

24644

MTC 12326
CONTRACT OF SALE

THIS CONTRACT is made on the 1 day of MAY, 1983, by and between HOMER J. CLARK and KATHRYN A. CLARK, husband and wife, whose address is Star Route Box 22, Malin, Oregon 97632, hereinafter referred to as "SELLERS", and KENYON BROS., INC., an Oregon Corporation, whose address is P.O. Box 352, Merrill, Oregon 97633, hereinafter referred to as "BUYER",

W I T N E S S E T H:

Sellers agree to sell to Buyer and Buyer agrees to purchase from Sellers for the price and on the terms and conditions set forth below that certain real and personal property situated in Klamath County, Oregon, described as follows:

REAL PROPERTY:

That certain tract of land more particularly described on Exhibit "A" which is attached hereto and by this reference made a part hereof.

PERSONAL PROPERTY:

- 1) Two wheel lines, each 1/4 mile in length;
- 2) Felco solid set;
- 3) Mainline;
- 4) 30 HP pump;
- 5) 40 HP pump;
- 6) Panel, and

Miscellaneous valves and pipe presently located on said above real property owned and previously used by Sellers. It being understood and agreed that Buyer accepts said personal property in the condition the same is at this time.

Until a change is requested, all TAX STATEMENTS shall be sent to Buyer at P.O. Box 352, Merrill, Oregon 97633.

1.

PURCHASE PRICE AND PAYMENT

Buyer promises to pay as the total purchase price for said

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1 real and personal property the sum of TWO HUNDRED THIRTY TWO
2 THOUSAND FIVE HUNDRED DOLLARS, (\$232,500.00) and such amount
3 shall be paid as follows:

4 The sum of \$20,082.00 which has previously been paid, and
5 the sum of \$69,443.00 which shall be paid upon the execution
6 hereof.

7 The remaining balance of \$142,975.00 shall be paid in annual
8 installments of \$22,100.00 each, including interest at the rate
9 of 12% per annum on the unpaid balances, the first of such in-
10 stallments shall be paid on or before the 1st day of May, 1984,
11 and subsequent installments to be paid on or before the 1st day
12 of each May thereafter until the entire purchase price, including
13 both principal and interest, is paid in full.

14 Interest on all unpaid balances shall commence on the date
15 hereof, Each payment shall be applied first to interest to-date
16 of payment and the balance to principal.

17 2.

18 PRE-PAYMENT

19 Buyer may at any time after January 1, 1986, increase any
20 annual payment or prepay the entire balance at any time, provided,
21 however, that increased payment shall not excuse Buyer from making
22 the regular annual payment provided for in this contract until
23 the remaining balance has been paid in full.

24 3.

25 ESCROW AGENT

26 Sellers shall upon the execution hereof make and execute in

1 favor of Buyer a good and sufficient warranty deed conveying said
2 real property free and clear of all liens and encumbrances, except
3 as herein or on said deed referred to and which Buyer takes sub-
4 ject thereto, and will place said deed, together with one of these
5 agreements in escrow at FIRST INTERSTATE BANK OF OREGON, N.A.,
6 Merrill, Oregon, and the parties hereto shall enter into written
7 escrow instructions in form satisfactory to said escrow agent and
8 the parties hereto, instructing said escrow agent that when, and
9 if, Buyer shall have paid the balance of the purchase price in
10 accordance with the terms and conditions of this agreement, said
11 escrow agent shall deliver said deed to Buyer. The cost or
12 initial escrow charge shall be shared equally by the parties.
13

4.

BILL OF SALE

15 Sellers shall further upon the execution hereof make and
16 execute in favor of Buyer a Bill of Sale to said personal property
17 conveying same to Buyer free of liens or encumbrances and place
18 same in said escrow instructing said escrow agent to deliver said
19 Bill of Sale to Buyer upon the May 1, 1984 annual installment
20 being made.
21

5.

