

79387

Vol 187 Page 16869  
Aspen Title # 31449-M

## LAND SALE CONTRACT

THIS CONTRACT, made and entered into this 16th day of September 1987, by and between A. KENNETH KIME and BETTY KIME, husband and wife, hereinafter called Seller, and JAMES C. DERNBACH and CONNIE I. DERNBACH, husband and wife, 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 real property situated in the County of Klamath, State of Oregon, to-wit:

Lots 12 and 13, Block 23, FOURTH ADDITION TO KLAMATH RIVER ACRES, in the County of Klamath, State of Oregon.

TOGETHER WITH: A certain 19 70 Marlett (brand name) Mobile Home bearing Oregon License No. X124125 and VIN No. A360CD221X00861

SUBJECT TO contracts and/or liens for irrigation and/or drainage, the schedule of exclusions from coverage, together with any schedules contained in standard title policies, reservations, easements, restrictions and rights of way of record and those apparent on the land.

ALSO SUBJECT TO rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.

ALSO SUBJECT TO conditions, restrictions as shown on the recorded plat of Fourth Addition to Klamath River Acres.

ALSO SUBJECT TO rules and regulations of Fire Patrol District.

ALSO SUBJECT TO: This property lies within and is subject to levies, liens, and assessments of Klamath River Acres Road District.

ALSO SUBJECT TO easement, including the terms and provisions thereof:

|                   |                                 |
|-------------------|---------------------------------|
| Granted To:       | California Oregon Power Company |
| For:              | Transmission lines              |
| Recorded in Book: | 288                             |
| Page:             | 72                              |

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.

It is mutually agreed as follows:

1. Possession: Buyer shall be entitled to possession of the property as of September 30, 1987, or as soon thereafter as the present tenants can legally be required to vacate the premises.

SEP 15 PM 4 11

**2. Prepayment Privileges:** After the date hereof, Buyer shall have the privilege of increasing any payment or prepaying the entire balance provided for hereinafter with interest due thereon to the date of payment;

**3. Payment of Liens and Taxes:** 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 the 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 herein, 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 therefore;

**4. Insurance:** It is agreed that buyer will keep any building or improvements on said property insured against loss or damage by fire or other casualty in an amount of not less than the full 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; Buyer shall furnish Seller proof of such insurance coverage;

**5. Waste Prohibited:** Buyer agrees that all improvements now locate 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 cut or remove any timber, trees or shubbery without Sellers prior written consent. 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. Transfer of Title:** 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 provided hereinbefore, the Certificate of Title to the mobile home, a Power of Attorney so as to enable transfer of title to the said mobile home, Bill of Sale therefore, and will place said documents, together with one of these agreements, in escrow at ASPEN TITLE & ESCROW, INC., 600 Main Street, Klamath Falls OR 97601, shall enter into written escrow instructions in form satisfactory to said escrow holder and the parties hereto, instruct 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;

7. **Tax Payment Procedures:** Until a change is requested, all tax statements shall be sent to the address designated by Buyer. Buyer shall be required to pay the same and provide proof of such payment to Seller within thirty (30) days of the date of mailing of the said tax statement by Klamath County.

8. **Property Taken "As Is":**

(a) 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 Buyer has made a personal inspection of the property so as to determine its acceptability, 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 an agent of Seller, except as set forth hereinafter; and that Buyer takes said property and the improvements thereon in the condition existing at the time of this agreement, with no express, implied or other warranties by Seller;

(b) **Well and Septic Agreement:** Seller does warrant that the water well, septic tank and drain field should provide adequate service for a domestic family of four. This warranty shall extend for a period of twenty-four (24) months from the date of closing. If the well, within such 24-month period and "after a twenty-four (24) hour recovery period," fails to produce three (3) gallons of water per minute for a period of one and one-half (1-1/2) hours, or if within such 24-month period the septic tank or drain field shall fail to provide adequate service (after being pumped), because of previous abuse, improper installation or faulty materials, then, in either of such events, ~~Buyer~~ <sup>Seller</sup> will agree to assume and pay the first THREE THOUSAND AND NO/100THS DOLLARS (\$3,000.00) of actual cost incurred to make necessary changes or repairs to provide the above services. Under no circumstances shall the Seller be required to assume and to pay any more than THREE THOUSAND AND NO/100THS DOLLARS (\$3,000.00) in total compensation for any or all repairs made with reference to the subject property, or improvements. Further, as a necessary precondition to the above warranties, Buyer agrees that he will have the septic tank pumped by a licensed and qualified professional firm within fifteen (15) days of the date of closing at Buyer's expense. *and K. J. B. K. C. D.*

9. **Consent to Assignment:** Buyer shall not assign this agreement, his rights thereunder, or in the property covered thereby without the written consent of Seller. A necessary condition of the consent by Seller to any such assumption shall be compliance by the Buyer with the conditions as follows:

(1) Buyer shall make a principal payment on the unpaid balance of the within contract in an amount of no less than THREE THOUSAND AND NO/100THS DOLLARS (\$3,000.00); and

(2) Buyer's prospective purchaser shall provide Seller with a satisfactory credit report and financial statement.

