

52651

LEASE AND SALE AGREEMENT

Return: President
Aqua Glass Western, Inc.
P.O. Box 412
Industrial Park
Adamsville, TN.
38310

MTL 28181

THIS LEASE AND SALE AGREEMENT is made and entered into as of the 11th day of September, 1992, by and between THE CITY OF KLAMATH FALLS, OREGON, an Oregon municipal corporation (hereinafter referred to as "City"), and AQUA GLASS WESTERN, INC., a Delaware corporation (hereinafter referred to as "Aqua Glass"):

W I T N E S S E T H

For and in consideration of the mutual promise to each other, the parties hereto have agreed and by these presents agree as follows, to-wit:

1. PREMISES. The City hereby leases to Aqua Glass, on the terms and conditions herein set forth, that certain parcel of property situated in Klamath County, Oregon, more particularly described in attached Exhibit "A", and shown on attached Exhibit "B", incorporated herein by this reference and hereinafter referred to as "the Property".

2. TERM. The term of this lease shall be for ninety-nine (99) years commencing September 11, 1992, and ending September 10, 2091, both dates inclusive unless sooner terminated by transfer of the Property to Aqua Glass or by any provisions hereof as hereinafter provided.

3. RENT. The Lessee agrees to pay rent for said demised premises in the sum of ONE DOLLAR (\$1.00).

4. AGREEMENT TO CONVEY.

a. City shall proceed to obtain title from the federal government for that unused drainage ditch strip of property shown on Exhibit "B". Upon acquisition of such title, City agrees to sell the Property including said strip to Aqua Glass for the sum of ONE DOLLAR (\$1.00). City shall convey the Property including the above referenced strip by bargain and sale deed. Closing shall be at a date and place mutually agreeable to the parties and within ninety (90) days of City acquisition of title to the strip.

b. In the alternative and at Aqua Glass' election, City shall sell the Property to Aqua Glass at any time after January 1, 1993, for the sum of ONE DOLLAR (\$1.00) upon receipt of such written request from Aqua Glass.

c. Aqua Glass may, at its option, from time to time during the term of this Lease, construct or make improvements to the Property. Upon sale as herein provided, any improvements added by Aqua Glass shall become the property of Aqua Glass without additional charges or cost to Aqua Glass.

5. TAXES. Subject to the provisions of City's Enterprise Zone Aqua Glass agrees to pay all taxes legally imposed or assessed upon the Property, which is the subject of the Lease, including any personal property taxes.

6. MAINTENANCE. Aqua Glass agrees to routine maintenance of the premises and to maintain the premises in good appearance, consistent with its particular operations and the operation and appearance of the premises in general.

7. INDEMNITY. Aqua Glass shall save and hold harmless City from, and hereby indemnifies City against, liability to Aqua Glass or to any other persons for or on account of any death or injury to persons or any damage to property in or about the Property that arises out of Aqua Glass' operations or use of the Property pursuant to this Agreement.

8. PEACEFUL POSSESSION. The City covenants and agrees that Aqua Glass paying the rent and observing the terms and conditions of this Lease shall quietly and peacefully enjoy the premises herein demised for the whole of the term thereof.

9. NON-WAIVER. The City's failure to take advantage of any default or breach of covenant on the part of the Lessee shall not be, or be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the City to insist upon the performance by the Lessee of any terms, covenant or condition hereof or to exercise any rights given the City on account of any such default.

10. NOTICES. For all purposes of notice provided herein, the following shall be used as the addresses of the respective parties until such time as notice of change of address is received:

City:
City Manager
P. O. Box 237
Klamath Falls, OR 97601

Aqua Glass:
President
Aqua Glass Western, Inc.
P. O. Box 412
Industrial Park
Adamsville, TN 38310

Any notice required by the terms of this Lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, sent by Certified Mail and deposited in the United States mail with postage fully prepaid. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof ninety-six (96) hours after the deposit thereof in said United States mail.

11. SURRENDER. In the event Aqua Glass fails to substantially complete its proposed facility to be located on the Property by June 30, 1994, then unless Aqua Glass pays to the City the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) on or before July 31, 1994, this lease shall terminate effective August 1, 1994, and the Property shall be surrendered to the City.

12. HEIRS AND ASSIGNS. All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend to, inure to the benefit of and bind, as the circumstances may require, so far as this Lease is assignable by the terms hereof, the assigns of such parties.

IN WITNESS WHEREOF, the respective parties have caused this instrument to be executed the days and year below written.

CITY OF KLAMATH FALLS

AQUA GLASS WESTERN, INC.

By: Anna C. Flitcraft
Mayor

By: [Signature]
President

Attest: [Signature]
City Recorder

Attest: [Signature]
Assistant Secretary
Vice-President

Date: 10-21-92

Date: 9-28-92

STATE OF TENNESSEE)
COUNTY OF Meigs) ss.

[Signature] Personally appeared

Harry A. Boosup who, being duly sworn, did say that former is the President and the latter is the Assistant Secretary of Aqua Glass Western, Inc., a Delaware corporation, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board; and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME this 28th day of September

[Signature]
Notary Public for Tennessee
My Commission Expires: 08/21/95

STATE OF OREGON)
COUNTY OF KLAMATH) ss.