TAXES AND WATER ASSESSMENTS

23 All taxes and water assessments levied against the real and
24 personal property for the current year shall be pro-rated between
25 Sellers and Buyer as of the date hereof. Buyer agrees to pay when
26 due all taxes and assessments which are thereafter levied against

1 said property.

2 6.

3 MAINLINE

4 The parties acknowledge that there presently exists a main-
5 line for irrigation purposes serving the above subject real pro-
6 perty which originates near the Northwest corner of said property
7 and runs South a distance of approximately 1320 feet and that said
8 mainline is situated on the property of either Sellers, or,
9 irrigation or governmental entities, accordingly, Sellers, to the
10 extent they may do so, and so long as the covenants of Buyer herein
11 provided are kept and performed, convey unto Buyer the perpetual
12 right to enter upon the land upon which said mainline is presently
13 located, including an area three feet on each side thereof, at
14 any time for the purpose of maintenance, and, any incidental,
15 reasonable purpose connected with using said mainline for irriga-
16 tion purposes, it being expressly understood that in the event
17 Sellers are not the owners of said real property, then and in
18 that event, this provision conveys unto Buyer no interest or ease-
19 ment.

20 7.

21 RIGHT OF FIRST REFUSAL

22 In the event Sellers, or either of them, in the event of the
23 death of one, desire to sell the property retained by them, con-
24 sisting of residence, hay shed and other improvements located
25 thereon, and which property is located in Klamath County, Oregon,
26 and described as Exhibit "B", which is attached hereto and by this

1 reference made a part hereof, during the term hereof and Sellers
2 receive from a prospective purchaser a bona fide offer to buy,
3 Sellers shall first offer said real property to Buyer as follows:

- 4 a. Sellers shall give written notice to Buyer within
5 10 days of receipt of said offer stating the basic
6 terms and price of the proposed sale; and
7 b. Within 10 days after receipt of notice, if this
8 agreement is not in default, Buyer may elect to pur-
9 chase said property on terms equally or more favor-
10 able to Sellers by so advising Sellers in writing; and
11 c. If Buyer elects to purchase, the sale shall be closed
12 within 20 days after receipt by Seller of Buyer's
13 notice of election to buy; and
14 d. If Buyer does not elect to purchase, or, in the event
15 of Buyer's failure to perform within the time above
16 stated to close the purchase, then and in either case,
17 Sellers shall have the right to sell pursuant to the
18 terms of the proposed sale, and, Buyer's rights pur-
19 suant to the above provisions shall terminate.

8.

FEDERAL LAND BANK

16 The subject property is presently subject to a mortgage
17 obligation in favor of The Federal Land Bank of Spokane having an
18 unpaid balance of approximately \$24,000.00 and Sellers covenant
19 and agree to pay the said obligation in full forthwith upon re-
20 ceipt of the above sum of \$69,443.00 payable by Buyers upon the
21 execution hereof as above provided, and, Sellers further agree
22 to cause the satisfaction of said mortgage to be thereafter placed
23 of record in the mortgage records of Klamath County, Oregon,
24 within a reasonable time after payment.

25 Sellers shall mail to Buyer a copy of said Satisfaction after
26 recording.

9.

FARM EQUIPMENT

Buyer shall have the right to maintain farm equipment and apparatus on the property retained by Sellers and described on Exhibit "B" provided, and, upon the express condition, that by so doing it will not interfere with the activities and enjoyment by Sellers of their home and environment.

10.

DOMESTIC WATER

Sellers shall have the right at reasonable times to take water from said mainline for use on Sellers' lawn and garden and other incidental domestic purposes, provided the taking of water for domestic purposes does not interfere with Buyer's irrigating.

11.

