

92389

BOOK 79 PAGE 632 3-8-29-1-1-5201

REAL ESTATE CONTRACT

THIS CONTRACT, made and entered into this 16th day of April, 1981, between MICHAEL D. ELLSWORTH and COLLEEN M. ELLSWORTH, husband and wife, hereinafter called the "sellers," and BEVERLY A. SEACER, a single woman, hereinafter called the "purchaser,"

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

Beginning at the intersection of the northerly right of way line of the Bonneville Power Administration's Bonneville-Coulee Transmission line and the easterly right of way line of County Road No. 2135 designated as the Wind River Road; said point lying north 276.82 feet and east 145 feet from the iron pin marking the southwest corner of the North-east Quarter of the Northeast Quarter of Section 29, Township 3 North, Range 8 E.W.M.; thence north 89° 36' east along said transmission line right of way 206.33 feet; thence north 01° 05' 16" east 40.01 feet; thence south 89° 36' west 222.71 feet to the easterly right of way line of County Road No. 2135; thence southerly along said right of way 42.84 feet to the point of beginning; said tract containing 0.20 acres, more or less.

1. The purchase price is Thirty Thousand Dollars (\$30,000.00), of which Six Thousand Dollars (\$6,000.00) has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price, together with interest on deferred balances at the rate of 10% per annum from date hereof, shall be paid as follows:

(a) Purchaser agrees to pay the sum of Two Hundred Thirty One and 61/100 Dollars (\$231.61), or more at purchaser's option, on or before the 17th day of May, 1981, and Two Hundred Thirty One and 61/100 Dollars (\$231.61), or more at purchaser's option, on or before the 17th day of each succeeding calendar month until the entire balance of the purchase price, both principal and interest, shall have been fully paid.

(b) Purchaser agrees to pay interest on the diminishing balance of the purchase price, at the rate of 10% per annum from the date of closing, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.

~~xxxx Purchaser xxx agrees to pay the sum of Two Hundred Thirty One and 61/100 Dollars (\$231.61), or more at purchaser's option, on or before the 17th day of May, 1981, and Two Hundred Thirty One and 61/100 Dollars (\$231.61), or more at purchaser's option, on or before the 17th day of each succeeding calendar month until the entire balance of the purchase price, both principal and interest, shall have been fully paid.~~

2. All payments to be made hereunder shall be made at Star Route, Box 35, Carson, Washington 98610, or at such other place as the sellers may direct in writing.

No. 8148
TRANSACTION EXCISE TAX

APR 23 1981

Amount Paid \$300.00

Skamania County Treasurer
By: [Signature]

Transaction in compliance with County subdivision ordinances.
Skamania County Assessor - By: [Signature]

3. As referred to in this contract, "date of closing" shall be April 17, 1981.

4. Sellers shall deliver possession of said premises to purchaser on or before May 27, 1981.

5. The purchaser assumes and agrees to pay before delinquency all taxes and assessments that may as between grantor and grantee hereafter become a lien on said real estate; and if by the terms of this contract the purchaser has assumed payment of or agreed to purchase subject to, any taxes or assessments now a lien on said real estate, the purchaser agrees to pay the same before delinquency.

6. All irrigation, plumbing, ventilating, cooling and heating fixtures, water heaters, attached electric light and bathroom fixtures, light bulbs, fluorescent lamps, venetian blinds, awnings, drapes, wall to wall carpeting, curtain rods, window and door screens, storm doors and windows, attached linoleum, attached television antenna, all plants, shrubs and trees and all fixtures not excepted herein are to be left upon the premises as part of the property purchased.

7. Purchaser will keep any improvements or future improvements located on the property and the contents thereof 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 agree 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 cancelled without ten (10) days' written notice being given to sellers.

8. Purchaser is 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, purchaser acknowledges that she has made her own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant she may retain. Purchaser 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 herein or in a subsequent document executed by sellers. All representations, warranties, understandings, and agreements between purchaser and sellers are merged herein and shall not survive closing.

9. The purchaser assumes all hazards of damage to or destruction of any improvements now on said real estate or hereafter placed thereon, and of the taking of said real estate or any part thereof for public use; and agrees that no such damage, destruction or taking shall 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 elect to allow the purchaser to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking. In case of damage or destruction from a peril insured against, the proceeds of such insurance remaining after payment of the reasonable expense of procuring the same shall be devoted to the restoration or rebuilding of such improvements.

within a reasonable time, unless purchaser elects that said proceeds shall be paid to the sellers for application on the purchase price herein.

10. Purchaser will at all times keep and maintain the property and all improvements now or hereafter located on the property in as good a state of repair as they are upon the date of this contract or date of installation as to future improvements, reasonable wear and depreciation excepted. Purchaser shall replace or repair worn out or obsolete portions of the improvements necessary to keep the improvements as a whole in good operating conditions. All maintenance, repair and replacement shall be at the purchaser's sole cost and expense and neither the sellers nor the property shall be liable therefor, nor subject to attachment nor lien as a result thereof. This covenant is not to be construed to indicate that sellers have any participation in the maintenance of such improvements or the making of repairs or replacements.

11. No building or other improvement on the property shall be structurally altered, removed or demolished, without sellers' prior written consent, nor shall any fixture or chattel covered by this contract be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by the purchaser, free and clear of any lien or security interest except such as may be approved in writing by sellers.

