

ADDENDUM TO CONTRACT OF SALE

9225

ENCUMBRANCES

1. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1987-88, and possibly prior years have been deferred pursuant to ORS 308.370 to 308.403. These, plus earned interest are due and payable when said reason for the deferment no longer exists.
  2. Acreage and use limitations under provisions of United States Statutes and regulations issued thereunder.
  3. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.
  4. Any unpaid charges or assessments of the Klamath Irrigation District.
  5. All contracts and agreements with the United States of America and Klamath Drainage District, relative to irrigation and/or drainage, and any rights of way for ditches or canals heretofore conveyed or in use in connection therewith.
  6. Right of Way for transmission line conveyed by Michael Motschenbacher and Mary R. Motschenbacher, his wife, to the California Oregon Power Company, by deed dated December 13, 1938, recorded March 7, 1939, in Volume 120 page 561, Deed records of Klamath County, Oregon being across E $\frac{1}{2}$ SW $\frac{1}{4}$  of Sec. 28 T. 40 S., R. 9 E.W.M.
  7. Right of Way and joint use of canals, ditches, dikes and roadways in accordance with contract of sale wherein August L. Andrieu, et ux are vendors and Regis V. Andrieu and June E. Andrieu, his wife, are vendees, dated January 15, 1949, recorded February 2, 1949, in Volume 228 page 338, deed records of Klamath County, Oregon.
  8. Memorandum of Lease, including the terms and provisions thereof, given by Western Bank as Lessor to Lee R. Sukraw as Lessee, dated March 26, 1987, recorded April 15, 1987, in Volume M87 page 6372, records of Klamath County, Oregon. (covers additional property)
- Judgment against Thurston Kretlow Henzel held by Dona Leigh Henzel, entered January 17, 1983, Judgment Lien Docket 40 page H-3, Case No. 82-1518, in the amount of \$500.00 per month child support; \$200.00 per month for alimony for 3 years from January 3, 1983, records of Klamath County, Oregon.
- Judgment against Thurston Kretlow Henzel held by Dona Leigh Henzel entered January 17, 1983, Case No. 82-1518, in the amount of \$1,000.00 interest in gold coin collection; \$90,000.00 Judgment; \$2,672.00 attorney fees, records of Klamath County, Oregon.

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ADDENDUM TO CONTRACT OF SALEMINERAL RIGHTS

Excepting and reserving to itself, its successors, and assign, all minerals, as defined in ORS 273.755(1), and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for and removing such minerals and geothermal resources; provided, however, that the rights hereby reserved to use the surface for any of the above activities shall be subordinate to that use of the surface of the premises deeded herein, or any part thereof, being made by the owner thereof on the date the State of Oregon leases its reserved mineral or geothermal resources; in the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from the state's lessee to the extent of the diminution in value of the surface rights of owner's interest.

