

FILED FOR RECORD AT REQUEST OF:

Columbia Title Company  
P.O. Box 735  
White Salmon, WA 98672

116221

WHEN RECORDED RETURN TO:

Columbia Title Company  
P.O. Box 735  
White Salmon, WA 98672

SCR 17747

FILED FOR RECORD  
SKAMANIA CO. WASH  
E. SKAMANIA CO. TITLE

MAY 13 10 53 AM '93

*P. Lowry*

GARY M. OLSON

BOOK 135 PAGE 274

Registered	
Indexed	<i>p</i>
Abstract	<i>p</i>
Filed	
Mailed	

REAL ESTATE CONTRACT  
(RESIDENTIAL SHORT FORM)

1. PARTIES AND DATE. This contract is entered into on April 6, 1993, between CRAIG BENESCH and LISA BENESCH, husband and wife, as "Seller" and ROBERT G. ROE and JOHANNA N. ROE, husband and wife, as "Buyer".

2. SALE AND LEGAL DESCRIPTION. For and in consideration of the payments to be made and the covenants to be performed, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the following described real estate in Skamania County, State of Washington:

Lot 8, WILLARD, according to the Plat thereof, recorded in Book B, Page 2, Skamania County Plat Records.

SUBJECT TO:

- 1) Taxes. (Account #03-09-02-1-1-0800-00)
- 2) Right-of-way for Flume, including the terms and provisions thereof, in favor of the Drano Flume & Lumber Company, as disclosed by instrument amending the terms of said easement, recorded July 21, 1921, in Book S, Page 326, Skamania County Deed Records.
- 3) Easement for Flume Road, as shown on the Plat.
- 4) Covenants as shown on the recorded Plat.
- 5) By-Laws of the Willard Home Owners Association, including the terms and provisions thereof, recorded June 27, 1988, in Book 109, Page 906, in Auditors File No. 105361, in Skamania County Deed Records.

REAL ESTATE EXCISE TAX

015795

MAY 13 1993

PAID 646.00

*Ed. L. L. L.*

SKAMANIA COUNTY TREASURER

Skamania County Home Owners Association  
By: *RC* Paid to 3-9-2-1-1-800

LAW OFFICES OF TUNIS WYKES  
P.O. Box 417 - 210 Columbia Avenue  
Hood River, Oregon 97031  
(503) 366-2221 (503) 366-1361 fax

1 - REAL ESTATE CONTRACT (residential short form)

[b4w1roe.isk]

6) The By-Laws as set forth contains, among other things, provisions for levies and assessments of the Willard Home Owners Association.

3. **PERSONAL PROPERTY.** Personal property, if any, included in the same is as follows:

Electric cook stove, window blinds, all light fixtures, garden shed, remaining cans of house paint, trim boards from remodelling, blue carpet in downstairs bedroom, carpet in upstairs bedroom, and clothes line.

No part of the purchase price is attributed to personal property.

4. (a) **PRICE.** Buyer agrees to pay:

	\$ 50,000.00	Total Price
Less	\$ 20,000.00	Down Payment
Results in	\$ 30,000.00	Amount Financed by Seller

The downpayment is to be made by Buyer, to the credit of Seller, in certified funds, to Columbia Title Company upon establishment of its closing escrow account for this transaction.

(b) **PAYMENT OF AMOUNT FINANCED BY SELLER.** Buyer agrees to pay the sum of \$30,000.00 as follows: \$300.00 on or before the 8th day of May 8, 1993, 1993, including interest from the date of this contract at the rate of 9% per annum on the declining balance thereof; and a like amount on or before the 8th day of each and every month thereafter until paid in full. Buyer shall have the privilege of increasing any payment, or prepaying the entire balance at any time without penalty.

Payments are applied first to interest and then to principal. Payments shall be made to Seller in care of Columbia Title Company, P.O. Box 735, White Salmon, Washington, 98672. Any changes in the place of collection escrow shall be with written consent of both parties.

5. (a) **OBLIGATIONS TO BE PAID BY THE SELLER.** The Seller agrees to continue to pay directly from payments received hereunder the following obligation to Broughton Lumber Company, (hereinafter the "prior encumbrance") which obligation must be paid in full when Buyer pays the purchase price in full:

That certain contract dated July 14, 1988, recorded on July 19, 1988, in Book 110, Page 207, Auditor's File No. 105475, Skamania County Deed Records. Excise Tax Receipt No. 12139.

