

65429

CONTRACT OF SALE

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THIS CONTRACT, made this 7th day of April, 1979, between HENRY E. MCCOLLUM and BETTY J. MCCOLLUM, husband and wife, herein-after called the Seller, and JAMES L. KIZZIAR, JR. and RUTH N. KIZZIAR, husband and wife, hereinafter called the Buyer;

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the Seller agrees to sell unto the Buyer, and the Buyer agrees to purchase from the Seller, all of the following described lands and premises situated in Klamath County, State of Oregon, to-wit:

Beginning at the section corner to Sections 17, 18, 19 and 20, Township 28 South, Range 8 East of the Willamette Meridian; thence, South 1667.8 feet; thence, East 491.6 feet; thence, North 16°53' East 400 feet; thence, South 73°6' East 110 feet to the true point of beginning on the East boundary of Highway No. 97 right of way; thence, South 73°6' East 190 feet; thence, North 16°53' East 337.92 feet; thence, North 73°6' West 190 feet; thence, South 16°53' West 337.92 feet along the Easterly right of way boundary line of Highway No. 97 to the true point of beginning, containing 1.47 acres.

SUBJECT TO THE FOLLOWING:

1. Acreage and use limitations under provisions of the United States Statutes and regulations issued thereunder. All contracts, water rights, proceedings, taxes and assessments relating to irrigation, drainage and/or reclamation of said lands, and all rights of way for roads, ditches, canals and conduits, if any of the above there may be.
2. Access restrictions, including the terms and provisions thereof, given by Joe Bellevance and Lee Bellevance, husband and wife, to the State of Oregon, by and through its State Highway Commission, dated October 29, 1954, recorded December 10, 1954, in Deed Volume 271, page 112, Records of Klamath County, Oregon, which provides that no

Page

1 - CONTRACT OF SALE
MCCOLLUM/KIZZIAR

BEDDOE & HAMILTON
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296 Main Street
Klamath Falls, Oregon 97601
Telephone (503) 882-4624

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1 right of access to, from, or across the State
2 Highway other than expressly therein provided
for, shall attach to the abutting property.

- 3 3. Indenture of Access between State of Oregon,
4 by and through its State Highway Commission,
and Joe Bellevance and Lee Bellevance, husband
5 and wife, dated November 8, 1956, recorded
November 23, 1956, in Deed Volume 288, page
6 120, Records of Klamath County, Oregon, which
modifies restrictions in Deed Volume 271,
7 page 112, Records of Klamath County, Oregon.
- 8 4. Easement for water line over and across the
above property for the benefit and use of ad-
9 joining property, as disclosed by deed from
Tommy F. Coble and Uldean Coble, husband and
10 wife, to William Laxague, dated February 25,
1961, recorded January 19, 1962, in Deed Volume
11 335, page 184, Records of Klamath County,
Oregon.
- 12 5. Right of Way for road, including the terms and
13 provisions thereof, and agreement relative to
use of pipe line, given by William Laxague
14 and Frieda L. Laxague, husband and wife, to
Crown Zellerbach Corporation, a Nevada corpora-
15 tion, dated June 21, 1962, recorded July 16,
1962, in Deed Volume 338, page 663, Records of
16 Klamath County, Oregon.

17 along with the following described personal property situated in
18 Klamath County, State of Oregon, more particularly known as Beaver
19 Marsh, Oregon, to-wit:

- 20 1. One - 1959 RICHS HT MOBILE HOME, Title No. 6833817609.
- 21 2. One - Kelvinator Window Air Conditioner.
- 22 3. One - Kenmore washer and one Kenmore dryer.
- 23 4. One - Preway gas stove.
- 24 5. One - Frigidaire refrigerator.
- 25 6. Davenport and chairs.
- 26 7. One - bed

1 8. Carpet.

2 9. Drapes and curtains.