6.2

**REMEDIES ON DEFAULT.** In the event of a default, Seller may take any one or more of the following steps:

- (a) Declare the entire balance due on the Contract, including interest, immediately due and payable;
- (b) Foreclose this Contract by suit in equity;
- (c) Specifically enforce the terms of this Contract by suit in equity;
- (d) Exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code. Seller may exercise these rights and remedies with respect to any part of the property which constitutes personal property in which Seller has a security interest.
- (e) Choose to impose a late charge. The charge will not exceed five (5) cents per dollar of the payment in the event Buyer fails to make any payment within 10 days after it is due.
- (f) Declare this Contract to be void thirty (30) or more days after Seller gives written notice to Buyer of Seller's intention to do so, unless the performance then due under this Contract is tendered or accomplished prior to the time stated. At the end of the thirty (30) days, all of Buyer's rights under this Contract shall cease without further act by Seller. Seller shall then be entitled to immediate possession of the property. All payments previously made to Seller by Buyer may be kept by Seller as reasonable rental of the property up to the time of default.
- (g) Appoint a receiver. Seller shall be entitled to the appointment of a receiver as a matter of right. It does not matter whether or not the apparent value of the property exceeds the amount of the balance due on the Contract. Any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the property, the receiver may:
  - (i) Use, operate, manage, control, and conduct business on the property and make necessary expenditures for all maintenance and improvements that in the receiver's judgement are proper;
  - (ii) Collect all rents, revenues, income, issues, and profits from the property and apply such sums to the necessary expenses of use, operation, and management;
  - (iii) Complete any construction in progress on the property, at Seller's option. To complete that construction, receiver may pay all bills, borrow funds, employ contractors, and make any changes in plans and specifications that Seller deems appropriate.
 If the revenues produced by the property are insufficient to pay expenses, the receiver may borrow, from Seller or otherwise, such sums as receiver deems necessary. These sums shall be used for the purposes stated in this paragraph. Repayment of such sums shall be secured by this Contract. Amounts borrowed from or advanced by Seller shall bear interest at the same rate as the balance on this Contract. Interest shall be charged from the date the amount is borrowed or advanced until the amount is repaid. Any amount borrowed shall be paid by Buyer on demand.
- (h) Elect to collect all rents, revenues, income, issues, and profits (the "Income") from the property, whether due now or later. Prior to default, Buyer may operate and manage the property and collect the Income from the property. In the event of default and at any time hereafter, Seller may revoke Buyer's right to collect the Income from the property. Seller may collect the income either through itself or a receiver. Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Buyer irrevocably designates Seller as Buyer's attorney-in-fact and gives Seller permission to endorse rent or fee checks in Buyer's name. Buyer also gives Seller permission to negotiate and collect such rents or fees. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the expenses of renting or collection and the balance (if any) to payment of sums due from Buyer to Seller under this Contract.

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**REMEDIES NONEXCLUSIVE.** The remedies provided above shall not exclude any other remedies provided by law. They are in addition to any other such remedies.

## SECTION 7. SELLER'S RIGHT TO CURE

If Buyer fails to perform any obligation required of it under this Contract, Seller may, without notice, take any steps necessary to remedy such failure. Buyer shall reimburse Seller for all amounts expended in so doing on demand. Such action by Seller shall not constitute a waiver of the default or any other right or remedy which Seller may have on account of Buyer's default.

## SECTION 8. WAIVER

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision. If a party waives a breach of any provision of this Contract, the waiver applies only to that specific breach. It does not apply to the provision itself.

## SECTION 9. INDEMNIFICATION

Buyer shall forever defend, indemnify, and hold Seller harmless from any claim, loss, or liability arising out of or in any way connected with Buyer's possession or use of the property; Buyer's conduct with respect to the property; or any condition of the property; in the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Buyer agrees to defend Seller. Buyer shall, upon notice from Seller, vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to Seller.

## SECTION 10. SUCCESSOR INTERESTS

This Contract shall be binding upon and for the benefit of the parties, their successors; and assigns. But no interest of Buyer shall be assigned, subcontracted, or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller. Consent by Seller to one transfer shall not constitute consent to other transfers or waiver of this section.

As a condition to such consent, Seller may increase the interest rate under this Contract from the date of the transfer. Any increase in the interest rate under this Contract shall entitle the Seller to increase monthly payments. Monthly payments may be increased to the amount necessary to retire the obligation within the time provided for in Section 1, 1.3, in this Contract. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller. Buyer hereby waives notice of and consent to any and all extensions and modifications of this Contract granted by Seller. Any other person at any time obligated for the performance of the terms of this Contract also hereby waives such notice and consent. Any such extensions or modifications will not in any way release, discharge, or otherwise affect the liability of any person at any time obligated under this Contract.

## SECTION 11. TRANSFER FEE

If any interest of the Buyer under this Contract is assigned, subcontracted, or otherwise transferred, a fee to cover administrative costs will be immediately due and payable to Seller. The amount of the fee shall be prescribed by Seller's duly adopted Oregon Administrative Rule 274-20-440.