INDEMNIFICATION

Buyer shall indemnify and defend Sellers from any claim, loss or liability arising out of or related to any activity of Buyer on the subject property or any condition of said property, and, during the term of this contract, maintain public liability and property damage insurance with limits of not less than \$100,000 for injury to one person and \$500,000 for injury to two or more persons in one occurrence, and \$100,000 for damage to property. Certificates evidencing such insurance shall be furnished Sellers.

12.

USE OF PREMISES

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1 Buyer shall at all times during the term of this agreement
2 farm the property in a good and farmerlike manner such as is
3 practiced by good farmers in the Malin, Oregon area. Buyers shall
4 make no substantial improvement or alteration without the prior
5 written consent of Sellers, provided that Sellers shall not un-
6 reasonably withhold consent in a proper case. Buyer shall like-
7 wise comply with all laws, regulations, directions, rules and
8 requirements of all governmental authorities applicable to the
9 use and occupancy of the property.

10 13.

11 TITLE INSURANCE

12 Sellers shall furnish at Buyer's expense a Purchaser's title
13 insurance policy in the amount of \$212,000.00 within a reasonable
14 time after closing, and subsequent to the recording of the satis-
15 faction of said mortgage, insuring Buyer against loss or damage
16 by Buyer by reason of the unmarketability of Sellers' title, or
17 liens or encumbrances thereon, excepting matters contained in
18 the usual printed exceptions in such title policies, and those
19 matters expressly covered herein or on said deed enumerated.

20 14.

21 PRIOR IRRIGATION DITCH

22 Buyer acknowledges that in past years there existed an irri-
23 gation ditch accross the subject property which was used to
24 irrigate property to the East but that the same has not been used
25 in recent years and that there may exist claims and/or rights
26 with respect to later use of said ditch for irrigation purposes.

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15.

DEFAULT

Time is of the essence of this contract. A default shall occur if:

- a) Buyer fails to make any payment within 120 days after it is due;
- b) Buyer fails to perform any other obligation imposed by this contract.

In the event of default, Seller may take any one or more of the following steps:

- a) Declare the entire balance of the purchase price and interest immediately due and payable;
- b) Foreclose this contract by suit in equity;
- c) Specifically enforce the terms of this contract;

It being understood and agreed that the remedies provided above shall be nonexclusive and in addition to any other remedies provided by law.

16.

USE RESTRICTIONS

Buyer acknowledges that he has ascertained, from sources other than Sellers, the applicable zoning, building and other regulatory ordinances, regulations and laws and that Buyer accepts the said real property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the said property.

17.

COSTS AND ATTORNEY FEES

1 In the event suit or action is instituted to enforce any of
 2 the terms of this contract, the prevailing party shall be entitled
 3 to recover from the other party such sum as the court may adjudge
 4 reasonable as attorneys' fees at trial or on appeal of such suit
 5 or action, in addition to all other sums provided by law.
 6

18.

7 PRIOR AGREEMENTS AND SUCCESSOR INTERESTS

8 This document is the entire, final and complete agreement of
 9 the parties pertaining to the sale and purchase of the property,
 10 and supercedes and replaces all written and oral agreements here-
 11 tofore made or existing by and between the parties or their
 12 representatives, This contract shall be binding upon and inure
 13 to the benefit of the parties, their successors and assigns.

14 IN WITNESS WHEREOF, the parties have caused this contract
 15 to be executed as of the day, month and year first above written.
 16

SELLERS:

17 Homer J. Clark
 18 Homer J. Clark

19 Kathryn A. Clark
 20 Kathryn A. Clark

21 BUYER: KENYON BROS., INC., An Oregon
 22 Corporation

23 By: Charles M. Kenyon
 24 President

25 Michael E. Kenyon
 26 Secretary

24 STATE OF OREGON)
 25 County of Klamath) ss.

MAY 1, 1983

Personally appeared the above named HOMER J. CLARK and

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1 KATHRYN A. CLARK, husband and wife, and acknowledged the fore-
2 going instrument to be their voluntary act.
3
4 BEFORE ME:

5
6 STATE OF OREGON)
7 County of Klamath) ss.

