

Skamania PUD
Robert Wittenberg
PO Box 500
Carson, WA 98610

LEASE AGREEMENT (With option to Purchase)

This is a lease entered into this 2nd day of August, 2004, by ROBERT SEAMAN, A Single Man, (hereinafter "Landlord"), and SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO. 1, A Washington Public Utility District, (hereinafter "Tenant").

RECITALS

WHEREAS, Skamania County Public Utility District No. 1 owns and operates the Carson Water System for the benefit of the businesses and residents of the Carson, Washington area, and;

WHEREAS, Skamania PUD desires to drill a well for eventual production for the Carson Water System, and;

WHEREAS, Robert Seaman owns real property described below that may provide a suitable location for a new well and would like to sell said property to Skamania PUD.

THE PARTIES HERETO AGREE AS FOLLOWS: *✓*

- 1) **Leased Property.** Landlord does hereby lease to the Tenant and Tenant does hereby lease from the Landlord part of that parcel in the SW ¼ of the SW ¼ of Section 8, T 3N R 8E 6.6, Skamania County, Washington commonly known as Tax parcel number 03 08 08 3 0 0600 00 and more fully described on page 125 of Book 128 in the Skamania County Auditors' Office, as 'that portion of Government Lot 4 in Section 8, Township 3 North, Range 8 East of the Willamette Meridian lying northeasterly of the Old State Road No. 8-C, now designated as High Bridge Road, EXCEPT that portion West of the East line of tract conveyed to Earl S. Seaman and Florence K. Seaman, as recorded in Book 56 of Deeds, at page 85, and recorded on June 27, 1966, ALSO EXCEPT that tract conveyed to Samuel James Seaman in Book 74 of Deeds at Page 122, recorded January 12, 1978; AND EXCEPT from the remainder the West 75 feet as measured along the North line thereof', such part being further described as one acre of real property, either Test Site #1 or Test Site #2, together with an easement for ingress and egress to said parcels, which are situated in the County of

County of Skamania, State of Washington (hereinafter called "premises"), and more fully described in Exhibits "A" and "B", attached hereto and incorporated herein as if fully set forth. Tenant shall occupy one test site at a time, beginning with Test Site #1, and shall not move onto Test Site #2 until after leaving Test Site #1.

- 2) Term. This lease shall be for a term of six (6) successive one-month terms, commencing when the Tenant takes possession of the property and terminating six months thereafter unless extended by the parties pursuant to Section 9 of this Agreement.
- 3) Rent. Tenant covenants and agrees to pay to Landlord as rental the sum of One Thousand Dollars \$1000.00 commencing on the date the Tenant takes possession of the property and \$1000.00 per month for five months thereafter. The first rental payment shall be due on the date the Tenant takes possession of the property and additional payments shall be due on the same date of each subsequent month thereafter. Payments shall be made to Landlord, or such other place as Landlord shall direct in writing.
- 4) Condition of Premises/Use by Tenant.
Landlord understands that Tenant is leasing the said real property for the purposes of drilling a test well. Landlord will not obstruct any of Tenant's activities on the property in connection with Tenant's desire to test suitability for a well, nor require Tenant to obtain any consents from Landlord regarding activities that may be required to perform said tests. Landlord further agrees to cooperate with any third parties conducting tests on the Tenant's behalf to the extent that the legal owner's participation is required. PROVIDED FURTHER, Landlord agrees that Tenant may elect to order a Preliminary Commitment of Title Insurance prior to exercising the option as set forth below as part of its activities in connection with Tenant's desire to test suitability for a well. Landlord agrees that if Tenant subsequently elects to exercise its option as set forth below, Landlord will reimburse Tenant for Tenant's cost for a Preliminary Title Commitment. Said cost may be reimbursed from funds due to Landlord at closing.
- 5) Option to Purchase. If the Tenant/Optionee is not in default, Tenant/Optionee shall have an exclusive right at any time after the date Tenant takes possession of the property, but not later than six months from the date Tenant takes possession of the property, to purchase either of the parcels of the above-described real property. PROVIDED THAT, Tenant may terminate this lease prior to the expiration of the six-month period upon written notice to the Landlord. The notice to exercise the option to purchase shall be accompanied by a Real Estate Purchase and Sale Agreement, the terms of which are included in the Real Estate Contract reviewed and agreed to by the parties, as Exhibit "C", and incorporated herein by this reference. To the extent any conflict exists between this Lease Agreement and Exhibit "C", the terms contained herein shall control. A copy of the parties' Lease Agreement, together with Exhibit "C", shall be furnished to the escrow agent upon exercise of the option to purchase.
- 6) Exercise of Option. Notice of exercise of this option must be in writing and may be mailed