(b) **FAILURE TO SELLER TO MAKE PAYMENTS ON PRIOR ENCUMBRANCES.** If Seller fails to make any payments on the prior encumbrance, Buyer may give written notice to Seller that unless Seller makes the delinquent payments within 15 days, Buyer will make the

payments together with any late charge, additional interest, penalties, and costs assessed by the Holder of the prior encumbrance. The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the prior encumbrance.

Buyer may deduct the amounts so paid plus a late charge of 5% of the amount so paid and any attorneys' fees and costs incurred by Buyer in connection with the delinquency from payments next becoming due Seller on the purchase price.

In the event Buyer makes such delinquent payments on three occasions, Buyer shall have the right to make all payments due thereafter direct to the holder of such prior encumbrance and deduct the then balance owing on such prior encumbrance from the then balance owing on the purchase price and reduce periodic payments on the balance due Seller by the payments called for in such prior encumbrances as such payments become due.

**6. OTHER ENCUMBRANCES AGAINST THE PROPERTY.** The property is subject to encumbrances including the following listed tenancies, easements, restrictions, and reservations in addition to the obligations assumed by Buyer and the obligations being paid by Seller: as listed in Paragraph 2 above.

**7. FULFILLMENT DEED.** Upon payment of all amounts due Seller, Seller agrees to deliver to Buyer a Statutory Warranty Deed in fulfillment of this contract. The covenants of warranty in said deed shall not apply to any encumbrances assumed by Buyer or to defects in title arising subsequent to the date of this contract by, through or under persons other than the Seller herein. Any personal property included in the same shall be included in the fulfillment deed.

**8. LATE CHARGES.** If any payment on the purchase price is not made within ten (10) days after the date it is due, Buyer agrees to pay a late charge equal to 5% of the amount of such payment. Such late payment charge shall be in addition to all other remedies available to Seller and the first amounts received from Buyer after such late charges are due shall be applied to the late charges.

**9. NO ADVERSE EFFECT ON PRIOR ENCUMBRANCES.** Seller warrants that entry into this contract will not cause in any prior encumbrance (a) a breach, (b) accelerated payments, or (c) an increased interest rate; unless (a) (b) or (c) has been consented to by Buyer in writing.

**10. POSSESSION.** Buyer is entitled to possession of the property from and after the date of this Contract, subject to any tenancies described in Paragraph 6, and shall continue so long as Buyer shall perform all terms, covenants and conditions of this Contract.

**11. TAXES, ASSESSMENTS AND UTILITY LIENS.** Buyer agrees to pay by

the date due all taxes and assessments becoming a lien against the property after the date of this contract. Buyer may in good faith contest any such taxes or assessments so long as no forfeiture or sale of the property is threatened as a result of such contest. Buyer agrees to pay when due any utility charges which may become liens superior to Seller's interest under this contract. If real estate taxes and penalties are assessed against the property subsequent to date of this contract because of a change in use prior to the date of this contract for Open Space, Farm, Agricultural, or Timber classifications approved by the County or because of Senior Citizen's Declaration to Defer Property Taxes filed prior to the date of this contract, Buyer may demand in writing payment of such taxes and penalties within 30 days. If payment is not made, Buyer may pay and deduct the amount thereof plus 5% penalty from the payments next becoming due Seller under the contract.

**12. INSURANCE.** Buyer agrees to keep all buildings and improvements now or hereafter erected on the property described herein continuously insured under fire and extended coverage policies in an amount not less than the balances owed on obligations assumed by Buyer plus the balance due Seller, or full insurable value, whichever is lower. Certificates of insurance shall be provided to Seller, and shall be in such companies as the Seller shall approve and have loss payable first to any holders of underlying encumbrances, then to Seller as their interests may appear and then to Buyer. Buyer may within 30 days after loss to negotiate a contract to substantially restore the premises to their condition before the loss. If the insurance proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless the underlying encumbrances provide otherwise. Otherwise the amount collected under any insurance policy shall be applied upon any amounts due hereunder in such order as the Seller shall determine. In the event of forfeiture, all rights of Buyer in insurance policies then in force shall pass to Seller.

