

110865

BOOK 122 PAGE 319

FILED FOR RECORD
SKAMANIA CO. WASH
BY *Kilpinski & Lawrence*

FEB 20 4 23 PM '91

P. Lawry

GAR. H. NELSON

REAL ESTATE CONTRACT

THIS CONTRACT, made and entered into this 13th day of February, 1991, between **GEORGE AIWAY**, a single man, hereinafter called the "Seller", and **DAN P. PATTON** and **JO ANN PATTON**, husband and wife, hereinafter called the "Purchasers".

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

A tract of land in the Northeast Quarter of Section 34, Township 2 North, Range 6 East of the Willamette Meridian in the County of Skamania and State of Washington described as follows:

Beginning at a point 845 feet South and 487 feet West of the Northeast corner of Section 34, Township 2 North, Range 6 East of the Willamette Meridian; thence running 172 feet West to the dividing line of the Sampson and Dahl property; thence South on said line 210 feet to the former State Road No. 8 right of way; thence South 56°18' East 123 feet; thence North 80°23' East 42 feet; thence North 14°8' East 120 feet; thence North 159 feet to the place of beginning.

reserving to Seller possession and control of all the above-described real property and the right to receive all the rents and profits derived from the above-described real property for his natural life. At the death of Seller, and upon payment in full of the purchase price and interest in the manner herein specified, fee simple title to all the above-described real property shall vest in Purchaser.

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is Forty Thousand and No/100 Dollars (\$40,000.00), of which Fourteen Thousand and No/100 Dollars (\$14,000.00) has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price shall be paid as follows:

a. \$300.00, or more at Purchasers' option, on or before the first day of March, 1991, and \$300.00, 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.

b. The Purchasers further agree to pay interest on the diminishing balance of said purchase price at the rate of ten percent (10%) per annum from the 1st day of March, 1991, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.

14139
REAL ESTATE EXCISE TAX

FEB 20 1991

PA. 512.00

W. D. R. R. R.
SKAMANIA COUNTY TREASURER

Registered *p*
Indexed, *p*
Indirect *p*
Filed 2-22-91
Mailed

c. After the death of Seller any payments remaining to be made hereunder shall be paid to DOLORES ZACHOMLER until the balance of the purchase price has been paid in full.

2. Purchasers agree to pay \$25.00 as reasonable liquidated damages, and not as a penalty, in the event that any regularly scheduled payment is made after the due date but prior to the expiration of 10 days from the due date. Such amounts shall be added to the principal balance remaining unpaid. In the event payment is not made within 10 days of the due date it shall constitute a default hereunder.

3. All payments to be made hereunder shall be made at M.P. .59L Butler Loop Road, Skamania, Washington, or at such other place as the Seller may direct in writing.

4. As referred to in this contract, "date of closing" shall be February 13th, 1991.

5. 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 penalty and without notice to Seller.

Closing Costs

6. Purchasers' Closing Costs. Purchasers shall pay the following closing costs:

- a. One-half (1/2) of the premium for title insurance.
- b. One-half (1/2) of the real estate excise tax.
- c. One-half (1/2) of the fee for recordation of real estate contract.
- d. One-half (1/2) of the closing fee to Kielpinski & Lorne, P.C.

7. Seller's Closing Costs. Seller shall pay the following closing costs:

- a. One-half (1/2) of the premium for title insurance.
- b. One-half (1/2) of the real estate excise tax.
- c. One-half (1/2) of the fee for recordation of real estate contract.
- d. One-half (1/2) of the closing fee to Kielpinski & Lorne, P.C.

Pro-Rated Items

8. The following shall be pro-rated as of the date of closing:

- a. Insurance, interest, mortgage insurance, water and other utilities constituting liens, if applicable.

9. For the duration of the life estate reserved to Seller hereunder, Seller agrees to pay before delinquency all taxes and assessments, including but not limited to any governmental improvement assessments or charges that may hereafter become a lien on said real estate. Upon request by Purchasers, Seller will show proof of said payments. Upon termination of the life estate

reserved to Seller, Purchasers shall be solely responsible for said payments.

Inspection

10. The Purchasers agree that full inspection of said real estate has been made and that neither the Seller nor his assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the Purchasers or Seller 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.

2. Purchasers are acquiring the property "as is" and Seller makes 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 Seller, unless the representation is expressly set forth therein or in a subsequent document executed by Seller. All representations, warranties, understandings and agreements between Purchasers and Seller are merged herein and shall not survive closing.