or personally delivered to the Landlord/Optionor. If notice is provided by mail, such notice shall be postmarked no later than 5 days prior to the termination of the option period. If mailed, the notice shall be sent postage prepaid, certified or registered mail, return receipt requested, and the date marked on the return receipt by the U.S. Postal Service shall be deemed the date upon which the Landlord/Optionor received notice.

Upon receipt of Notice from Tenant/Optionee as provided above, Landlord/Optionor agrees to submit an application to the Skamania County Planning Department for a land division within 30 days, with Tenant/Optionee's assistance as requested. Tenant/Optionee agrees to reimburse Landlord/Optionor for all reasonable invoiced costs incurred by Landlord/Optionor in connection with the land division application and required surveys and documents for the Tenant/Optionee's parcel. Any additional costs incurred for other land divisions for Landlord/Optionor benefit alone shall be borne by Landlord/Optionor.

- 7) Consideration for Option. The parties hereby agree that a portion of Tenant's monthly rental payments in the amount of One Thousand Dollars (\$1000.00) shall be considered consideration for the option to purchase, payable in the following manner: Tenant shall, upon possession of the property, tender to Landlord the amount of One-Thousand Dollars (\$1,000.00) as provided for in Section 3 hereof. In addition to the initial payment of One Thousand Dollars (\$1,000.00), Tenant shall make additional rental payments in the amount of One Thousand Dollars (\$1000.00) for each successive month, for up to six months, and the parties agree that said additional rental payments shall hereby be considered as additional consideration for this Option. At the time the option is exercised, the parties agree that the total sums paid by tenant and received by Landlord for this option pursuant to Section Three of this Agreement, in the amount of up to Six Thousand Dollars, shall be applied towards and deducted from the property purchase price of Thirty Six Thousand Dollars (\$36,000.00).
- 8) Notices. Any notices required to be served in accordance with the terms of this lease shall be personally served or shall be sent by registered or certified mail to the following address, or to such other address as the parties may designate in writing:

Landlord: Robert Seaman
762 High Bridge Road
Carson, WA. 98610

Tenant: Skamania PUD
Robert Wittenberg Jr., Manager
P.O. Box 500
Carson, WA. 98610

- 9) Termination of Option. The option to purchase granted to the Lessee/Optionee hereunder shall terminate no later than six months from the date that Tenant takes possession of the property unless the parties mutually agree to extend the Option Agreement term. The Option may terminate earlier in the event of the Lessee/Optionee's exercise of Option, or in the event of default and termination of the Lease Agreement under the terms thereof.