**13. NONPAYMENT OF TAXES, INSURANCE AND UTILITIES CONSTITUTING LIENS.** If Buyer fails to pay taxes or assessments, insurance premiums, or utility charges constituting liens prior to Seller's interest under this contract, Seller may pay such items and Buyer shall forthwith pay Seller the amount thereof plus a late charge of 5% of the amount thereof plus any costs and attorney's fees incurred in connection with making such payment. Such payment by Seller shall not waive Buyer's default nor shall Seller be deemed to have made an election of remedies and shall be entitled to act on such default as provided in this Contract.

**14. CONDITION OF PROPERTY.** Buyer accepts the property in its present condition and ACKNOWLEDGES AND AGREES THAT BUYER HAS BEEN INFORMED AND UNDERSTANDS THAT SELLER MAKES NO WARRANTIES, EXPRESS



OR IMPLIED TO BUYER. Buyer agrees to maintain the property and use such property in compliance with all laws, rules and regulations.

15. **RISK OF LOSS.** Buyer shall bear the risk of loss for destruction or condemnation of the property. Any such loss shall not relieve Buyer from any of Buyer's obligations pursuant to this contract.

16. **WASTE.** Buyer shall keep the property in good condition and repair and shall not commit or suffer waste or willful damage to or destruction of the property. Buyer shall not remove commercial timber without the written consent of Seller. If Buyer uses the house as a rental, Buyer assumes full responsibility for any damage that may occur.

17. **CONDEMNATION.** Seller and Buyer may each appear as owners of an interest in the property in any action concerning condemnation of any part of the property. Buyer may within 30 days after condemnation and removal of improvements, negotiate a contract to substantially restore the premises to their condition before the removal. If the condemnation proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless underlying encumbrances provide otherwise. Otherwise, proceeds of the award shall be applied in payment of the balance due on the purchase price, as Seller may direct.

18. **DEFAULT.** If the Buyer fails to observe or perform any term, covenant, or condition of this contract, Seller is entitled to elect to enforce all remedies allowed at law or equity, including, without limitation:

(a) **Suit for Installments.** Sue for any delinquent periodic payment; or

(b) **Specific Performance.** Sue for specific performance of any of Buyer's obligations pursuant to this Contract; or

(c) **Forfeit Buyer's Interest.** Forfeit this contract pursuant to Ch. 61.30, RCW, as it is presently enacted and may hereafter be amended. The effect of such forfeiture includes: (i) all right, title, and interest in the property of the Buyer and all persons claiming through the Buyers shall be terminated; (ii) the Buyer's rights under the contract shall be cancelled; (iii) all sums previously paid under the contract shall belong to and be retained by the Seller or other person to whom paid and entitled thereto; (iv) all improvements made to any unharvested crops on the property shall belong to the Seller; and (v) Buyer shall be required to surrender possession of the property, improvements, and unharvested crops to the Seller 10 days before the forfeiture. This subparagraph becomes null and void when the principal balance due

hereunder is reduced to \$25,000.00.

BOOK 135 PAGE 279

(d) Acceleration of Balance Due. Give Buyer written notice demanding payment of said delinquencies and payment of a late charge of 5% of the amount of such delinquent payments and payment of Seller's reasonable attorney's fees and costs incurred for services in preparing and sending such notice and stating that if payment pursuant to said notice is not received within thirty (30) days after the date said notice is either deposited in the mail addressed to the buyer or personally delivered to the Buyer, the entire balance owing, including interest, will become immediately due and payable. Seller may thereupon institute suit for payment of such balance, interest, late charge, and reasonable attorneys' fees and costs.

19. LIENS AND ENCUMBRANCES. Buyer shall not allow or suffer any liens or encumbrances to attach or be filed against any part of the property described in this Contract; PROVIDED, HOWEVER, that should any lien or encumbrance attach or be filed which Buyer, in good faith, deems invalid either in whole or in part, Buyer shall have the right to diligently litigate and obtain judicial determination regarding the validity or extent of such lien or encumbrance, include appellate determination, and should such proceeding be resolved against Buyer, then Buyer shall immediately satisfy and discharge same. In this regard, Buyer shall prosecute or defend such litigation at Buyer's own cost and expense on behalf of and for the benefit of all parties to this Agreement. Seller shall not be barred from taking such legal action as Vendor shall deem necessary or useful to protect Seller's interest in said property. This paragraph becomes null and void when the principal balance due hereunder is reduced to \$25,000.00.