3 a more particular description being known to the parties hereto,
4 for the sum of NINETEEN THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS
5 (\$19,500.00), hereinafter called the purchase price, on account of
6 which TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) is
7 paid on the execution hereof, the receipt of which is hereby acknow-
8 ledged by the Seller; the Buyer agrees to pay the balance of said
9 purchase price, to-wit: SEVENTEEN THOUSAND AND NO/100 DOLLARS
10 (\$17,000.00) to the order of the Seller in monthly payments of not
11 less than TWO HUNDRED AND NO/100 DOLLARS (\$200.00) each, payable on
12 the 1st day of each month, beginning with the month of May
13 1979 and continuing until said purchase price is fully paid. All of
14 said purchase price may be paid at any time; all deferred balances of
15 said purchase price shall bear interest at the rate of eight (8) per
16 cent per annum, from April 10, 1979, until paid, interest to be paid
17 monthly and is included in the minimum monthly payments above required.
18 Taxes on said premises for the current tax year shall be prorated be-
19 tween the parties hereto as of April 10, 1979.

20 The Buyer warrants to and covenants with the Seller that the
21 real property described in this contract is primarily for Buyer's person-
22 al, family, household or agricultural purposes.

23 The Buyer shall be entitled to possession of said lands on
24 April 10, 1979, and may retain such possession so long as he is not
25 in default under the terms of this contract. The Buyer agrees that at
26 all times he will keep the buildings on said premises, now or hereafter

1 erected, in good condition and repair, and will not suffer or permit
2 any waste or strip thereof; that he will keep said premises free
3 from mechanic's and other liens and shall save the Seller harmless
4 therefrom and reimburse Seller for all costs and attorney's fees
5 incurred by him in defending against any such liens; that he will
6 pay all taxes hereafter levied against said property, as well as all
7 water rents, public charges and municipal liens which hereafter law-
8 fully may be imposed upon said premises, all promptly before the
9 same or any part thereof become past due; that at Buyer's expense,
10 he will insure and keep insured all buildings now or hereafter
11 erected on said premises against loss or damage by fire, with extended
12 coverage, in an amount up to their insurable value, and shall also
13 insure said 1959 RICHS HT Mobile Home, Title No. 6833817609 up to
14 its insurable value with a company or companies satisfactory to the
15 Seller. Seller agrees that Buyer, with the written consent of the
16 Seller, be given the right to elect to use the insurance proceeds
17 for repair or replacement of property damaged, and if the Buyer
18 does not elect to use the insurance proceeds for repair or replace-
19 ment, then the loss payable would be first to the Seller and then
20 to the Buyer, as their respective interests may appear, and all
21 policies of insurance are to be delivered to the Seller as soon as
22 insured. All uninsured losses shall be born by the Buyer on or after
23 the date Buyer becomes entitled to possession. If the Buyer shall
24 fail to pay any such liens, costs, water rents, taxes or charges or
25 to procure and pay for such insurance, then Seller may do so and any
26 payment so made shall be added to and become a part of the debt

1 secured by this contract, and shall bear interest at the rate afore-
2 said, without waiver, however, of any right arising to the Seller
3 for Buyer's breach of contract.

4 Seller agrees that at his expense and within ten (10) days
5 from the date hereof, he will furnish unto Buyer a title insurance
6 policy insuring marketable title in and to said premises in the
7 Seller in the amount of SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00)
8 on or subsequent to the date of this agreement, save and except the
9 usual printed exceptions and the building and/or other restrictions
10 and easements now of record, if any.

11 Seller will, upon execution hereof, make and execute in
12 favor of Buyer a good and sufficient warranty deed conveying said
13 premises free and clear as of this date of all encumbrances except
14 those set forth herein above, and will place said deed, together
15 with the original of this agreement and a certificate of title for
16 the mobile home, and any other conveyances of title or security
17 instruments required hereby in escrow at Klamath County Title Com-
18 pany, Klamath Falls, Oregon, with instructions to said escrow holder
19 that when and if the Buyer shall have paid the balance of purchase
20 money and interest as hereinabove set forth, and shall have complied
21 with all other terms and conditions of this agreement, to deliver
22 the same to Buyer, subject to the usual printed conditions and pro-
23 visions of the standard form of escrow instructions provided by said
24 escrow holder.