- 10) Closing Following Exercise of Option. Both parties agree to use their best efforts to cause the purchase and sale, pursuant to the option, to close on or before six months from the date that Tenant takes possession of the property, or on such other date as the parties may mutually agree upon in writing.
- 11) Earnest Money/Option Consideration. The Option Consideration shall be credited against the purchase price at closing. The Option Consideration shall be refundable only if the Landlord/Optionor is unable to deliver marketable title to the real property; otherwise the Option Consideration then paid shall be non-refundable as liquidated damages in the event the Tenant fails to execute its Option. If this transaction fails to close, the escrow agent shall be entitled to deduct from the Option Consideration any cancellation fees incurred for the title or escrow.
- 12) Alterations. Landlord shall hold Tenant harmless for all acts taken in connection with its testing activities, and Tenant agrees to comply with all laws, ordinances, rules and regulations of any public authority, obtaining all necessary permits, approvals or authorizations
- 13) Costs and Attorney's Fees. If either party is forced to bring an action claim or demand to enforce their rights under this agreement, the prevailing party shall be entitled to their reasonable attorneys' fees, including attorneys' fees on appeal.
- 14) Default and Re-Entry. Time is of the essence with respect to all matters herein, and if any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, then the Landlord may cancel this lease upon giving the notice required by law, and re-enter said premises, but notwithstanding such re-entry by the Landlord, the liability of the Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this lease.
- 15) Entire Agreement. There are no verbal or other agreements, (unless attached hereto and initialed by the parties), which modify or affect this lease. This lease supersedes any and all prior agreements executed by or on behalf of the parties hereto regarding the leased premises. Neither Landlord nor Tenant shall be bound by any understanding, agreement, promise or representation expressed or implied not specified herein or attached hereto.
- 16) Partial Invalidity. Any provision of this lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

IN WITNESS WHEREOF the parties have hereunto set their hand the date and year first above written.

Robert L. Seaman Jr.
ROBERT SEAMAN, SELLER

Robert Wittenberg Jr.
ROBERT WITTENBERG JR, Mgr
Skamania County Public Utility
District No. 1

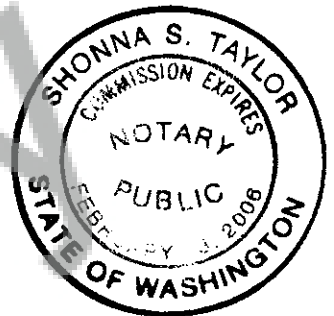
STATE OF WASHINGTON)
)
COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that ROBERT SEAMAN is the person who appeared before me and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Shonna Taylor
NOTARY PUBLIC

Shonna Taylor
(Print or Type Name of Notary)

My Appointment Expires 2-13-06



STATE OF WASHINGTON)
)
COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that ROBERT WITTENBERG JR. is the person who appeared before me and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Shonna Taylor
NOTARY PUBLIC

Shonna Taylor
(Print or Type Name of Notary)

My Appointment Expires 2-13-06

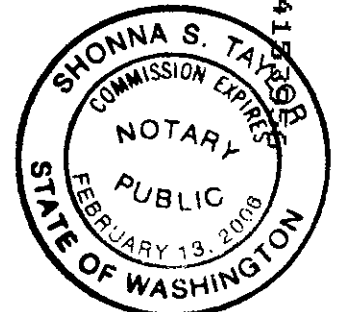


Exhibit 'A' to

Lease Agreement w/ Option to Purchase
Mr. Robert Seaman & Skamania County PUD

Test Site #1: Beginning at the Northeast corner of Government Lot 4, in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 3 North, Range 8 East of the Willamette Meridian, in Skamania County, Thence S89°56'26"W 208.71 feet, Thence S1°28'10"W 208.71 feet, Thence N89°56'26"E 208.71 feet, Thence N1°28'10"E 208.71 feet to the point of beginning.

Test Site # 2: Beginning at a point which bears S89°56'26"W 633.18 feet from the Northeast corner of Government Lot 4, in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 3 North, Range 8 East of the Willamette Meridian, in Skamania County, Thence S1°28'10"W 208.71 feet, Thence N89°56'26"E 208.71 feet, Thence N1°28'10"E 208.71 feet, Thence S89°56'26"W 208.71 feet to the point of beginning.

