

94424

BOOK 21 PAGE 34



REAL ESTATE CONTRACT

1. RE1704-SC  
2. 3-8-28/1201

3.

4. THIS CONTRACT is made and entered into this 16th day of  
5. July, 1982, by and between the undersigned parties  
6. in consideration of the mutually beneficial terms and provisions,  
7. hereof. It is now agreed as follows:

8. 1. PARTIES. The parties to this Agreement are as follows:

9. A. DONALD EDWARD DELZER and JANICE MAE DELZER, husband  
and wife, hereinafter called "Seller".

10. B. BYRON J. HOFER, hereinafter called "Purchaser".

11.

12. 2. PROPERTY SOLD. Seller agrees to sell to the Purchaser,  
13. and the Purchaser agrees to purchase from the Seller, the  
following described real estate, with appurtenances, (hereinafter  
14. called "Property") located in Skamania County, Washington:

15. PARCEL I:

16. The East 415 feet of the Southeast quarter of  
the Northeast quarter of the Northwest quarter  
17. of Section 28, Township 3 North, Range 8 East  
of the Willamette Meridian,

18. Except: That portion thereof lying within a  
500 foot strip of land acquired by the United  
19. States of America for the Bonneville Power  
Administration for Electric Transmission  
Lines; by declaration recorded February 6,  
20. 1939, in Book 7 of Deeds at page 315.

21. Also except any portion thereof lying within  
the West 245 feet of said Southeast quarter.

22. Also except Public Roads;

23. Also known as Lot 1 of the Laughery Short Plat  
recorded May 22, 1978, in Book 2 of Short  
24. Plats at Page 52, records of Skamania County,  
Washington.

25. Subject to: Covenants, conditions,  
restrictions and easements of record.

26. PARCEL II:

27. The West 245 feet of the Southeast quarter of  
the Northeast quarter of the Northwest quarter  
28. of Section 28, Township 3 North, Range 8 East  
of the Willamette Meridian,

1 Except: That portion thereof lying within a  
2 300 foot strip of land acquired by the United  
3 States of America for the Bonneville Power  
4 Administration for Electric Transmission  
5 Lines; by declaration recorded February 6,  
6 1939, in Book 7 of Deeds at page 315.

7 Also except any portion thereof lying within  
8 the East 415 feet of said Southeast quarter.

9 Also except Public Roads;

10 Also known as Lots 2 and 3 of the Laughery  
11 Short Plat recorded May 22, 1978, in Book 21 of  
12 Short Plats at Page 52, records of Skamania  
13 County, Washington.

14 Subject to: Covenants, conditions,  
15 restrictions and easements of record.

16 PARCEL I is subject to the terms of a Deed of  
17 Trust and Promissory Note held by People's  
18 Mortgage having a balance in the amount of  
19 \$63,217.03, which shall be assumed by  
20 Purchaser.

21 Subject to easements, reservations,  
22 restrictions, plat dedications, restrictive  
23 covenants, either of record or in apparent  
use, and future municipal district  
assessments, if any.

24 Together with all currently attached plumbing,  
25 irrigation, water, heating and lighting  
fixtures, attached television antennae or  
other attached or built-in appliances, all  
attached bathroom accessories, all shades,  
curtain and drapery rods, screens and storm  
windows, linoleum and wall-to-wall carpeting  
attached to said property.

26 3. PRICE AND TERMS. The purchase price of the Property is  
27 \$105,000.00, of which \$25,000.00 has been paid down, and the  
balance of said purchase price shall be paid as follows:

28 A. Balance and Interest. Purchaser shall assume and  
29 pay according to its terms that Promissory Note, secured by Deed  
of Trust, and held by People's Mortgage, in the amount of  
\$63,217.03. The remainder of the purchase price, \$16,782.97,  
shall bear interest at the rate of 11% per annum on the declining  
balance until such time as such balance has been paid in full.  
Interest shall accrue from and after the date shown above.

30 B. Payments. Monthly payments of principal and  
31 interest, due from the Purchaser to the Seller, shall be \$160.00.  
All payments shall be due on the 15th day of each month,  
commencing with August 15, 1982.

32 C. Prepayment. Prepayment of the Purchaser's  
principal obligation shall be permitted. Any permitted  
prepayment shall be applied only upon final payments due  
hereunder, and shall not be prepayment of any interim monthly

1 payments... In the event Purchaser elects to prepay any payments  
 2 on this contract, such that Seller then becomes obligated to pay  
 3 any prepayment penalties on any underlying obligation, the  
 4 Purchaser shall immediately pay any such prepayment, penalties in  
 5 addition to all other payments owed pursuant to this contract.

