

7263

THIS AGREEMENT, made and entered into this 9<sup>th</sup> day of December, 1981, by and between GLENN M. HOWARD and GLORIA A. HOWARD, Husband and Wife, hereinafter called Seller, and KATH POCK hereinafter called Buyer (it being understood that the singular shall include the plural if there are two or more sellers and/or buyers).

## WITNESSETH:

Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller for the price and on the terms and conditions set forth hereafter all of the following described property and improvements situate in Klamath County, State of Oregon, to-wit:

"PARCEL 1

That part of the Southwest Quarter of the Southwest Quarter of Section 8, Township 40 South, Range 8 East of the Willamette Meridian, lying Southwesterly of the Keno Worden Highway.

EXCEPTING that part described in Deed Volume 60, page 344.

PARCEL 2

That part of the Northwest Quarter of the Northwest Quarter of Section 17, Township 40 South, Range 8 East of the Willamette Meridian, lying Southwesterly of the Keno Worden Highway.

EXCEPTING a strip of land 60 feet wide along the East line of said Northwest Quarter of the Northwest Quarter of Section 17. The East line of said 60 foot strip to be the East line of said Northwest Quarter of the Northwest Quarter,"

together with the following easement:

A certain easement for irrigation between Lloyd V. Howard, Jr. and Cheryl Howard, Husband and Wife as First Party, and Glenn M. Howard and Gloria A. Howard, Husband and Wife as Second Party, dated the 2/11 day of December, 1981,

together with the following personal property:

Irrigation Pump:	Jacuzzi Bros. Model #10 WA E WCE 906 4" 10 Horsepower
Pump Motor:	U.S. Electrical Motors, Inc., Serial No. 927310
Drainage Pump:	Pearless Pump, Inc., Serial No. 323898 8" Gear Turbo Lift Pump, 25 Horsepower
Pump Motor:	U.S. Electrical Motors, Inc., Serial No. 586846

NOTE: This pump needs repair of bearing carrier and lower motor housing. No estimate of cost of repair.

Irrigation Pipe:	2 each 4" x 20' = 40 ft.
	5 each 4" x 40' = 200 ft.
	8 each 3" x 40' = 320 ft.
	21 each 3" x 30' = 630 ft.
	<u>TOTAL 1,190 ft.</u>

## SUBJECT TO:

- 1) Contracts and/or liens for irrigation and/or drainage, reservations, easements, restrictions and rights of way of record and those apparent on the land;
- 2) Agreement, including the terms and provisions thereof, recorded August 8, 1945 in Deed Book, 175, page 531, involving irrigation right;
- 3) Agreement, including the terms and provisions thereof, recorded December 22, 1931 in Deed Book 96, page 540 in favor of The California Oregon Power Co. for release from damages by reason of

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the regulation and/or control of water level of Upper Klamath Lake and/or Klamath River;

- 4) An easement created by instrument, including the terms and provisions thereof, dated June 10, 1930, recorded December 22, 1930, in Deed Volume 96, page 441, in favor of The California Oregon Power Co. for raising and/or lowering the water level of Klamath River;
- 5) Agreement, including the terms and provisions thereof, recorded July 14, 1948 in Deed Book 222, page 435, from the United States of America to supply 7.7 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 17, with irrigation water;
- 6) Rights of the public in and to any portion of said premises lying within the limits of roads and highways;
- 7) As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land. Any such additional assessment shall be the responsibility of Buyer herein;
- 8) ~~Easement dated the \_\_\_\_\_ day of \_\_\_\_\_, 1981 by and between Glenn M. Howard and Gloria A. Howard, Husband and Wife, and Lloyd Howard, Jr., providing an easement for drainage ditches;~~
- 9) Contract, including the terms and provisions thereof,  
 Dated: July 31, 1978  
 Recorded: August 29, 1978 Book: M-78 Page: 19141  
 Vendor: Lloyd V. Howard and Letha Waive Howard  
 Vendee: Glenn M. Howard and Gloria A. Howard

which Seller herein agrees to pay from the collection escrow proceeds herein.