Taking

11. 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 Seller and applied as payment on the purchase price herein unless the Seller agrees 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

12. For the duration of the life estate reserved to Seller hereunder, the Seller agrees 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 Purchasers. Payment received for any loss shall be used exclusively for repair or reconstruction of the premises unless the parties agree otherwise in writing. Seller agrees to pay all premiums for such insurance and deliver all policies and renewals thereof to the Purchasers. All such policies shall provide that they cannot be amended or canceled without ten (10) days written notice to Purchasers. Upon termination of the life estate reserved to Seller, 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 Seller and with loss payable first to the Seller, as his interest may appear, and to pay all premiums for such insurance and deliver all policies and renewals thereof to the Seller. All

such policies shall provide that they cannot be amended or canceled without ten (10) days written notice to Seller.

Title Insurance

13. The Seller has delivered, or agrees to deliver within fifteen (15) days of the date of closing, a purchasers' policy of title insurance in standard form, or a commitment therefor, issued by Skamania County Title Company, insuring the Purchasers to the full amount of said purchase price 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. Easement for pipeline including the terms and provisions thereof recorded June 8, 1915 in Book P, Page 294, Skamania County Deed Records; and
- c. Rights of the Public in and to that portion of the premises lying within Butler Loop Road.

Deed

14. The Seller agrees, 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 Seller, and subject to the exceptions noted in Paragraph 13 hereof.

Possession

15. Upon termination of the life estate reserved to Seller hereunder, the Purchasers shall be entitled to possession of said real estate 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, 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 Seller's 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 Seller.

Default

18. In case either party fails to make any payment herein required to be made by said party, the other party may make such

payment, and any amounts so paid by said party, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by the other party, on demand, all without prejudice to any other right said party 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 Seller may at his 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. Seller may institute suit for any installments or other sums then due and payable under this agreement together with any sums advanced by Seller 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 Seller may cancel and render void all rights, title 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 Seller records a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract, the Seller may retain all payments made hereunder by the 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 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 proceeding the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including the Seller's reasonable attorneys' fees.
- c. Specific Performance. Seller 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 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 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 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.

20. a. In the event Seller should default in any of his 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 Purchasers at law or in equity.

b. The waiver of Seller 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 Seller with regard to that particular breach and shall not be construed, in any manner whatsoever, to be a waiver of any right of Seller to pursue any of the above remedies for the same or a different breach at a subsequent time; election of the Seller to utilize any particular remedy to enforce a breach of this contract shall not preclude Seller 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 Seller to take action upon default shall not be construed as a waiver of said default.

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: Dan P. Patton
Jo Ann Patton
M.P. 0.59L Butler Loop Road
Skamania, WA 98648

To Seller: George S. Alway
M.P. 0.591 Butler Loop Road
Skamania, WA 98648

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 Seller 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.

Use of Pronouns

24. Unless the context requires otherwise, references to the singular shall include the plural and references to the plural shall include the singular. Unless some other meaning or intent is apparent from the context, masculine, feminine and neuter pronouns are used interchangeably herein.

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 instrument as of the date first written above.

SELLER:

George S. Alway
GEORGE S. ALWAY

PURCHASER:

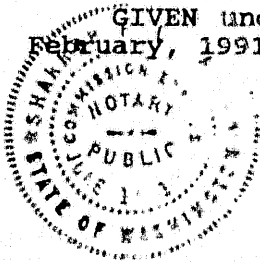
Dan P. Patton
DAN P. PATTON

Joann Patton
JOANN PATTON

STATE OF WASHINGTON)
) ss
 County of Skamania)

On this day personally appeared before me GEORGE S. ALWAY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13th day of February, 1991.



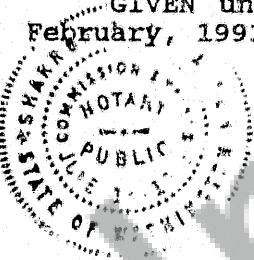
Shanon Feldhausen
 Notary Public in and for the
 State of Washington, residing
 at Carson

Commission expires 6-13-93

STATE OF WASHINGTON)
) ss
 County of Skamania)

On this day personally appeared before me DAN P. PATTON and JO ANN PATTON, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13th day of February, 1991.



Shanon Feldhausen
 Notary Public in and for the
 State of Washington, residing
 at Carson

Commission expires 6-13-93