## SECTION 12. NOTICE

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or ten (10) days after being deposited in the U.S. mail, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

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**SECTION 13. COSTS AND ATTORNEY FEES**

Events may occur that would cause Seller or Buyer to take some action, judicial or otherwise, to enforce or interpret terms of this Contract. Should such actions be taken, the prevailing party shall be entitled to recover from the other party all expenses reasonably incurred in taking such action. Such expenses shall include, but are not limited to the following costs:

- Cost of searching records,
- Cost of title reports,
- Cost of surveyors' reports,
- Cost of foreclosure reports,
- Cost of attorney fees,
- Cost of foreclosing action.

**SECTION 14. SURVIVAL OF COVENANTS**

Any covenants, the full performance of which is not required prior to the closing or final payment of the purchase price, shall survive the closing and the final payment of the purchase price. Such covenants shall be fully enforceable thereafter in accordance with their terms.

**SECTION 15. GOVERNING LAW; SEVERABILITY**

This Contract shall be governed by the laws of the State of Oregon. In the event that any provision or clause of this Contract conflicts with applicable law, such conflict shall not affect any other provision and, to this end, the provisions of this Contract are severable.

**SECTION 16. REPRESENTATIONS; CONDITION OF PROPERTY**

Buyer accepts the land, buildings, improvements, and all other aspects of the property, and any personal property sold under this Contract, in their present condition, AS IS. Present condition includes latent defects, without any representations or warranties, expressed or implied, unless they are expressly set forth in this Contract or are in writing signed by Seller. Buyer agrees that Buyer has ascertained, from sources other than Seller, the applicable zoning, building, housing, and other regulatory ordinances and laws. Buyer also agrees to accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property. Buyer agrees that Seller has made no representations with respect to such laws or ordinances.

**NONE**

Buyer acknowledges that they have read, understood, and agreed to the terms and conditions of this Contract, and that they have not been coerced, unduly influenced, or otherwise pressured into entering into this Contract. Buyer further acknowledges that they have read and understood the terms and conditions of this Contract, and that they have not been coerced, unduly influenced, or otherwise pressured into entering into this Contract. Buyer further acknowledges that they have read and understood the terms and conditions of this Contract, and that they have not been coerced, unduly influenced, or otherwise pressured into entering into this Contract.

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.**

This document is the entire, final, and complete agreement of the parties, pertaining to the sale and purchase of the property. The document supersedes and replaces all prior or existing written and oral agreements (including any sale or earnest money agreement) between the parties or their representatives relating to the property.

**IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate as of the first day and year above written.**

**BUYER(S):**

*[Signature]*  
**SAM A. HENZEL**

*[Signature]*  
**THURSTON K. HENZEL**



STATE OF OREGON

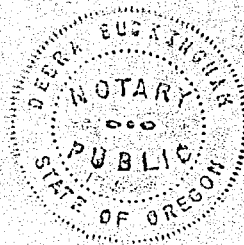
9229

County of Klamath

) ss

June 14, 19 88

Personally appeared the above named Sam A. Henzel and Thurston K. Henzel  
and acknowledged the foregoing Contract to be his (their) voluntary act and deed.

Before me: Debra BuckinghamMy Commission Expires: 12-19-88

Notary Public For Oregon

SELLER:

Director of Veterans' Affairs

By: Cliff JonesLoan Supervisor

Title

STATE OF OREGON

County of Marion

) ss

June 10, 19 88

Personally appeared the above named Cliff Jones  
and, being first duly sworn, did say that he (she) is duly authorized to sign the foregoing Contract on behalf of the Department of Veterans' Affairs by  
authority of its Director.

Before me: Charles J. MatisonMy Commission Expires: 12.9.90

Notary Public For Oregon

## CONTRACT OF SALE

FOR COUNTY RECORDING INFORMATION ONLY

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co.  
of June A.D., 19 88 at 3:49 o'clock P M., and duly recorded in Vol. M88  
of Deeds on Page 9223

FEE \$38.00

Evelyn Biehn

By: Bernetha A. Dubach

County Clerk

AFTER RECORDING RETURN TO:  
Department of Veterans Affairs  
Oregon Veterans Building  
700 Summer St., N.E., Suite 100  
Salem, OR 97310-1239

AFTER RECORDING RETURN TO:

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CM/mka/wed