Access Road: A strip of land 20 feet wide located adjacent to and south of the north line of Government Lot 4, in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, Township 3 North, Range 8 East of the Willamette Meridian, in Skamania County from the Northeast corner thereof, and extending westerly 633.17 feet, and extending further S1°28'10"W 361 more or less feet to the Northeasterly rights-of-way line of High Bridge Road.

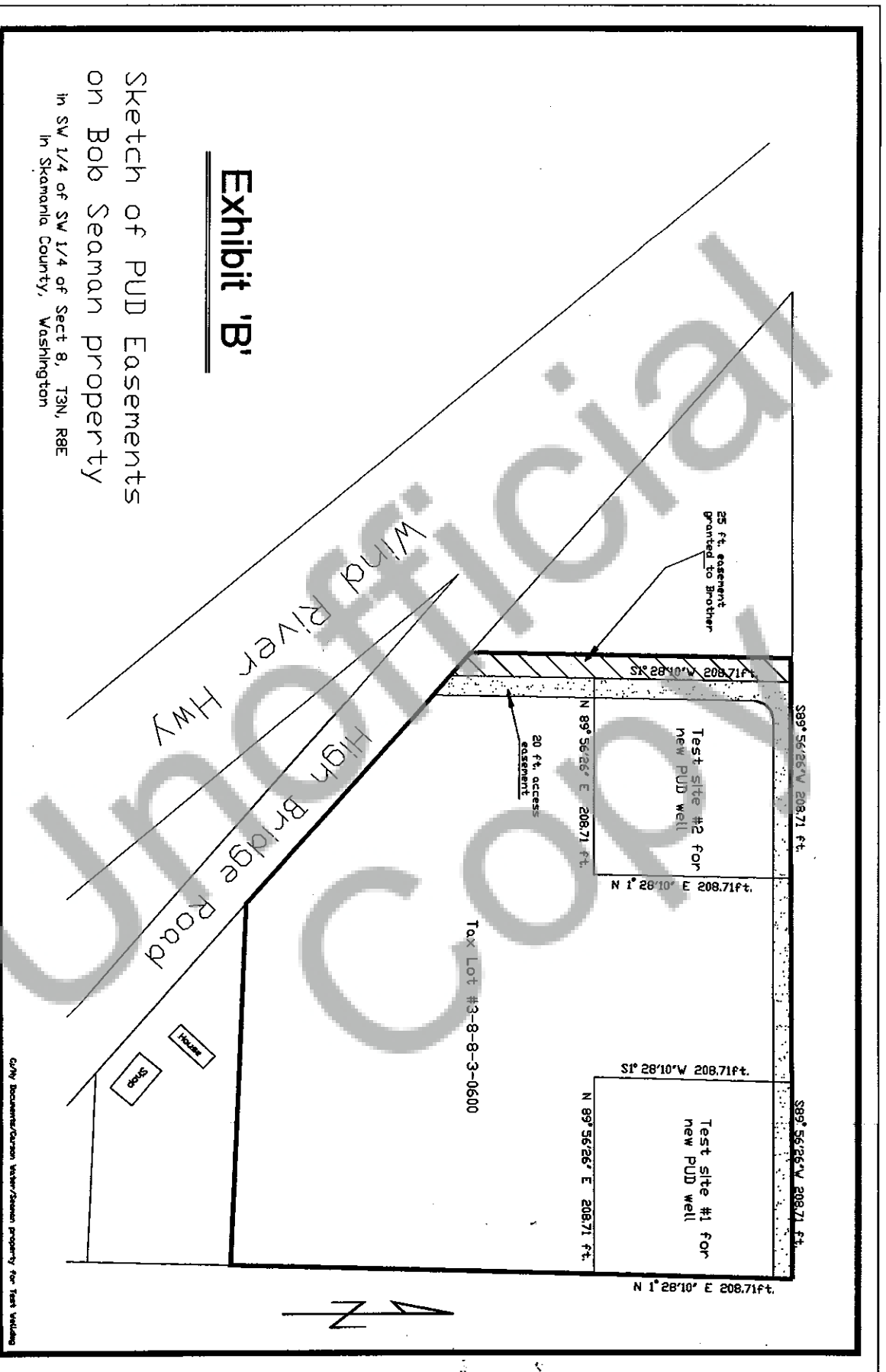


Exhibit 'C'