The purchase price thereof shall be the sum of \$110,000.00, payable as follows: \$30,000.00 upon the execution hereof; the balance of \$80,000.00 shall be paid in monthly installments of \$784.10 including interest at the rate of 11% per annum on the unpaid balance, the first such installment to be paid on the 9th day of January, 1982, and a further and like installment to be paid on or before the 9th day of each and every month thereafter until the entire purchase price, including both principal and interest, is paid in full

It is mutually agreed as follows:

- 1) Interest as aforesaid shall commence from date hereof; Buyer shall be entitled to possession of the property as of date hereof;
- 2) After date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance with interest due thereon to the date of payment;
- 3) Buyer shall pay promptly all indebtedness incurred by their acts which may become a lien or purported lien, upon said property, and shall regularly and before the same shall become delinquent, pay all taxes, including adjustment of same for any reason, assessments, liens, and encumbrances of whatsoever kind affecting said property after this date, provided, all such taxes, assessments, and charges for the current year shall be pro-rated as of date hereof, and in the event Buyer shall fail to so pay, when due, any such matters or amounts required by Buyer to be paid hereunder, or to procure and pay seasonably for insurance, Seller may pay any or all such amounts and any such payment shall be added to the purchase price of said property on the date such payments are made by Seller and such amount shall bear interest at the same rate as provided above, without waiver, however, of any right arising to Seller for Buyer's breach of contract, and, in such event or events, the escrow holder is hereby directed and authorized to so add such amounts to the contract balance upon being tendered

- a proper receipt therefor; Buyer shall further provide Seller with proofs of payment of each year's taxes and insurance.
- 4) Buyer shall keep the buildings on said property insured against loss or damage by fire or other casualty in an amount not less than the insurable value thereof with loss payable to the parties hereto and the interests herein reflected, if any, all as their interests appear at the time of loss, all uninsured losses shall be borne by the Buyer on or after the date Buyer becomes entitled to possession;
  - 5) Buyer agrees that all improvements now located or which shall hereafter be placed on the property, shall remain a part of the real property and shall not be removed at any time prior to the expiration of this agreement without the written consent of Seller. Buyer shall not commit or suffer any waste of the property, or any improvements thereon, or alteration thereof, and shall maintain the property, improvements and alterations thereof, in good condition and repair, provided, Buyer shall not make or cause to be made any major improvements or alterations to the property without first obtaining the written consent of Seller;
  - 6) Buyer and Seller further agree that, in addition to the provisions of Paragraph 5 hereinabove, that no timber of any kind or nature whatsoever shall be removed, cut, sold or otherwise disposed of on the real property described hereinabove, during the term of this contract.
  - 7) Buyer and Seller further agree that Buyer shall lease back a portion of the premises to Seller, under the terms and provisions of a lease agreement executed of even date.
  - 8) Buyer and Seller agree that Buyer may wish to attempt development of a potential geothermal resource underlying the real property described hereinabove. Should Buyer develop such a geothermal resource, Buyer shall make full accounting, and shall pay unto Seller 10% of any and all income produced from the said geothermal resource, which said payments shall continue for so long as income is produced from the said resource.
  - 9) Seller shall upon the execution hereof make and execute in favor of Buyer a good and sufficient deed conveying said property free and clear of all liens and encumbrances, except as herein provided, and which Buyer assumes, unless otherwise therein provided, together with a good and sufficient U.C.C. 3 and Bill of Sale, and will place said documents, together with one of these agreements, in escrow at First Interstate Bank of Oregon, 601 Main Street, Klamath Falls, Oregon, and shall enter into written escrow instructions in form satisfactory to said escrow holder and the parties hereto, instructing said escrow holder that when, and if, Buyer shall have paid the balance of the purchase price in accordance with the terms and conditions of this contract, said escrow holder shall deliver said documents to Buyer, but in case of default by Buyer said escrow holder shall, on demand, surrender said documents to Seller;
  - 10) Buyer is presently contemplating construction of a new residence on the real property conveyed by the within agreement. It is further contemplated that such construction may require the Buyer to obtain new loan funds. Therefore, should Buyer fully pay and satisfy, or have removed as an encumbrance that certain contract dated July 31, 1978, recorded August 29, 1978, in Book M78, Page 19141 as between Lloyd V. Howard and Letha Waive Howard as Vendors and Glenn M. Howard and Gloria A. Howard as Vendees, then and only at such time, Sellers agree to subordinate their interest represented by the within agreement as a second encumbrance to such new loan.

