

88957

Vol. 114 Page 6102

THIS CONTRACT OF SALE of real property made this 13<sup>th</sup> day of May, 1974, between HAZEL VANDER KAMP, hereinafter called "Vendor," and CHARLES E. KIMBOL and HARLENE C. KIMBOL, husband and wife, as tenants by the entirety as to an undivided 1/3 interest, VIVIAN N. KIMBOL, single, as to an undivided 1/3 interest, and DELBERT L. KIMBOL, single, as to an undivided 1/3 interest, hereinafter called "Purchaser";

A.24481

W I T N E S S E T H:

Vendor agrees to sell to Purchaser and Purchaser hereby agrees to buy from Vendor, at the price and on the terms, covenants, conditions and provisions hereinafter contained, all of the following described property situate in the County of Klamath, State of Oregon, more particularly described as follows:

Township 34 South, Range 7 East of the Willamette Meridian:  
Section 30: South half of South half of Southeast quarter of Northwest quarter; South half of South half of South half of Southeast quarter; North half of Southeast quarter; East half of Southwest quarter;

SUBJECT TO: The exceptions as set forth in Exhibit "A".

SPECIAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

The purchase price of the property, which Purchaser agrees to pay, is the sum of \$150,000.00, payable as follows:

(a) \$15,000.00 down payment, receipt of which is hereby acknowledged.

(b) \$135,000.00 deferred balance payable as follows: in monthly installments of \$400.00, inclusive of interest, the first such installment to be paid on the fifteenth day of June, 1974, and a like installment on the fifteenth day of each month thereafter until the full sum of principal and interest secured by this contract has been paid.

Interest on the deferred balance of the purchase price is fixed at the rate of seven (7%) percent per annum simple interest on the declining balances of the deferred balance. Interest commences on May 15, 1974.

All installments due Vendor from Purchaser under this agreement shall be paid without demand to the Escrow Holder hereinafter named. All such installments received shall be applied first to interest accrued to the date of receipt and then applied to reduce principal.

From and after January 1, 1978, Purchaser may increase any installment or prepay all or any part of the whole consideration at any time, together with interest thereon to the date of any such payment. Prior to said date, said prepayment may be made only with the written consent of Vendor and no partial payment, increased installment, nor payment for a partial conveyance by reason of the eminent domain provisions of this agreement shall be credited in lieu of any regular future installment nor excuse Purchaser from making the regular installments specified in this agreement.

The obligation of Purchaser herein is joint and several and the refutation by any party to this transaction who is a minor shall not affect the obligations of the adult parties hereto.

Purchaser shall have possession of said real property on May 15, 1974.

Purchaser has made an independent investigation and inspection of the real property herein described and has entered into this contract without relying on any statement or representation or covenant not specifically embodied in this contract, and accepts the property described in this agreement as is, in its present condition, and requires no work of any kind to be done on said property by Vendor.

# GENERAL TERMS, COVENANTS, CONDITIONS AND PROVISIONS

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GIACOMINI, JONES & ZANSKY, ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