25 It is understood and agreed between said parties that time
26 is of the essence of this agreement, and in case Buyer shall fail to

1 make the payments above required, or any of them, punctually within
2 thirty (30) days of the time limited therefor, or fail to keep any
3 agreement herein contained, then the Seller, at his option, shall
4 have the following rights: (1) to declare the whole unpaid principal
5 balance of said purchase price with the interest thereon at once due
6 and payable, (2) to withdraw said deed and other documents from escrow
7 and/or (3) to foreclose this contract by suit in equity; and in any
8 of such cases, all rights and interest created or then existing in
9 favor of the Buyer as against the Seller hereunder shall utterly
10 cease and determine and the right to the possession of the premises
11 above described and all other rights acquired by the Buyer hereunder
12 shall revert to and revest in said Seller without any act of re-entry,
13 or any other act of said Seller to be performed and without any right
14 of the Buyer of return, reclamation or compensation for moneys paid
15 on account of the purchase of said property, as absolutely, fully
16 and perfectly as if this contract and such payments had never been
17 made. And, in case of default, all payments theretofore made on this
18 contract are to be retained by and belong to said Seller as the agreed
19 and reasonable rent of said premises up to the time of such default.
20 Said Seller, in case of such default, shall have the right immediately,
21 or at any time thereafter, to enter upon the land aforesaid, without
22 any process of law, and take immediate possession thereof, together
23 with all the improvements and appurtenances thereon or thereto be-
24 longing.

25 Buyer further agrees that failure by Seller at any time to
26 require performance by Buyer of any provision hereof shall in no way

1 affect his right hereunder to enforce the same, nor shall any waiver
2 by said Seller of any breach of any provision hereof be held to be a
3 waiver of any succeeding breach of any such provision, or as a waiver
4 of the provision itself.

5 The true and actual consideration paid for this transfer,
6 stated in terms of dollars, is NINETEEN THOUSAND FIVE HUNDRED AND
7 NO/100 DOLLARS (\$19,500.00).

8 In case suit or action is instituted to foreclose this con-
9 tract or to enforce any provision hereof, the losing party in said suit
10 or action agrees to pay such sum as the trial court may adjudge
11 reasonable as attorney's fees to be allowed the prevailing party in
12 said suit or action, and if an appeal is taken from any judgment or
13 decree of such trial court, the losing party further promises to pay
14 such sum as the appellate court shall adjudge reasonable as the pre-
15 vailing party's attorney's fees on such appeal.

16 In construing this contract, it is understood that the Seller
17 or the Buyer may be more than one person or a corporation; that if
18 the context so requires, the singular pronoun shall be taken to mean
19 and include the plural, the masculine, the feminine and the neuter, and
20 that generally all grammatical changes shall be made, assumed and im-
21 plied to make the provisions hereof apply equally to corporations
22 and to individuals.

23 This agreement shall bind and inure to the benefit of, as
24 the circumstances may require, not only the immediate parties hereto,
25 but their respective heirs, executors, administrators, personal re-
26 presentatives, successors in interest and assigns as well.

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IN WITNESS WHEREOF, said parties have executed this instrument in triplicate.

SELLER:

Henry E. McCollum
HENRY E. MCCOLLUM

Betty J. McCollum
BETTY J. MCCOLLUM

STATE OF OREGON)
Deschutes) ss:
County of ~~Klamath~~)

Before me this 7th day of April, 1979, appeared the above named Seller, Henry E. McCollum and Betty J. McCollum, and acknowledged the foregoing instrument to be their voluntary act and deed.

Loid L. Wright
Notary Public for Oregon
My Commission Expires 11-21-79

BUYER:

James L. Kizziar, Jr.
James L. Kizziar, Jr.

Ruth N. Kizziar
Ruth N. Kizziar

STATE OF OREGON)
Deschutes) ss:
County of ~~Klamath~~)

Before me this 7th day of April, 1979, appeared the above named Buyer, James L. Kizziar, Jr. and Ruth N. Kizziar, and acknowledged the foregoing instrument to be their voluntary act and deed.

Loid L. Wright
Notary Public for Oregon
My Commission Expires 11-21-81

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MCCOLLUM/KIZZIAR

Return to
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STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 13th day of April A.D., 19 79 at 3:00 o'clock P M., and duly recorded in Vol. M79 of Deeds on Page 8144.

FEE \$24.00

WM. D. MILNE, County Clerk
By Bernetha M. Leitch Deputy