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- 11) Until a change is requested, all tax statements shall be sent to the following address:

Keith Pocock  
1735 West Katella  
Orange, California

- 12) Buyer certifies that this contract of purchase is accepted and executed on the basis of his own examination and personal knowledge of the premises and opinion of the value thereof; that no attempt has been made to influence his judgment; that no representations as to the condition or repair of said premises have been made by Seller or by any agent of Seller; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement.
- 13) Buyer shall not assign this agreement, his rights thereunder, or in the property covered thereby without the written consent of Seller. Such consent shall not be unreasonably withheld.

PROVIDED FURTHER, that in case Buyer shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and at the times above-specified or fail to keep any of the other terms or conditions of this agreement time of payment and strict performance being declared to be the essence of this agreement, then Seller shall have the following rights: (1) To foreclose this contract by strict foreclosure in equity; (2) To declare the full unpaid balance immediately due and payable; (3) To specifically endorse the terms of this agreement by suit in equity; (4) To declare this contract null and void, and in any of such cases, except exercise of the right to specifically enforce this agreement by suit in equity, all the right and interest hereby created or then existing in favor of Buyer derived under this agreement shall utterly cease and determine, and the premises aforesaid shall revert and revert in Seller without any declaration of forfeiture or act of re-entry, and without any other act by Seller to be performed and without any right of Buyer of reclamation or compensation for money paid or for improvements made, as absolutely, fully and perfectly as if this agreement had never been made.

Buyer further agrees to execute a U.C.C. 1 Security interest in all timber located on the subject premises. Should Buyer, during the term of this contract, remove any timber or trees from the subject property, such removal shall constitute a default, allowing to Seller each of the rights referred to in the foregoing paragraph.

Should Buyer, while in default, permit the premises to become vacant, Seller may take possession of same for the purpose of protecting and preserving the property and his security interest herein, and in the event possession is so taken by Seller, he shall not be deemed to have waived his right to exercise any of the foregoing rights.

In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

Buyer further agrees that failure by Seller at any time to require performance by Buyer of any provision hereof shall in no way affect Seller's right hereunder to enforce the same, nor shall any waiver by Seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the foregoing.

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IN WITNESS WHEREOF, the parties have caused this agreement to be executed this 9th day of December, 1981.

Glenn M. Howard  
GLENN M. HOWARD, Seller

Keith Pocock  
KEITH POCOCH, Buyer

Gloria A. Howard  
GLORIA A. HOWARD, Seller

STATE OF OREGON, County of Klamath) ss.

Personally appeared the above-named GLENN M. HOWARD and GLORIA A. HOWARD, Husband and Wife, on this 9th day of December, 1981, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

W. Lawrence T. Addington  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 3-22-85

STATE OF OREGON, County of Klamath) ss.

Personally appeared the above-named KEITH POCOCH on this 9th day of December, 1981, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Return T. TIA-So. 6th

W. Lawrence T. Addington  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 3-22-85

STATE OF OREGON, County of Klamath) ss.

I certify that the within instrument was received for record on the 9th day of December, 1981, at 3:33 o'clock P.M., and recorded in Book M81 at Page 21150 or as file/reel number 7263, of said county.

Witness my hand and seal of County affixed.

Evelyn Biehn County Clerk  
Recording Officer  
By: Joyce McQuinn Deputy  
Fee \$20.00