REAL ESTATE PURCHASE & SALE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2004 by and between **ROBERT SEAMAN**, a Single Man (hereinafter "Seller"), and **SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO. 1**, a Washington Public Utility District (hereinafter "Purchaser"), with reference to the following facts:

- 1) A. Seller desires to sell and Purchaser desires to purchase Seller's interest in the real property located in Skamania County, Washington, commonly known as: a one-acre parcel located in the SW ¼ of the SW ¼ of Section 8, T 3N R 8E Skamania County, Washington and more fully described in Exhibits "A" and "B", attached hereto and incorporated herein as if fully set forth, being part of Tax parcel number 03 08 08 3 0 0600 00, which is more fully described as follows:

That portion of Government Lot 4 in Section 8, Township 3 North, Range 8 East of the Willamette Meridian lying northeasterly of the Old State Road No. 8-C, now designated as High Bridge Road, EXCEPT that portion West of the East line of tract conveyed to Earl S. Seaman and Florence K. Seaman, as recorded in Book 56 of Deeds, at page 85, and recorded on June 27, 1966, ALSO EXCEPT that tract conveyed to Samuel James Seaman in Book 74 of Deeds at Page 122, recorded January 12, 1978; AND EXCEPT from the remainder the West 75 feet as measured along the North line thereof,

B. Purchaser desires to acquire the Seller's interest in the property for the consideration and upon the terms set forth in this agreement.

NOW, THEREFORE, the parties agree as follows:

- 1) **PURCHASE AND SALE:** Seller shall sell the property to Purchaser, and Purchaser shall buy the property from Seller upon the terms and conditions herein set forth.
- 2) **PURCHASE PRICE:** The purchase price for the property shall be Thirty Six Thousand Dollars (**\$36,000.00**) and shall be payable as follows:

- a) Purchaser agrees to pay at time of closing the total sum of Thirty Six Thousand Dollars (\$36,000.00) *less rent/option payments made up to time of purchase as set forth in Section 2(b) below.*
- b) Payments paid by Purchaser pursuant to Section 7 of Purchaser's Lease with Option to Purchase dated _____ shall be applied by Seller towards the Purchase price and shall reduce the purchase price by said amount. Said down payment shall be in the amount of not less than One Thousand Dollars (\$1000.00) nor more than Six Thousand Dollars (\$6000.00), unless the option period is extended by the parties pursuant to the terms contained in the Lease with Option to Purchase.
- 3) **CONDITION OF TITLE:** Title to the property is to be free of all encumbrances or defects.
- 4) **TITLE CONVEYANCE:** Seller shall convey title to Purchaser by Statutory Warranty Deed at the time of closing.
- 5) **CLOSING OF SALE:** This sale shall be closed at the Law Office of Woodrich & Archer LLP, or such other licensed or bonded escrow company upon which Seller and Purchaser may mutually agree.
- 6) **CONDITION OF PROPERTY:** The sale negotiated for the subject property is premised upon Purchaser buying the same in its "as is", "where is" condition.
- 7) **CLOSING:** Closing shall be within ten (10) days after Purchaser's exercise of its option to purchase pursuant to the Lease with Option to Purchase dated _____ and upon satisfaction or waiver of all contingencies and "subject to's". Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for disbursement to Seller. Purchaser and Seller shall deposit, when notified and without delay, in escrow with the closing agent all instruments, monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

POSSESSION: Purchaser's physical possession of the Property shall continue without interruption between the date Purchaser exercises its option to purchase and the date of closing as specified herein.