6       4. D. Payoff. On or before the 15th day of August, 1992,  
 7 the Purchaser shall pay to the Seller, in its entirety, the then  
 8 unpaid principal balance, together with all other sums, owed  
 9 pursuant to the terms of this contract.

10     4. PLACE OF PAYMENTS. All payments to be made hereunder  
 11 shall be made to Seller, c/o Mr. Edgar M. Delzer of Ethen, South  
 12 Dakota, 57334, or at such other place as Seller may direct in  
 13 writing.

14     5. DATE OF CLOSING. As referred to in this contract the  
 15 "date of closing" shall be the date this Contract is recorded, or  
 16 thirty (30) days after the date above, whichever first occurs.

17     6. PAYMENT OF TAXES AND ASSESSMENTS. The Purchaser assumes  
 18 and agrees to pay before delinquency all taxes and assessments  
 19 that may as between Seller and Purchaser hereafter become a lien  
 20 on said real estate; and if by terms of this contract the  
 21 Purchaser has assumed payment of any mortgage, contract or other  
 22 encumbrance, or has assumed payment of or agreed to purchase  
 23 subject to, any taxes or assessments now or a lien on said real  
 24 estate, the Purchaser agrees to pay the same before delinquency.

25     7. INSURANCE. The Purchaser agrees, until the purchase  
 26 price is fully paid, to keep the buildings now and hereafter  
 27 placed on said real estate, insured to the actual cash value  
 28 thereof against loss or damage by both fire and windstorm and to  
 29 maintain property owner's liability coverage, in a company  
 30 acceptable to the Seller and for the Seller's benefit, as their  
 31 interest may appear and to pay all premiums therefor and to  
 32 deliver all policies and renewals thereof to the Seller. The  
 33 Seller agrees that, in the event of any insured loss during the  
 34 life of this contract, the Purchaser may, at Purchaser's option,  
 35 use any insurance funds remaining after payment of reasonable  
 36 expenses of procuring the same to diligently restore or  
 37 reconstruct the improvements to substantially the same condition  
 38 as existed prior to the loss; provided, however, that the  
 39 Purchaser shall have the right to use the proceeds in this manner  
 40 only if the Purchaser is not in default under this contract at  
 41 the time of the loss and only if the Purchaser causes any  
 42 insurance proceeds to be placed in a trust account or  
 43 disbursement account, assuring the use of the funds for  
 44 reconstruction or restoration as provided herein.

45     8. PURCHASER'S LIENS. The Purchaser agrees, until the  
 46 purchase price is fully paid, not to permit any judgment liens or  
 47 other liens of whatsoever nature, arising from any action or  
 48 claim against the Purchaser, to remain on the property for more  
 49 than thirty (30) days. In the event any such lien is placed upon  
 50 the property, the Purchaser agrees to pay the underlying  
 51 obligation giving rise to the lien, or to assume the  
 52 responsibility for instituting the proper legal action to clear  
 53 the lien. In the event of suit or other action by any lien  
 54 holder to enforce or foreclose such a lien, the Purchaser agrees  
 55 to indemnify the Seller for all loss, costs or expense, including  
 56 attorney's fees, incurred by the Seller in defending such suit or  
 57 foreclosure action.

1. 9. SELLER'S LIENS. The Seller agrees, until the purchase  
2 price is fully paid, not to permit any judgment liens or other  
3 liens of whatsoever nature, arising from any action or claim  
4 against the Seller, to remain on the property for more than  
5 thirty (30) days. In the event any such lien is placed upon the  
6 property, the Seller agrees to pay the underlying obligation  
7 giving rise to the lien, or to assume the responsibility for  
8 instituting the proper legal action to clear the lien, or to  
9 apply all payments thereafter received from Purchaser (net of any  
10 payments thereafter due from Seller on any senior underlying  
11 interest), to the partial satisfaction of such lien. In the event  
12 of suit or other action by any lien holder to enforce or  
13 foreclose such a lien, the Seller agrees to indemnify the  
14 Purchaser for all loss, costs or expense, including attorney's  
15 fees, incurred by the Purchaser in defending such suit or  
16 foreclosure action.

17 10. INSPECTION. The Purchaser agrees that full inspection  
18 of said real estate has been made and that neither the Seller nor  
19 his assigns shall be held to any covenant respecting the condi-  
20 tion of any improvements thereon nor shall the Purchaser or  
21 Seller or the assigns of either be held to any covenant or agree-  
22 ment for alterations, improvements or repairs unless the covenant  
23 or agreement relied on is contained herein or is in writing and  
24 attached to and made a part of this contract.