1 The real property above described hereby sold to Purchaser includes  
2  
3 all and singular the tenements, hereditaments, rights, easements, privi-  
4 leges and appurtenances thereunto belonging, or in anywise appertaining,  
5 improvements thereon including, but not limited to, stationary pumps,  
6 pumping stations, pumping motors, pumping engines, reservoirs, nonportable  
7 pipes and flumes or other nonportable equipment now used for the produc-  
8 tion of water thereon or for the irrigation or drainage thereof, and the  
9 reversions, remainders, rents, issues and profits thereof, together with  
10 all the rights of the use of water for irrigating said premises and for  
11 domestic use thereon to which Vendor is now entitled, or which are now  
12 used on said premises, however the same may be evidenced, and together  
13 with all shares of stock or shares of water in any ditch or irrigation  
14 company which, in any manner entitles the Vendor water for irrigating or  
15 domestic purposes upon said real property. The Vendor's lien created by  
16 this contract shall and does hereby include the real property above de-  
17 scribed, together with, all and singular, the tenements, hereditaments,  
18 rights, easements, privileges and appurtenances thereunto belonging or in  
19 anywise appertaining, and all improvements now or hereafter thereon, in-  
20 cluding, but not limited to, stationary pumps, pumping stations, pumping  
21 motors, pumping engines, reservoirs, nonportable pipes and flumes or other  
22 nonportable equipment now or hereafter used for the production of water  
23 thereon for the irrigation or drainage thereof, and the reversions, re-  
24 mainders, rents, issues and profits thereof, and together with all the  
25 rights to use of water for irrigating said premises and for domestic use  
26 thereon to which said real property is now or may hereafter become enti-  
27 tled, or which now are or may hereafter be used on said premises, however  
28 the same may be evidenced, and together with all shares of stock or shares  
29 of water in any ditch or irrigation company which in any manner entitles  
30 the legal or equitable owner thereof to water for irrigating or domestic  
31 purposes upon said real property. In addition, Purchaser hereby agrees  
32 that Vendor's lien is superior to any and all rights of Purchaser under  
33 and by virtue of any homestead, stay or exemption laws now in force, or  
34 which may hereafter become laws and that no timber will be cut from any  
35 of the real property subject to said lien.  
36 Vendor hereby warrants that he has good and merchantable title to  
37 the real property above described, subject to the exceptions above set  
38 forth. Vendor will, upon execution hereof, make and execute in favor of  
39 Purchaser, a good and sufficient warranty deed conveying said premises  
40 free and clear as of this date of all encumbrances, subject to the above  
41 set forth exceptions, and will place said deed, together with the origi-  
42 nal of this agreement, and any other conveyances of title or security in-  
43 struments required hereby in escrow at Chiloquin Branch of United States  
44 National Bank of Oregon with instructions to said Escrow Hold-  
45 er that when and if the Purchaser shall have paid the balance of the pur-  
46 chase money and interest as above specified and shall have complied with  
47 all other terms and conditions of this agreement, to deliver the same to  
48 Purchaser subject to the usual printed conditions and provisions of the  
49 standard form of escrow instructions provided by said Escrow Holder.  
50 Vendor shall furnish, at his own expense, a Purchaser's Title Insurance  
51 Policy issued by Klamath County Title Company under Order  
52 No. A-24481 insuring Purchaser's title in the above described real prop-  
53 erty in the amount of \$150,000.00 subject to the above set forth ex-  
54 ceptions and printed conditions and exceptions contained in the usual form  
55 of title policy issued by said title insurance company.  
56 Purchaser shall be entitled to possession of the above described real  
57 property on the date this contract is recorded. Purchaser shall remain  
58 in possession so long as Purchaser is not in default hereunder. Purchaser  
59 shall and hereby agrees to keep said real property in clean, sanitary,  
60 sightly, attractive condition; to commit no waste or otherwise damage or  
61 injure said premises; to maintain said premises in accordance with the  
62 laws and the ordinances and regulations of any constituted authority ap-  
63 plying to said premises and to make up no unlawful use thereof; to pay  
64 regularly and seasonably, and before the same shall become delinquent,  
65 all taxes, assessments, and charges of whatever nature (including addi-  
66



1 tional charges by reason of change of use) levied and assessed against  
2 said real property and to pay and discharge all encumbrances thereafter  
3 placed thereon by Purchaser; to permit no lien or other encumbrances to  
4 be filed upon or placed against said premises without the written consent  
5 of Vendor; and it is further understood and agreed for the purposes of  
6 this provision that if Purchaser fails to pay or discharge any taxes, as-  
7 sessments, liens, encumbrances, or charges, Vendor, at his option and  
8 without waiver of default or breach of Purchaser, and without being obliged  
9 to do so, may pay or discharge all or any part thereof all of which said  
10 sums so paid by Vendor shall become repayable by Purchaser, together with  
11 interest at the rate of ten (10%) percent per annum, upon demand, payment  
12 of which is part of the performance of this agreement by Purchaser and a  
13 condition precedent to delivery of the warranty deed and other documents  
14 by the Escrow Holder.

15 Purchaser agrees to keep the buildings and improvements now on or  
16 hereafter placed upon the above described real property insured against  
17 loss by fire or other casualty in an amount not less than maximum insur-  
18 able value as determined by the insurance carrier and shall obtain, at his  
19 own expense, said insurance in the name of Vendor as the primary insured  
20 with an endorsement thereon providing for loss payable to Vendor and Pur-  
21 chaser as their respective interests may appear. The policy or policies  
22 of insurance shall be delivered to Vendor, or, in lieu thereof, a certifi-  
23 cate of such insurance may be provided by Purchaser and delivered to Ven-  
24 dor. If a loss should occur for which insurance proceeds shall become  
25 payable, the Purchaser may elect to either rebuild or repair the portion  
26 of the building so destroyed, or apply the proceeds to payment of the then  
27 unpaid balance of the purchase money. If the Purchaser elects to rebuild,  
28 he shall sign such documents as may be required by Vendor to guarantee  
29 the application of the insurance proceeds to the cost of such rebuilding  
30 or repair.

