

2-4-27-700
SK 12/28

REAL ESTATE CONTRACT

THIS AGREEMENT made this day between W. H. DOWNER and JUDITH A. DOWNER, husband and wife, hereinafter called "Sellers," and STEVEN J. DELVO, a single man, hereinafter called "Buyer,"

WITNESSETH:

1. **PREMISES SOLD:** That the Sellers will sell to the Buyer, his heirs and assigns, and Buyer will buy of the Sellers, their heirs, executors, administrators and assigns, the following described real property situate in Skamania County, Washington, with appurtenances thereunto belonging on the following terms and conditions:

That portion of the SE 1/4 of NW 1/4 Section 28, Township 2 North, Range 6 E. W.M., described as follows:

Being that portion of said SE 1/4 of the NW 1/4 bordered on the SW by Duncan Creek Road, on the NE by the Westerly right of way of Lori Lane, and on the NE by the centerline of Duncan Creek.

Also known as Lot 2, W.H. Downer short plat recorded June 29, 1977, under Auditor's File No. 84339, Records of Skamania County, Washington.

Together with an easement for egress and ingress over and across an existing access road approximately fifteen (15) feet in width, extending from the Northerly line of Duncan Creek Road and thence in a Northwesterly and thence Northeasterly direction to the center line of Duncan Creek, said easement being known as Lori Lane.

2. **PURCHASE PRICE:** The purchase price for said real property is the sum of Ten Thousand and no/100 Dollars (\$10,000.00), of which the Buyer has paid unto the Sellers the sum of Forty-five Hundred and no/100 Dollars (\$4,500.00), receipt of which is hereby acknowledged by the Sellers, and the balance of \$5,500.00 shall be paid in monthly installments of \$250.64 or more, commencing on the 1st of August, 1977, with a like installment due on the 1st day of each month thereafter until the balance of the purchase price, together with interest is paid in full.

All payments shall include interest on the unpaid balance owed from time to time at the rate of eight and three-quarters percent (8 3/4%) per annum computed from July 22, 1977, until said balance of the purchase price, together with interest is paid in full.

Buyer reserves the right to pay the balance due on this contract in full at any time without penalty.

3. **POSSESSION:** It is understood and agreed that possession to said premises is to be delivered to Buyer on the 22 day of July, 1977.

4. **TAXES:** The 1977 real estate taxes shall be pro rated between Buyer and Sellers as of July 22, 1977.

5. **GENERAL:** Buyer acknowledges the premises are subject to an executory contract of sale dated January 9, 1976, wherein Lloyd Babler, Jr., Thomas Babler and Raymond A. Town, Jr., d/b/a/ Western International Investors Development Company, and their respective wives if married at the time of acquiring title by deed dated August 2, 1971, are the sellers, and W. H. Downer and Judith A. Downer, husband and wife, are the purchasers.

Sellers agree to make such payments in accordance with the terms of said contract, and upon default, the purchaser has 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.

Premises are sold and accepted subject to easements and rights of way for County Road No. 1011 designated as Duncan Creek Road and easement and rights of way for Lori Lane.

6. COVENANT FOR ROAD MAINTENANCE: Sellers agree that in the event they, their heirs, successors or assigns should commence a frequent or regular use of the aforescribed roadway leading from County Road No. 1011 to Duncan Creek, they shall pay their proportional share of maintaining or improving said roadway to keep same in a condition suitable to the users. Buyer agrees that he, his heirs, successors and assigns shall pay his proportional share of maintaining said roadway. In the event any user shall determine said roadway is in need of maintenance, the other users shall be notified in writing of the proposed repairs to be made. In the event any user shall disagree with such proposal, the parties shall attempt to compromise any differences. Should the parties continue to disagree, the proponent of the proposal shall have the right to pick an arbitrator within five (5) days of such disagreement, as shall the opponents have the same amount of time and the arbitrators so chosen shall select a third arbitrator. Said arbitrators shall be governed by the laws of the State of Washington and their decision as to whether the road shall be improved, the extent of same and the cost to the individual users shall be conclusive. The cost and expenses of the arbitrators shall be borne equally by the users. This maintenance agreement shall be a covenant running with the following described premises:

Skanawha County, State of Washington:

That portion of the Southeast Quarter of the Northwest Quarter of Section 24, Township 2 North, Range 6 East of the Willamette Meridian lying northerly of the County Road no. 1011, known as Duncan Creek Road.

7. COVENANT FOR WELL: Sellers agree that in the event it becomes necessary for Buyer to dig a well to serve his personal residence because water is not available from Duncan Creek as a result of reduced stream flow or because water therefrom is declared unfit for human consumption by the appropriate state agency, they shall pay one-half the cost of digging, operating and maintaining a water well to serve their residence and that of Buyer, being limited to service of two (2) residences only. Buyer agrees that he, his heirs, successors and assigns shall pay their proportional share of digging, operating and maintaining said well. In the event any user shall determine said well is in need of maintenance, the other users shall be notified in writing of the proposed repairs to be made. In the event any user shall disagree with such proposal, the parties shall attempt to compromise any differences. Should the parties continue to disagree, the proponent of the proposal shall have the right to pick an arbitrator within five (5) days of such disagreement, as shall the opponents have the same amount of time and the arbitrators so chosen shall select a third arbitrator. Said arbitrators shall be governed by the laws of the State of Washington and their decision as to whether the well shall be improved, the extent of same and the cost to the individual users shall be conclusive. The cost and expenses of the arbitrators shall be borne equally by the users. This maintenance agreement shall not be a covenant

running with real property and is personal to the buyer and sellers so long as they own contiguous property subject to this contract, except that when and if said well is dug the parties shall enter a written agreement identifying the location and premises to be served by said well, and make said written agreement a covenant running with the then identified and described premises.