20. RECEIVER. If Seller has instituted any proceedings specified in Paragraph 18 and Buyer is receiving rental or other income from the property, Buyer agrees that the appointment of a receiver for the property is necessary to protect Seller's interest.

21. BUYER'S REMEDY FOR SELLER'S DEFAULT. If Seller fails to observe or perform any term, covenant or condition of this contract, Buyer may, after 30 days' written notice to Seller, institute suit for damages or specific performance unless the breached designated in said notice are cured.

22. NON-WAIVER. Failure of either party to insist upon strict performance of the other party's obligations hereunder shall not be construed as a waiver of strict performance thereafter of all of the other party's obligations hereunder and shall not prejudice any remedies as provided herein.

23. ATTORNEYS' FEES AND COSTS. In the event of any breach of this contract, the party responsible for the breach agrees to pay reasonable attorneys' fees and costs, including costs of services

of notices and title searches, incurred by the other party. The prevailing party in any suit instituted arising out of this contract and in any forfeiture proceedings arising out of this contract shall be entitled to receive reasonable attorneys' fees and costs incurred in such suit or proceeding.

24. **NOTICES.** Notices shall be either personally served or shall be sent certified mail, return receipt requested, and by regular first class mail to Buyer at 0.08R Flume Road, Willard, Washington, 98605, and to Seller at 315 N. 21st, Boise, Idaho, 83702, or such other addresses as either party may specify in writing to the other party. Notices shall be deemed given when served or mailed. Notice to Seller shall also be sent to any institution receiving payments on the contract.

25. **TIME FOR PERFORMANCE.** Time is of the essence in performance of any obligations pursuant to this contract.

26. **SUCCESSORS AND ASSIGNS.** Subject to any restrictions against assignment, the provisions of this contract shall be binding on the heirs, successors and assigns of the Seller and the Buyer.

27. **DUE ON SALE.** If Buyer, without written consent of Seller, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease, or assign, (f) grants an option to buy the property, (g) permits a forfeiture or foreclosure or trustee or sheriff's sale on any of the Buyer's interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable.

28. **ENTIRE AGREEMENT.** This contract constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, written or oral. This contract may be amended only in writing executed by Seller and Buyer.

IN WITNESS WHEREOF, the parties have signed and sealed this contract the day and year first above written.

SELLER

BUYER

Craig Benesch  
CRAIG BENESCH

Robert G. Roe  
ROBERT G. ROE

Lisa Benesch  
LISA BENESCH

Johanna N. Roe  
JOHANNA N. ROE

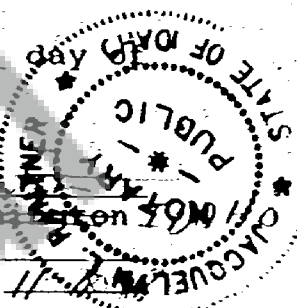
STATE OF ~~WASHINGTON~~ IDAHO  
County of ADAM

BOOK 135 PAGE 281

On this day personally appeared before me CRAIG BENESCH and LISA BENESCH, to me known to be the individuals described in and who executed the 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 7<sup>th</sup> day of MAY, 1993.

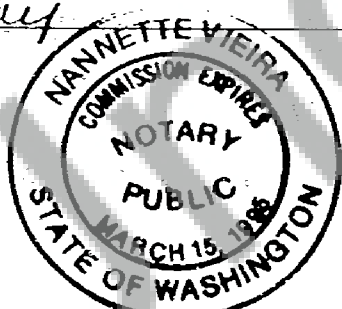
[Signature]  
Notary Public for Washington  
Residing at [Address]  
My commission expires: 11-1-94



STATE OF WASHINGTON  
County of Klickitat

On this day personally appeared before me ROBERT G. ROE and JOHANNA N. ROE, to me known to be the individuals described in and who executed the 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 6 day of May, 1993.



Nannette Vieira  
Notary Public for Washington  
Residing at White Salmon  
My commission expires: 3-15-95

**CONSENT**

The undersigned hereby consents to the above assignment of the vendee's interest in the underlying Contract. This consent shall not operate to release or discharge assignor of his liability under the contract.

BROUGHTON LUMBER COMPANY

By: [Signature]