10. **Time of Essence:** It is understood that and agreed between the parties that time is of the essence of this contract;

11. **Default:** In case Buyer shall fail to make the payments aforesaid, or them punctually and upon the strict terms and at the times above-specified or fail to keep any of the terms or conditions of this agreement, then the Seller at his option shall have the following rights;

(a) To declare this contract null and void, after giving such notice as is then required by Oregon Revised Statutes; and/or

(b) To declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable; and/or

(c) To withdraw said deed and other documents from the escrow and/or;

(d) To foreclose this contract by suit or by strict foreclosure in equity.

(e) Such rights as afforded to Seller pursuant to the Uniform Commercial Code of the State of Oregon.

In any of such cases, all rights and interest created or then existing in favor of the Buyer as against the Seller hereunder shall utterly cease and determine, and the right to the possession of the premises above-described and all other rights acquired by the Buyer hereunder shall revert to and revest in said Seller without any act of re-entry, or any other act of said Seller to be performed and without any right of Buyer of return, reclamation or compensation for monies paid on account of the purchase of said property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default, all payments theretofore made on this contract are to be retained by and belong to said Seller as the agreed and reasonable rent of said premises up to the time of such default. The said Seller, in case of such default, shall have the right immediately, or any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all of the improvements thereon; and alternatively, Buyer shall have the right to apply to the Court for appointment of a receiver as a matter of right and nothing in this contract shall preclude appointment of the Seller as such receiver;

12. **Abandonment:** Should Buyer, while in default, permit the premises to become vacant for a period in excess of 20 days, Seller may take possession of same individually or by appointment of a receiver by self-help or by Court order 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;

13. **Attorney Fees:** 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;

14. **No Waiver:** 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;

15. **Binding on Successors:** 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;

16. **Purchase Price and Payments:** The purchase price for the interest conveyed is the sum of THIRTY-SIX THOUSAND AND NO/100THS DOLLARS (\$36,000.00) payable as follows:

(a) Buyer shall pay an initial payment in the sum of THREE THOUSAND SIX HUNDRED AND NO/100THS DOLLARS (\$3,600.00); and

(b) The remainder of the purchase price in the amount of THIRTY-TWO THOUSAND FOUR HUNDRED AND NO/100THS DOLLARS (\$32,400.00) shall be payable in monthly installments of THREE HUNDRED THIRTEEN AND NO/100THS DOLLARS (\$313.00) including interest at the rate of ten percent (10%) per annum on the unpaid balance, which said sum includes principal and interest; together with the applicable collection escrow fees; the first of such payments shall be payable on the 16th day of October, 1987, with a further and like installment payable on the 16th day of each and every month thereafter, until the full amount of principal and interest shall have been paid in full.

17. **Inclusion of Personal Property:** It is agreed between Buyer and Seller that the property conveyed by the within Land Sale Contract includes a certain mobile home described hereinabove, which said personal property item constitutes an improvement to the real property conveyed by the within instrument. Buyer and Seller agree that Seller shall retain a security interest in the said mobile home, represented by the within Land Sale Contract, and that the said personal property shall be treated as attached to and an improvement on the real property conveyed hereby.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first hereinabove written.

**SELLER:**

A. Kenneth Kime  
A. Kenneth Kime

Betty Kime  
Betty Kime

**BUYER:**

James C. Dernbach  
James C. Dernbach

Connie I. Dernbach  
Connie I. Dernbach

STATE OF OREGON/County of Klamath ) ss.

PERSONALLY APPEARED BEFORE ME the above-named A. KENNETH KIME and BETTY KIME, and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 16th day of September, 1987.

W. Darlene D. Aldington  
NOTARY PUBLIC FOR OREGON

My Commission expires: 3-22-89



16874

STATE OF OREGON/County of Klamath ) ss.

PERSONALLY APPEARED BEFORE ME the above-named James C. Dernbach and Connie I. Dernbach, and acknowledged the foregoing Land Sale Contract to be their voluntary act and deed.

DATED this 16th day of September, 1987.

[Signature]  
NOTARY PUBLIC FOR OREGON  
My Commission expires: 8-22-89

LAND SALE CONTRACT - Page Five

GRANTOR'S NAME AND ADDRESS:  
A. Kenneth Kime and Betty Kime

GRANTEE'S NAME AND ADDRESS:  
James C. Dernbach and Connie I. Dernbach

AFTER RECORDING, RETURN TO:  
Aspen Title

UNTIL A CHANGE IS REQUESTED,  
TAX STATEMENTS SHOULD BE  
SENT TO: 17514 Ponderosa Lane  
Keno, OR 97627

STATE OF OREGON/County of Klamath ) ss.

I CERTIFY that the within instrument was received for record on the 16th day of September, 1987, at 4:11 o'clock P.M., and recorded in Book 79387 M87 on Page 16869 or as File/Reel number 79387, Records of Deeds of said County.

WITNESS MY HAND AND SEAL OF COUNTY AFFIXED.

Evelyn Biehn, County Clerk  
Recording Officer

Fee: \$25.00

By: [Signature]

LAND SALE CONTRACT - Page Six