Taking

8. The purchasers assume all risk hereafter placed on said real estate or of the taking of said real estate or any part thereof for public use and agree that any such taking shall not 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 the sellers and applied as payment on the purchase price herein unless the sellers agree in writing 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.

Insurance

9. The purchasers agree to keep any improvements or future improvements located on the property insured against loss or damage by fire, windstorm, and all other casualties covered by "all risk" or extended coverage endorsements available in the State of Washington in an amount equal to the full insurable value thereof, on the initial and renewal policy dates, with a company acceptable to the sellers and with loss payable first to sellers as their interest may appear, and to pay all premiums for such insurance and deliver all policies and renewals thereof to the sellers. All such policies shall provide that they cannot be amended or canceled without ten (10) days written notice to sellers.

Title Insurance

10. The sellers have delivered, or agree to deliver within fifteen (15) days of the date of closing, at purchasers' expense, a purchaser's policy of title insurance in standard form, or a commitment therefor, issued by Safeco Title Insurance Company, insuring the purchasers to the full amount of said purchase price against loss or damage by reason of defect in 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. Liens or encumbrances which by the terms of this contract the purchasers are to assume, or as to which the conveyance hereunder is to be made subject; and
- c. Any existing contract or contracts under which sellers are purchasing said real estate, and any mortgage or other obligation, which sellers by this contract agree to pay, none of which for the purpose of this Paragraph 10 shall be deemed defects in title.

11. If sellers' title to said real estate is subject to an existing contract or contracts under which sellers are purchasing said real estate, or any mortgage or other obligation which sellers are to pay, sellers agree to make such payments in accordance with the terms thereof, and upon default the purchasers shall have the right to make any payments necessary to remove the default, and any payments so made shall be applied to the payments next falling due the sellers under this contract.

Other Encumbrances Against the Property.

12. Purchasers specifically understand and agree that sellers are reserving unto sellers an easement, the purposes of which, in most general terms, shall be to protect and to provide for the enhancement of scenic, cultural, recreational and natural resources of the Columbia River Gorge as allowed by Public Law 99-663 (100 STAT. 4274), and that said easement shall be conveyed by sellers to the United States of America. Purchasers further specifically understand and agree that sellers reserve an exclusive power to negotiate said easement with the United States, to execute all documents in connection therewith and to receive all monetary benefits resulting from the conveyance of said easement. Purchasers understand and agree that conveyance of said "scenic easement" to the United

States shall or may greatly diminish the potential use and enjoyment of the subject real property, do hereby consent to placing said encumbrance upon the title to be conveyed pursuant to this Real Estate Contract, and agree that any interest in or to the real property which is the subject hereof which is hereafter acquired by the United States pursuant to this Paragraph 12 shall not constitute a defect in sellers' title for purposes of this agreement. Buyers further agree that any title acquired by them hereunder shall be subject and subordinate to that conveyed to the United States of America by sellers pursuant to this Paragraph.

Deed

13. The sellers agree, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to purchasers a statutory warranty fulfillment 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 the standard policy exceptions.

Sellers' Covenants

14. The sellers have deposited with Skamania County Title Company, Stevenson, Washington, a Warranty Deed in Fulfillment of this real estate contract and agree that upon full payment of the purchase price and interest in the manner hereinbefore specified that said deed can be delivered to the purchasers; that said Warranty Deed excepts any part of the property which may hereafter be condemned and is free and clear of all encumbrances, except those mentioned herein and any that may accrue hereafter through any person, or persons, other than the sellers.

Possession

15. 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 purchasers are not in default hereunder. The purchasers covenant to keep any 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.

Use of Premises

16. Purchasers covenant and agree to make or permit no unlawful, offensive or improper use of the premises or any part thereof.

Assignment

17. The rights hereby granted are personal to the purchasers and sellers' reliance upon purchasers' ability and integrity is a part of the consideration for this contract. Neither this contract nor any interest therein, nor the possession of the property, may be assigned or transferred by purchasers, nor shall purchasers make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of sellers.

Default

18. In case the purchasers fail to make any payment herein provided, the sellers may make such payment, and any amounts so paid by sellers, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by purchasers on sellers' demand, all without prejudice to any other right the sellers might have by reason of such default.

19. Time and the covenants of purchasers are 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 at their option exercise any of the following alternative remedies upon giving purchasers thirty (30) days' written notice specifying the default and the remedy to be exercised should purchasers fail to secure all defaults at the expiration of the 30-day period:

- a. Suit for delinquencies. Sellers may institute suit for any installments or other sums then due and payable under this agreement together with any sums advanced by sellers for and the amount of any delinquencies for items such as water assessments, taxes, insurance, payments and underlying obligations and lienable items, together with interest thereon at the rate of 12% per annum from the date each such payment was advanced or due, as the case may be.
- b. Forfeiture and Repossession. The sellers may cancel and render void all rights, titles and interests of the purchasers and their successors 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 sellers record a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract the sellers 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 remain 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 sellers and the sellers 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.

- c. Specific Performance. Sellers may institute suit to specifically enforce any of the purchasers' covenants hereunder.
- 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 sellers, 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 a tenant 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 sellers 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.

20. a. In the event sellers should default in any of their obligations under this contract and such default continues for fifteen (15) days after the purchasers give the sellers 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 purchasers at law or in equity.

b. The waiver of sellers to elect to pursue any of the above remedies at any time upon a breach of any of the terms of this contract by the purchasers shall be deemed only an indulgence by the sellers with regard to that particular breach and shall not be construed, in any manner whatsoever, to be a waiver of any right of sellers to pursue any of the above remedies for the same or a different breach at a subsequent time; election of the sellers to utilize any particular remedy to enforce a breach of this contract shall not preclude sellers from electing to use an alternate remedy to enforce a subsequent breach. The remedies stated herein are cumulative and not mutually exclusive. Any delay or failure of sellers to take action upon default shall not be construed as a waiver of said default. If sellers is/are required to institute legal action to enforce any of the remedies indicated, purchasers agree to pay sellers' costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

Notice

21. Any notice, declaration, demand, consent or communication to be given by any party to this contract to any other party shall be in writing and transmitted to the other party by either personally delivering the notice or by certified or registered mail, return receipt requested, addressed as follows:

To purchasers:

Steven M. & Jolene A. Elkins
Steven M. Elkins

Jolene A. Elkins

To sellers:

Jack L. & Cheryl Randall
Jack L. Randall

Cheryl Randall

Either party may change its address by giving written notice to the other party in the manner provided above, provided that in no event shall sellers be required to send any notice to more than two (2) addresses. The mailing and registering or certifying of any such notice as herein provided shall be sufficient service thereof. Service shall be complete when such notice is registered or certified and placed in the United States mail as shown by the cancellation stamp or postage meter stamp, as the case may be.

Costs and Attorneys' Fees

22. 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 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, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation). 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 its court costs and reasonable attorneys' fees, including such costs and fees as 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.

Succession

23. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

Governing Law

24. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

Entire Agreement

25. This Agreement supersedes any prior agreement and contains the entire agreement of the parties as to the matter covered. No other agreement, statement or promise made by any party or to any employee or agent of any party shall be binding unless made in writing and signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this