31 In the event any governmental agency or entity having the power of  
32 eminent domain acquires by eminent domain, or by negotiated sale in lieu  
33 of eminent domain, all, or any portion, of the real property described in  
34 this contract, Vendor may require Purchaser to apply all proceeds received  
35 by Purchaser from such acquisition (remaining after payment by Purchaser  
36 of attorney fees, appraiser fees, and related necessary and reasonable  
37 costs in connection with securing said proceeds) which proceeds are here-  
38 inafter called "net proceeds" toward the payment of the sums secured by  
39 this contract. Upon receipt of said net proceeds, Purchaser shall notify  
40 Vendor of the amount of said net proceeds and Vendor shall, within ten (10)  
41 days after such notification, notify Purchaser in writing if Vendor elects  
42 to have said net proceeds applied toward payment of the sums secured by  
43 this contract. If Vendor fails to so notify Purchaser of such election,  
44 Vendor shall conclusively be deemed to have elected not to require Pur-  
45 chaser apply said net proceeds toward the sums secured by this contract.  
46 If Vendor elects to have said net proceeds applied toward payment toward  
47 the sums secured by this contract, the amount to be received by Vendor  
48 shall not exceed the total of the principal plus accrued interest to the  
49 date of receipt thereof by Vendor, and all such sums shall be paid to the  
50 Escrow Holder named herein. Regardless of whether Vendor elects to have  
51 said net proceeds applied to the sums secured by this contract, Vendor  
52 will join in any conveyance required by the governmental agency or entity  
53 acquiring a portion or all of the real property described herein by emi-  
54 nent domain, but Vendor shall not be required to partially convey more  
55 property than that which is acquired by such governmental agency or entity.  
56 Vendor shall not be obligated to participate in any negotiations with such  
57 governmental agency or entity. Any notice or notices required to be given  
58 by Purchaser to Vendor pursuant hereto shall be in writing, and shall be  
59 deemed given when the same is deposited in the United States mail as reg-  
60 istered mail, postage prepaid, addressed to Vendor at the last address of  
61 Vendor shown on the records of the Escrow Holder.

62 If Purchaser shall sell said real property described herein and se-  
63 curing the unpaid balance of this contract, Vendor may elect to permit  
64 the subsequent Purchaser to assume the balance of Purchaser's obligation  
65 secured hereby, or to demand payment from Purchaser, or the transferee of  
66 said Purchaser, or both (at the option of the Vendor) of such portion of



1 the deferred balance as Vendor may consider satisfactory, or declare the  
 2 entire balance of the deferred balance due and payable. This provision  
 3 shall not apply to any transfer by Purchaser by way of gift, devise, or  
 4 bequest, or transfer between each Purchaser, if more than one, or transfer  
 5 by Purchaser to any partnership or corporation wherein any Purchaser shall  
 6 own more than <sup>seventy</sup> (75%) percent thereof. This clause cannot be waived  
 7 unless Purchaser gives Vendor notice of such sale in writing and Vendor,  
 8 after receipt of such written notice, accepts a payment from the subse-  
 9 quent Purchaser. The written notice provided for herein shall be deemed  
 10 given when the same is deposited in the United States mail as registered  
 11 mail, addressed to the last address of Vendor shown on the records of the  
 12 Escrow Holder.

13 Vendor may appear in or defend any action or proceeding at law, in  
 14 equity, or in bankruptcy, affecting in any way the security hereof, and  
 15 in such event, Vendor shall be allowed and paid, and Purchaser hereby a-  
 16 grees to pay, all costs, charges and expenses, including costs of evidence  
 17 of title or validity and priority of the security and attorney fees in a  
 18 reasonable sum, incurred in any such action or proceeding in which Vendor  
 19 may appear, which shall bear interest at ten (10%) percent from date of  
 20 demand therefor. Failure of Purchaser to pay Vendor for such costs,  
 21 charges and expenses within ninety (90) days from date of demand therefor  
 22 shall constitute a breach of this contract.

23 If Purchaser shall fail to perform any of the terms of this agreement,  
 24 time of payment and performance being of the essence, Vendor shall, at his  
 25 option, subject to the requirements of notice as herein provided, have the  
 26 following rights:

- 27 (a) To foreclose this contract by strict foreclosure in equity;
- 28 (b) To declare the full unpaid balance of the purchase price im-  
 29 mediately due and payable; and,
- 30 (c) To specifically enforce the terms of this agreement by suit  
 31 in equity.

32 Purchaser shall not be deemed in default for failure to perform any  
 33 covenant or condition of this contract, other than the failure to make  
 34 payments as provided for herein, until notice of said default has been  
 35 given by Vendor to Purchaser and Purchaser shall have failed to remedy  
 36 said default within thirty (30) days after the giving of the notice.  
 37 If Purchaser shall fail to make payments as herein provided and said  
 38 failure shall continue for more than thirty (30) days after the payment  
 39 becomes due, Purchaser shall be deemed to be in default and Vendor shall  
 40 not be obligated to give notice to Purchaser of a declaration of said de-  
 41 fault.

42 Where notice in writing is required by Vendor to the Purchaser, such  
 43 notice shall be deemed given when the same is deposited in the United  
 44 States mail as registered mail, addressed to the last address of Purchaser  
 45 shown on the records of the Escrow Holder.