25 11. REGULATIONS AND ZONING: The Purchaser agrees that they  
26 have had an opportunity to review all Federal, State and local  
27 regulations, including but not limited to zoning regulations and  
28 regulations and standards affecting various permit applications,  
29 and the effect that such regulations and requirements may have on  
30 the above described property, including the effect of the same on  
31 any prospective intended use or uses.

32 12. ASSUMPTION OF RISK. The Purchaser assumes all hazards  
33 of damage to or destruction of any improvements now on said real  
34 estate or hereafter placed thereon, and of the taking of said  
35 real estate or any part thereof for public uses; and agrees that  
36 no such damage, destruction or taking shall constitute a failure  
37 of consideration.

38 13. CONDEMNATION. In case any part of said real estate is  
39 taken for public use, the portion of the condemnation award  
40 remaining after payment of reasonable expenses of procuring the  
41 same shall be paid to the Seller and applied as payment on the  
42 purchase price; provided, however, that the Purchaser shall have  
43 the right to apply such condemnation award to the rebuilding or  
44 restoration of any improvement so taken as long as the Purchaser  
45 complies with the same terms and conditions as set forth for the  
46 similar use of an insurance award in the "Insurance" paragraph  
47 above.

48 14. TITLE INSURANCE. The Seller has delivered, or agrees to  
49 deliver, within fifteen (15) days of the date of closing, a  
50 Purchaser's policy of title insurance in standard form, or a  
51 commitment therefor, issued by Land Title Company of Skamania  
52 County, insuring the Purchaser to the full amount of said  
53 purchase price against loss or damage by reason of defect in  
54 Seller's title to said real estate as of the date of closing and  
55 containing no exceptions other than the following:

56 A. Printed general exceptions appearing in said  
57 policy form;

- 1           B. Liens or encumbrances which by the terms of this  
 2 contract the Purchaser is to assume, or as to  
 3 which the conveyance hereunder is to be made  
 4 subject; and  
 5           C. Any existing contract or contracts under which  
 6 Seller is purchasing said real estate, and any  
 7 mortgage or other obligation, including all terms  
 8 and provisions thereunder, which Seller by this  
 9 contract agrees to pay, none of which for the  
 10 purposes of this paragraph shall be deemed defects  
 11 in Seller's title; : : : : :  
 12           D. Easements, covenants, restrictions and reservations  
 13 of record.

14       15. NONASSIGNMENT. It is agreed that no right, title or  
 15 interest to the property herein involved or to the contract here  
 16 executed shall be assigned, given, sold or conveyed by Purchaser  
 17 hereto without the express written consent of the Seller.  
 18 Purchaser agrees to pay Seller's reasonable costs (including  
 19 attorney's fees and credit-report fees) in evaluating any  
 20 proposed sale or other assignment. The Seller agrees not to  
 21 withhold consent to any sale or transfer to any buyer or other  
 22 assignee who meets each of the following tests:

- 23       A. Is financially qualified and credit-worthy.  
 24       B. Acquires their interest subject to the terms and  
 25 provisions of this Contract, which terms and provisions may be  
 26 enforced by the Seller against any subsequent assignee.  
 27       C. Subordinates their interest in the property to the  
 28 interest of the Seller, and expressly waives any right they might  
 29 have to seek judgment, foreclosure, or other remedy against the  
 30 Seller in the event of any breach or default by any party who is  
 31 "beneath" the Seller in the chain of title.  
 32       D. Furnishes to the Seller an address for the sending  
 33 (or serving) of any notices which the Seller may wish to send to  
 34 (or serve upon) such subsequent assignee.

35       E. Agrees that any payments required pursuant to their  
 36 transaction shall be made through any escrow or collection  
 37 account established hereby.

38       F. Accepts, as modified terms to this contract, an  
 39 increase in the interest rate to be agreed upon by the Seller,  
 40 Purchaser and Purchaser's assignee, and a proportionate increase  
 41 in the monthly payment.

42       16. UNDERLYING INTERESTS. If Seller's title to said real  
 43 estate is subject to an existing contract or contracts under  
 44 which Seller is purchasing said real estate, or any mortgage or  
 45 other obligation, which Purchaser is to assume, Purchaser agrees  
 46 to make such payments in accordance with the terms thereof. In  
 47 the event of Purchaser's default as to any underlying obligation,  
 48 the Seller shall have the right to make any payments necessary to  
 49 cure the default (including any penalty, interest, or late  
 50 charges properly assessed against the Seller), and any payments  
 51 so made shall be credited to the payments next falling due to the  
 52 Seller under this contract. Default by Purchaser of his  
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1 obligation under such assumed obligation shall be deemed default  
2 under the terms of this contract.