12. The sellers have delivered, or agree to deliver within fifteen (15) days of the date of closing, a purchaser's policy of title insurance in standard form, or a commitment therefor, issued by a title insurance company acceptable to both sellers and purchaser, insuring the purchaser to the full amount of said purchase price against loss or damage by reason of defect in sellers' 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 purchaser is 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 12. shall be deemed defects in sellers' title.

Sellers agree to indemnify purchaser, her heirs, devisees, representatives and assigns against any special exception to title other than the foregoing which may be disclosed by a commitment for title insurance on the real estate from a recognized title insurance company. Sellers agree to hold purchaser harmless in that certain action entitled *Fermin E. Obias, Jr. and Jeri Obias, husband and wife, Plaintiffs, v. Michael D. Ellsworth and Colleen M. Ellsworth, husband and wife, Defendants*, Skamania County Cause Number 6825, wherein the Plaintiff alleges that a fence constructed by Sellers is on Plaintiffs' property.

13. 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 purchaser 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.

14. The sellers agree, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to purchaser 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.

15. The rights here granted are personal to the purchaser and sellers' reliance upon purchaser's 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 purchaser, nor shall purchaser make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of sellers.

16. Any attempt at assignment and transfer by purchaser in violation of the foregoing provisions may, at sellers' option, be deemed a default by purchaser, and sellers may declare the remaining contract balance, accrued interest and any other sums owing by purchaser to sellers hereunder immediately due and payable.

17. The purchaser shall be entitled to possession of said real estate on the date provided in paragraph 4. and to retain possession so long as purchaser is not in default hereunder. The purchaser covenants not to permit waste on said premises and not to use, or permit the use of, the real estate for any illegal purpose. The purchaser covenants 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 purchaser is entitled to possession.

18. Time and the covenants of purchaser set forth herein are of the essence of this agreement. If purchaser fails to make any payment precisely when due or breaches any term or provision of this contract, sellers may, at their option, exercise any of the following alternative remedies upon giving purchaser thirty (30) days' written notice specifying the default and the remedy to be exercised should purchaser 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) Acceleration. Sellers may declare the entire unpaid balance of the purchase price to be immediately due and payable and institute suit to collect such amounts, together with any sums advanced by the sellers for and the amount of any

delinquencies for items such as water assessments, taxes, insurance, payments on underlying obligations, lienable items and other expenses incurred to protect sellers' interest in the property, together with interest thereon at the rate of 12% per annum from the date of each such advance. Payment by purchaser of any judgment obtained by sellers pursuant to this paragraph shall be a condition precedent to the delivery of a deed to said property by sellers or by the escrow agent, if any.

(c) Forfeiture. Sellers may elect to declare a forfeiture of and cancellation of this contract and upon such election being made, all rights of purchaser hereunder shall cease and terminate and sellers shall be entitled to take possession of the property, and all payments made by purchaser hereunder shall be retained by sellers in liquidation of all damages sustained by said default. In addition, should sellers commence a quiet title action in connection with such forfeiture or defend any claim in opposition to such forfeiture, sellers shall be entitled to recover from purchaser all further costs and attorneys' fees incurred therein and in any appeal. At the end of said 30-day period, sellers may enter into the property and take possession thereof and purchaser shall immediately surrender possession. If the contract is, within said 30-day period, reinstated by the purchaser's performance and cure of all defaults, purchaser shall pay \$1,000.00 to sellers as liquidated damages for the breach of this agreement. If a forfeiture is declared, all payments which, but for the forfeiture, would have become due during the specified 30-day period and all costs and expenses including, but not limited to costs of title search and a reasonable attorney's fee, incurred by sellers in connection with the default must be paid in addition to the sums set forth in the notice of forfeiture as a condition to reinstatement of the contract. Should purchaser pay sellers an amount less than all sums required to reinstate the contract, sellers' acceptance of such sums shall not be deemed a waiver of any defaults or a reinstatement of the contract, and any such sums shall be retained by sellers as further liquidated damages should purchaser remain in default in any respect on the expiration of the 30-day period.

(d) Specific Performance. Sellers may institute suit to specifically enforce any of the purchaser's covenants hereunder. The failure 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. Purchaser's covenants to pay the accelerated balance and/or any intermediate installments and/or any other payments made by sellers and repayable by purchaser in the event of default are independent of the covenant to make a deed and every action is an action arising on a contract for the recovery of money only, as if the promise to pay had been expressed in a different instrument. Any delay or failure of sellers to take action upon default shall not be construed as a waiver of said default. If sellers are required to institute legal action to enforce any of the remedies indicated, purchaser agrees to pay sellers' costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

19. Any notice, declaration, demand 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 Purchaser:

Beverly A. Seager
P.O. Box 600
Carson, WA 98610

To Sellers:

Michael and Colleen Ellsworth
Star Route Box 35
Carson, WA 98610

Either party may change their 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) addressees. 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.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

Michael D. Ellsworth
MICHAEL D. ELLSWORTH
Colleen M. Ellsworth
COLLEEN M. ELLSWORTH
Beverly A. Seager
BEVERLY A. SEAGER

STATE OF WASHINGTON)
County of Skamania) ss.

On this day personally appeared before me MICHAEL D. ELLSWORTH and COLLEEN M. ELLSWORTH, 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.

GIVEN under my hand and official seal this 16th day of April, 1981.

John C. Kirk
Notary Public in and for the
State of Washington, residing
at Stevenson.