- 8) **ESCROW/CLOSING COSTS:** Closing shall occur at the Law Office of Woodrich & Archer LLP, 40 Cascade Avenue, Suite 110, Stevenson, Washington, who shall act as the escrow/closing agent unless the parties agree in writing otherwise. Unless limited by law or modified by the terms of this Agreement, Purchaser and Seller shall pay at closing all customary and usual closing costs and fees, including but not limited to the following: Seller shall pay the Seller's excise tax, the cost of the owner's standard form of title insurance, recording fees, and Seller's half share of escrow fees; Purchaser shall pay all costs and fees associated with the financing, recording fees, Purchaser's excise tax, any

other costs agreed to under the terms of this Agreement, and Purchaser's half share of the escrow fees (unless prohibited by government regulation). Taxes for the current year, rents, interest, association or homeowner's fees, if any, shall be pro-rated as of the date of closing. All water and other utility charges shall be paid and/or pro-rated outside escrow directly between Purchaser and Seller.

- 9) **BROKERS.** Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through a licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any contract, dealings or communication, the party through whom the broker or finder makes his or her claim will be responsible for that commission or fee and shall indemnify, defend and hold harmless the other party from and against any liability, cost or damages (including attorneys' fees and costs) arising out of that claim.
- 10) **SELLER'S DISCLOSURE AND REPRESENTATIONS:** Seller shall provide Seller's disclosure statement as provided for in R.C.W. 64.06.020 prior to closing.
- 11) **TITLE;**
- a) Title Insurance to be issued by , Skamania County Title Co. Skamania County, Washington. Title insurance provided at closing shall be Standard Title Insurance. Seller will pay the cost of Standard Title Insurance. If Purchaser requires Extended Title Insurance, Purchaser agrees to pay all costs in excess of those charged for the standard form including, without limitation, increased premiums and survey costs. If a survey is required, Purchaser shall order the survey within (3) business days of receiving notice from title company of survey requirements and shall pay the estimated cost of the survey prior to performance of any survey work or Purchaser can waive requirement for an extended policy and accept standard title insurance.
 - b) Title Insurance Commitment: Seller authorizes the closing agent, at Seller's expense, to apply for a preliminary commitment ("Commitment") for an ALTA form Owner's policy of title insurance ("Policy") as described in (a) above, with homeowner's additional protection and inflation protection endorsements, if available at no additional charge, to be issued by the above title company. Seller shall pay title insurance cancellation fees.
 - c) Extended Title Insurance: Purchaser acknowledges that the coverage afforded by the standard form policy of title insurance provided for in this Agreement is limited in that limited or no coverage is provided for loss by reason of conflicts in boundary lines, shortage in area, encroachments, or any other matters which an accurate survey would disclose. More extensive coverage may be available for an additional charge and subject to additional requirements imposed by the title insurer including a survey.

- d) Title Insurance Exceptions and Exclusions: The Policy shall contain no exceptions to or exclusions from coverage other than those provided in the specified title policy form and those which are consistent with subparagraph (e) below. If title cannot be made so insurable by closing, and if Purchaser does not elect to waive any exceptions to coverage which are not consistent with this subparagraph and subparagraph (e) below, this Agreement shall terminate at Purchaser's option.
- e) Condition of Title: Unless otherwise specified in this Agreement, title to the Property at closing shall be free of all encumbrances and defects which interfere with Purchaser's intended use of the Property. Presently recorded reservations, covenants, conditions and restrictions, easements, and existing building or zoning regulations or restrictions shall not be considered encumbrances or defects provided they do not interfere with Purchaser's intended use of the Property. Purchaser shall conclusively be deemed to have accepted the condition of title unless Seller receives written notice of Purchaser's objections with five [5] business days after the Commitment for title insurance is made available to the Purchaser. Encumbrances to be discharged by Seller shall be paid from Seller's funds at closing.
- f) Legal Description: Purchaser and Seller agree that the legal description for the Property that is provided by the title insurance company in the preliminary title commitment shall be substituted for the legal description contained in this Agreement.
- 12) DEFAULT/TERMINATION: If this Agreement is terminated for any reason, any costs authorized under this Agreement to be advanced from the earnest money deposit shall be deducted before the remaining earnest money is refunded to the Purchaser or forfeited to Seller. If a dispute should arise regarding the disbursement of any earnest money, the party holding the earnest money may interplead the funds into court and that party shall recover all costs and attorney fees associated with the interpleader action from the earnest money before any other disbursements are made. Furthermore, if either Purchaser or Seller defaults, the non-defaulting party may seek specific performance or damages, except that the Seller's remedy shall be limited as follows if the paragraph below has been initialed by both parties.