3       17. DEED UPON PERFORMANCE. The Seller agrees, upon  
4 receiving full payment of the purchase price and interest in the  
5 manner above specified, and satisfaction of the existing  
6 obligation assumed by Purchaser, to execute and deliver to  
7 Purchaser a warranty to said real estate, excepting any part  
8 thereof hereafter taken for public use, free of encumbrances  
9 except any that may attach after date of closing through any  
10 person other than the Seller, and subject to the following:  
11 Easements, covenants, restrictions and reservations of record.

12       18. POSSESSION AND USE. Unless a different date is provided  
13 for herein, the Purchaser shall be entitled to possession of said  
14 real estate on date of closing and to retain possession so long  
15 as Purchaser is not in default hereunder. The Purchaser  
16 covenants and agrees not to structurally alter, remove, or  
17 demolish any buildings or any other improvements now located or  
18 hereafter placed on the said real estate, and to keep such  
19 buildings and improvements in good repair, and not to permit  
20 waste of the property, and not to use (or permit the use of) the  
21 real estate for any illegal purpose. The Purchaser covenants to  
22 pay all service, installation or construction charges for water,  
23 sewer, electricity, garbage or other utility services furnished  
24 to said real estate after the date Purchaser is entitled to  
25 possession.

26       19. SELLER'S RIGHT TO MAKE PAYMENTS. In case the Purchaser  
27 fails to make any payment herein provided, including but not  
28 limited to taxes, liens or assessments, or to maintain insurance  
29 as herein required, the Seller may make such payment or effect  
30 such insurance, and any amounts so paid by the Seller, together  
31 with interest at the rate of 14% per annum thereon from the date  
32 of payment until repaid, shall be repayable by Purchaser on  
33 Seller's demand, all without prejudice to any other right the  
34 Seller might have by reason of such default.

35       20. DEFAULT AND REMEDIES. TIME IS OF THE ESSENCE IN THE  
36 PERFORMANCE OF THIS AGREEMENT. If the Purchaser fails to make any  
37 payment when due or within any allowable grace period, or if the  
38 Purchaser fails to comply with or perform any other condition or  
39 agreement hereof, the Seller may, at Seller's option, exercise  
40 any one or more of the following alternative remedies upon giving  
41 the Purchaser thirty (30) days written notice specifying the  
42 default. The Purchaser may cure the default within the notice  
43 period by performing the conditions set forth therein. Seller  
44 need not elect between the following remedies at the time of  
45 giving notice to the Purchaser of any default, or at the time of  
46 instituting any suit or action on account of such default, or at  
47 any time prior to the satisfaction of a judgment entered in such  
48 suit or action. The Seller's remedies shall be:

49           A. Suit for Delinquencies. Seller may institute suit  
50 for any installments or other sums then due and payable under  
51 this contract, together with interest thereon at the rate of  
52 14% per annum from the date each such item was due from the  
53 Purchaser or advanced by the Seller. Purchaser's covenant to pay  
54 any installment or any other payments due under this contract are  
55 independent of the Seller's covenant to give a Deed.

56           B. Acceleration. Seller may declare the entire unpaid  
57 balance of the purchase price, together with any other sums then  
58 due.

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1 due and payable under this contract, to be immediately due and  
2 payable, and the Seller may then institute suit to collect such  
3 amounts, together with interest thereon at the rate of 14% per  
annum from date of Purchaser's default. Payment by Purchaser of  
any judgment obtained by Seller pursuant to this paragraph shall  
be a condition precedent to the delivery of a deed to said  
4 property by Seller, or by the escrow agent, if any.

5 C. Forfeiture. Seller may elect to declare a  
forfeiture of and cancellation of this contract and, upon such  
6 election being made, all rights of Purchaser hereunder shall  
cease and terminate and Seller shall be entitled to take  
7 possession of the property, including all improvements then  
appertaining, and all payments made by Purchaser hereunder shall  
8 be retained by Seller in liquidation of all damages sustained by  
said default. At the end of said notice period, Seller may enter  
9 into the property and take possession thereof and Purchaser shall  
immediately surrender possession.

10 D. Specific Performance. Seller may institute suit to  
specifically enforce any of the Purchaser's covenants hereunder.