46 No waiver by Vendor of any breach of any covenant of this agreement  
 47 shall be construed as a continuing waiver of any subsequent breach of such  
 48 covenant nor as a waiver of any breach of any other covenant nor as a  
 49 waiver of the covenant itself.

50 In the event any suit or action is commenced to foreclose this con-  
 51 tract, the court having jurisdiction of the case may, upon motion by Ven-  
 52 dor, appoint a receiver to collect the rents and profits arising out of  
 53 the above described real property and to take possession, management and  
 54 control of the same during pendency of such foreclosure proceeding or un-  
 55 til payment of the obligations hereby secured, and apply said rents and  
 56 profits to the payment of the amount due hereunder, first deducting all  
 57 proper charges and expenses attending the execution of said receivership.

58 Upon the commencement of any suit or action to collect the indebted-  
 59 ness or disbursements, secured hereby, or any part thereof, or to enforce  
 60 any provision of this contract by specific performance, foreclosure, or  
 61 otherwise, there shall become due, and Purchaser agrees to pay to Vendor,  
 62 in addition to all statutory costs and disbursements, any amount Vendor  
 63 may incur or pay for any title report, title search, insurance of title,  
 64 or other evidence of title subsequent to the date of this contract on any  
 65 of the real property above described and this contract shall be security  
 66 for the payment thereof.

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In the event any suit or action is instituted to collect the indebtedness or disbursements secured hereby, or any part thereof, or to enforce any provision of this contract by specific performance, or foreclosure, or otherwise, the prevailing party, at trial, or on appeal, shall be entitled to such reasonable attorney's fees as shall be fixed by the court having jurisdiction of the case, in addition to statutory costs and disbursements. This agreement contains the full understanding of the parties with respect to the subject hereof and no modification hereof shall be given effect unless the same be in writing subscribed by the parties hereto or their successors in interest.

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

In construing this agreement, the singular shall include both the singular and the plural and the masculine both the masculine and feminine.

*Hazel Vanderkamp*  
Hazel Vanderkamp

Vendor

*Charles E. Kimbol*  
Charles E. Kimbol

*Harlene C. Kimbol*  
Harlene C. Kimbol

*Vivian N. Kimbol*  
Vivian N. Kimbol

*Delbert L. Kimbol*  
Delbert L. Kimbol

Purchaser

STATE OF OREGON )  
County of Klamath ) ss.

On the 15 day of May, 1974, personally appeared the above named Hazel Vanderkamp and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

*Shirley Agnew*  
Notary Public for Oregon  
My Commission expires: 8-5-75

(SEAL)

STATE OF OREGON )  
County of Klamath ) ss.

On the 13th day of May, 1974, personally appeared the above named Charles E. Kimbol and Harlene C. Kimbol, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

*William O. Bruckner*  
Notary Public for Oregon  
My Commission expires: 10-29-75

(SEAL)

Contract of Sale  
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GIACOMINI, JONES & ZANSKY, ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON



1 STATE OF OREGON )  
2 ) ss.

3 County of Klamath )

4 On the 13-4 day of May, 1974, personally appeared the above named  
5 Vivian N. Kimbol and acknowledged the foregoing instrument to be her vol-  
6 untary act and deed.

Before me:

10 William O. Bricker  
11 Notary Public for Oregon  
12 My Commission expires: 10-29-75  
13 (SEAL)

16 STATE OF OREGON )  
17 ) ss.

18 County of Klamath )

19 On the 13-4 day of May, 1974, personally appeared the above named  
20 Delbert L. Kimbol and acknowledged the foregoing instrument to be his vol-  
21 untary act and deed.

Before me:

26 William O. Bricker  
27 Notary Public for Oregon  
28 My Commission expires: 10-29-75  
29 (SEAL)

GIACOMINI, JONES & ZANSKY, ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION, KLAMATH FALLS, OREGON

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REAL PROPERTY  
ENCUMBRANCES

SUBJECT TO: Terms and conditions of special assessment as farm use and the right of Klamath County to additional taxes in the event said use should be changed; acreage and use limitations under provisions of United States Statutes and regulations issued thereunder; and, easements and rights of way of record and apparent thereon.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of KLAMATH COUNTY TITLE CO  
this 15th day of May, A. D. 1974 at 4:09 o'clock PM., and  
duly recorded in Vol. M 74, of DEEDS on Page 6102  
FEE \$ 14.00

Wm D. MILNE, County Clerk  
By Hazel Drayton

Mail Tax Statements  
to: Charles Kimbol  
P.O. Box 226  
Chiloquin, OR 97624

Ret to:  
K Co Title Co  
P.O. Box 151  
K. Allen

Exhibit "A"