In the event the Purchaser fails, without legal excuse, to complete the purchase of the property, the deposit made by the Purchaser as referenced in Section 2(b) shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure.

Purchaser's Initials _____

Seller's Initials _____

- 13) ATTORNEYS FEES/COSTS: If the Purchaser and Seller are involved in any dispute relating to this transaction, the prevailing party shall recover reasonable attorney's fees and costs (including those for appeals) that relate to the dispute.

- 14) CASUALTY/LOSS: If, prior to closing, the Property or improvements on the Property are destroyed or materially damaged by fire or other casualty, Purchaser may elect to terminate this Agreement.
- 15) PROFESSIONAL ADVICE: Each party has had the opportunity to have this document review by counsel of their choice and no interpretation or construction shall be made with respect to this document based on which party drafted the document. Each party is specifically aware that issues such as form of deed used for conveyance, agency representation, financing documents, liquidated damages, title insurance and seller representations are complicated and that the parties may require advice for which the parties should contact their own attorney or accountant. Furthermore, Purchaser and Seller agree that (a) they are not relying on any representations or advice by the other party or the other party's attorney; and, (b) they have satisfied themselves as to the terms and conditions of this sale.

GENERAL PROVISIONS:

Notices: Unless otherwise specified in this Agreement, any notice required or given under the terms of this Agreement must be written. Receipt of any notice shall be defined as the earlier of: three (3) business days following the postmark date; or the date the notice is actually received by the party.

Faxes and Counterparts: Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, or the closing agent, the parties will confirm facsimile transmitted signatures by signing an original document. This Agreement may be signed in counterparts.

Integration: There are no verbal agreements or understandings that modify this Agreement. This Agreement constitutes the full understanding between Purchaser and Seller.

- a) Time is of the essence: Time is of the essence as to all terms and conditions of this Agreement.
 - b) Venue/Applicable Law: This Agreement shall be interpreted and construed according to the laws of the State of Washington; venue shall be in the county in which the Property is located.
 - c) Survival: All terms of this Agreement, which are not satisfied or waived prior to closing, shall survive closing. These terms shall include, but not be limited to, representations and warranties, attorney's fees and costs, disclaimers, repairs, rents and utilities, etc.
- 16) AGREEMENT TO PURCHASE: Purchaser offers to purchase the Property on the above terms and conditions. Purchaser hereby acknowledges receipt of a copy of this Agreement. Acceptance shall not be effective until a signed copy hereof is actually received by Purchaser.

I have read the above document, have executed it as of the date set forth above and agree to be bound by its terms and conditions:

SELLER:

PURCHASER:

ROBERT SEAMAN

ROBERT WITTENBERG JR., Mgr
Skamania County Public Utility District No. 1

Unofficial
Copy

State of Washington)
) ss
County of Skamania)

I certify that I know or have satisfactory evidence that ROBERT SEAMAN is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Title)

My appointment expires _____

State of Washington)
) ss
County of Skamania)

I certify that I know or have satisfactory evidence that ROBERT WITTENBERG JR. is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Title)

My appointment expires _____