11 21. WAIVER. The failure of Seller to elect to pursue any of  
the remedies set forth in the "Default and Remedies" paragraph  
12 following any breach or default by the Purchaser shall be deemed  
only an indulgence by the Seller with regard to that particular  
13 breach; such failure shall not be construed, in any manner  
whatsoever, to be a waiver of the Seller's right to pursue any of  
14 Seller's remedies in the event of another breach or default at a  
subsequent time. Any delay by the Seller in sending notice or  
15 taking other action upon the Purchaser's default shall not be  
construed as a waiver of said default, as long as notice or other  
16 action is instituted prior to the Purchaser otherwise curing such  
default. Further, should Purchaser pay to Seller an amount less  
17 than all sums required to cure defaults, including costs,  
Seller's acceptance of such sums shall not be deemed to be either  
18 a waiver of the defaults or a reinstatement of the contract; Such  
sums shall be retained by the Seller as liquidated damages if the  
19 Seller declares a forfeiture, and shall be retained and applied  
20 Seller declares a forfeiture, and shall be retained and applied  
against Purchaser's obligation if the Seller asserts any other  
21 remedy.

22 22. NOTICES. Any notice, declaration, demand or communica-  
tion to be given by any party to this contract to any other party  
23 shall be in writing and transmitted to the other party by either  
personally delivering the notice or by certified or registered  
24 mail, return receipt requested, addressed as follows:

25 To Purchaser: P.O. Box 252  
26 Stevenson, WA 98648

27 To Seller: c/o Mr. Edgar M. Delzer  
28 Ethen, South Dakota 57334

29 Any party may change its address by giving written notice to the  
30 other parties in the manner provided above, provided that in no  
event shall Seller be required to send any notice to more than  
31 one (1) addressee. The mailing and registering or certifying of  
any such notice as herein provided shall be sufficient service  
32 thereof. Service shall be complete when such notice is

1 registered or certified and placed in the United States mail as  
2 shown by the cancellation stamp or postage meter stamp, as the  
case may be.

3       23. ATTORNEY'S FEES AND COSTS. In the event of any default  
4 of any of the terms of this agreement, and in the event of the  
5 bringing of any suit or action with respect to any default, or to  
6 enforce any of the terms, the prevailing or non-breaching party  
7 shall be entitled to recover, in addition to statutory costs, all  
8 reasonable costs and attorney's fees incurred in connection with  
9 such suit or action. Purchaser further agrees to pay the reason-  
10 able costs, including attorney's fees, incurred by the Seller, or  
11 assigns, for preparing and serving notices of forfeiture, or of  
12 intention to declare forfeiture, in the event of default on the  
13 part of Purchaser. Purchaser further agrees to pay the reason-  
14 able costs of searching records to determine the condition of  
15 title, in the event that the Seller, after any default by the  
16 Purchaser, undertakes such a search in preparation for the  
17 bringing of any suit or action, or instituting forfeiture  
provisions.

18       24. LATE PAYMENT CHARGE. The Purchaser shall have a grace  
19 period of ten (10) days in which to make any payment owed to the  
Seller pursuant to the "Price and Terms" paragraph. Any payment  
not made within this grace period shall automatically accrue a  
late charge in the amount of \$25.00 for each such overdue  
payment. Any contract payment not made within an additional  
thirty (30) days shall, in addition, bear interest at the rate of  
14% per annum from the date of default. The imposition, charge,  
or payment of any late payment charge, pursuant to this  
paragraph, shall be in addition to any other remedies available  
to the Seller pursuant to the terms of this contract.

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

22       SELLER:

23       DONALD E. DELZER  
24       DONALD EDWARD DELZER

25       JANICE MAE DELZER  
26       JANICE MAE DELZER

PURCHASER:

27       Byron J. Hofer  
28       BYRON J. HOFER

29       STATE OF WASHINGTON  
30       ss.  
31       COUNTY OF CLARK

32       THIS IS TO CERTIFY that on this day personally appeared  
before me, DONALD EDWARD DELZER and JANICE MAE DELZER, 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 16<sup>th</sup> day of  
33       July, 1982.

34       Michael T. Murphy  
35       Notary Public in and for the  
36       State of Washington, residing  
37       at 10211 11th

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1 STATE OF WASHINGTON }  
2 COUNTY OF CLARK } ss.

3 THIS IS TO CERTIFY that on this day personally appeared  
4 before me, BYRON J. HOFER, to me known to be the individual  
5 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.

6 GIVEN under my hand and official seal this 15th day of  
July, 1982.

*Michael F. Morris*

Notary Public in and for the  
State of Washington, residing  
at 1100 14th Ave.

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CLARK COUNTY REC'D. SS

BY CERTIFY THAT THE WITHIN

STATE OF WASHINGTON

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