Sellers do not warrant that the drilling of the well is possible on said premises or that water is known to exist thereon for well purposes.

8. BUYER'S COVENANTS: Buyer covenants and agrees to the following terms and conditions, to-wit: To make the payments above agreed to promptly, in the manner and on the dates above named; to pay the consideration agreed upon, regardless of any loss to said real property resulting from condemnation proceedings or from any other cause; to make or permit no unlawful, offensive or improper use of said premises or any part thereof; to permit the Sellers, or their agents, to enter into or upon said real property at any reasonable time to inspect same; to pay regularly and seasonably and before the same shall become delinquent all taxes, assessments, liens and encumbrances whatsoever having or taking precedence over the rights of the Sellers in and to said property; and not to cut or remove any trees growing upon said premises other than for the purposes of residential firewood or for clearing for residential purposes, without first receiving the written consent of Sellers.

9. SELLERS' COVENANTS: The Sellers agree that when the Buyer shall have paid the balance of the purchase price and all interest due and shall have repaid any and all payments or advancements made upon the Sellers to or for the benefit of the Buyer or for the protection of the property or of this contract, together with interest thereon, and shall have, in all other respects, fully complied with all of the terms and conditions of this contract to make, execute and deliver to the Buyer or assigns a good and sufficient Warranty Deed, conveying title to said premises free and clear of all encumbrances, except those of record mentioned herein, and it is understood and agreed that the warranties to said deed shall, after the date of this contract, apply only to the acts of the Sellers and shall not include any taxes or assessments which may have become a lien after the date of this contract. Sellers further agree to furnish to Buyer a policy of title insurance insuring their legal title to said real estate as of the date of this contract within ninety (90) days from the date hereof.

10. ASSIGNMENT: It is agreed that no assignment of this contract nor any contract to assign this contract and no contract whereby the title or possession of the above described real estate shall be transferred, shall be valid unless the same shall be consented to by the Sellers in writing, and any attempted assignment, contract to assign, or contract to transfer the title or possession of said premises, by the Buyer, shall be void unless consented to as above provided and shall be a default under the terms and conditions hereof.

11. FORFEITURE: Time is of the essence of this contract, and if the Buyer shall fail, refuse or neglect to pay either or any of the installments or interest or any other payments 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 the Sellers shall have the right to declare this contract null and void; and if the Buyer shall fail

to make good such default within fifteen (15) days after the Sellers shall have served a written notice of intent to declare a forfeiture by delivering said notice to the Buyer or mailing same by certified mail to said Buyer at his last known address or to the address given on this contract, at the Sellers' option, then, and in that event, all of the rights under this contract shall immediately and utterly cease and determine and the property described herein shall revert to, and revert in, the Sellers without further action on the part of the Sellers and without any right of the Buyer to reclamation or compensation for money paid, or for improvements made on said premises, and all money theretofore paid to the Sellers under this contract shall thereupon be forfeited without process of law and shall be retained by and belong to, the Sellers in full satisfaction of all claims as accrued and reasonable rent of said premises from this day to the time of such forfeiture and as the liquidated damages to the Sellers for the Buyer's failure to complete this contract.

12. **OTHER REMEDIES:** As an alternative to declaring a forfeiture for any such default, Sellers may, at their election, bring an action or actions, on any intermediate overdue installment, or on any payment or payments, made by the Sellers 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.

Or Sellers may, in the event of such default, at their election, bring such action or actions as they may deem appropriate to effect collection thereof.

It is agreed that any such action is an action arising on contract for the recovery of money only, as if the promise to pay had been expressed in a different instrument, and that no such action shall constitute an election not to proceed otherwise as to any subsequent default.

13. **COURT COSTS AND ATTORNEYS' FEES:** In any action by either party to enforce any rights of either party hereunder, the prevailing party in any such action shall be entitled to recover from the other party a reasonable attorneys' fees together with their costs.

14. **REPRESENTATIONS:** Buyer has inspected the property sold herein and has found the same to be to his satisfaction and he agrees that no promises, representations, statements or warranties, expressed or implied, shall be binding on the Sellers unless expressly contained herein.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate this 21 day of July, 1977.

W. H. Downer
No. 4920
BUYER
TRANSACTION EXCISE TAX
JUL 22 1977
STATE OF OHIO
County of CUYAHOGA
Amount Paid \$110.00
\$2.00
Sharon A. Downer

On this day personally appeared before me W. H. DOWNER and W. H. A. DOWNER, husband and wife, 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.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of July, 1977.