Charles M. Kenyon
Notary Public for Oregon
My Commission expires: 11-30-85

8 Personally appeared
9 being sworn, stated that CHARLES M. KENYON, who
10 secretary, of KENYON BROS., INC., an Oregon Corporation, and that
11 the seal affixed hereto is its seal and that this agreement was
12 voluntarily signed and sealed in behalf of the corporation by
13 authority of its Board of Directors.
14
15 BEFORE ME:

Charles M. Kenyon
Notary Public for Oregon
My Commission expires: 11-30-85

16 In consideration of Sellers accepting and entering into the
17 above and foregoing contract with the above corporation as Buyer,
18 we, the undersigned, do hereby jointly and severally unconditionally
19 promise, guarantee and agree to pay the sums of money at the times
20 hereinabove provided, and, hereby expressly covenant and agree to
21 the provisions in the above contract provided, and, we also agree
22 that it shall not be necessary for Sellers to first exhaust its
23 remedies against said Buyer before proceeding to collect from us.
24 Dated the day, month and year first above written.

25 Return:
26 Prentiss Puckett
P.O. Box 15
Merrill, Or 97633

Michael E. Kenyon
Michael E. Kenyon
Charles M. Kenyon
Charles M. Kenyon

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TAKES:
KENYON BROS.
P.O. Box 352
Merrill, Or 97633

EXHIBIT "A"

1 The SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13 and the NW $\frac{1}{4}$ of the NE
2 $\frac{1}{4}$ of Section 24, Township 41 South, Range 12 East of the
3 Willamette Meridian, Klamath County, Oregon, EXCEPTING
4 THEREFROM the following:

5 A parcel of land situate in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section
6 13, Township 41 South, Range 12 East of the Willamette
7 Meridian, Klamath County, Oregon, more particularly
8 described as follows:

9 Beginning at the Northwest corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$
10 of Section 13, Township 41 South, Range 12 East of the
11 Willamette Meridian, Klamath County, Oregon; thence
12 South 30 feet to the South line of Stastny Road, said
13 point being the true point of beginning; thence South
14 255 feet; thence East 440 feet; thence North 255 feet,
15 more or less, to the Southerly right of way line of Stastny
16 Road; thence West along said Southerly line of Stastny
17 Road, 440 feet to the point of beginning, with bearings
18 based on Minor Partition 1-83, as filed in the Klamath
19 County Engineer's Office.
20
21
22
23
24
25
26

EXHIBIT "B"

1
2 A parcel of land situate in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section
3 13, Township 41 South, Range 12 East of the Willamette
4 Meridian, Klamath County, Oregon, more particularly
described as follows:

5 Beginning at the Northwest corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$
6 of Section 13, Township 41 South, Range 12 East of the
7 Willamette Meridian, Klamath County, Oregon; thence South
8 30 feet to the South line of Stastny Road, said point
9 being the true point of beginning; thence South 255 feet;
10 thence East 440 feet; thence North 255 feet, more or less,
11 to the Southerly right of way line of Stastny Road; thence
12 West along said Southerly line of Stastny Road, 440 feet
13 to the point of beginning, with bearings based on Minor
14 Partition 1-83, as filed in the Klamath County Engineer's
15 Office.
16
17

STATE OF OREGON; COUNTY OF KLAMATH; ss.

STATE OF OREGON; COUNTY OF KLAMATH; ss
I hereby certify that the within instrument was received and filed for
record on the 16th day of June A.D., 19 83 at 2:04 o'clock P M
and duly recorded in Vol M83, of Deeds on page 9412

FEE \$ 48.00

EVELYN BIEHN COUNTY CLERK
by [Signature] Deputy

22
23
24
25
26
PRENTISS K. PUCKETT
Attorney at Law
P.O. Box 15
Merrill, Oregon
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Exhibit "B"