Personally appeared George C. Flitcraft and Elisa D. Fritz who, being duly sworn, did say that former is the Mayor and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the seal affixed to the foregoing instrument is the seal of said municipal corporation and that said instrument was signed and sealed in behalf of said City by authority of its City Council; and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME this 28th day of October, 1992.

[Signature]
Notary Public for Oregon
My Commission Expires: 03-13-93

EXHIBIT "A"

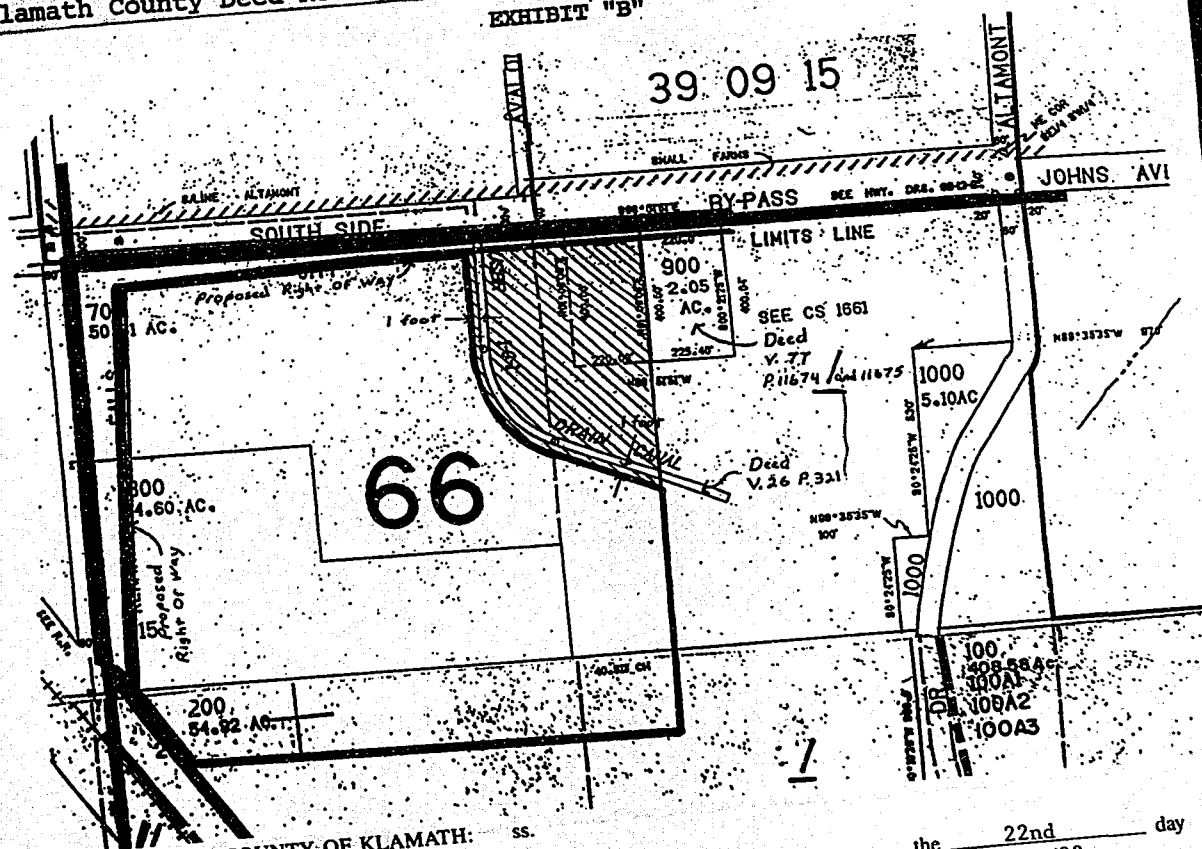
A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 15,
TOWNSHIP 39 SOUTH, RANGE 9 EAST, OF THE WILLAMETTE MERIDIAN,
KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

Commencing at a point on the proposed south right of way line of the South Side By-Pass, said point being at right angles to and southerly 110 feet from the existing right of way centerline of the South Side By-Pass at O.S.H.D. Engineers Station 245+00; thence easterly, along a straight line to the true point of beginning, said true point being westerly 1 foot from the intersection of said straight line and the west right of way line of the U.S.B.R. 1-G-1 Drain Canal (formerly known as the R-D-2 Drain) as described in Volume 26, Page 321 of the Klamath County Deed Records, the end point of said straight line being at right angles to and southerly 90 feet from said existing right of way centerline at O.S.H.D. Engineers Station 255+00; thence southeasterly, along a line that is parallel and concentric with and 1 foot southwesterly of the southwest right of way line of said 1-G-1 Drain, to the southerly prolongation of the west line of property described in Volume 77, Pages 11674 and 11675 of the Klamath County Deed Records; thence northerly, along said southerly prolongation and the west line of said property to said straight line between said O.S.H.D. Engineers Stations 245+00 and 255+00, said straight line being the proposed south right of way line of the South Side By-Pass; thence westerly, along said straight line to the true point of beginning.

EXCEPTING THEREFROM the U.S.B.R. 1-G-1 Drain Canal (formerly known as the R-D-2 Drain) as described in Volume 26, Page 321 of the Klamath County Deed Records.

EXHIBIT "B"

EXHIBIT "B"



STATE OF OREGON: COUNTY OF KLAMATH: ss. _____ the 22nd day
Filed for record at request of Mountain Title Co
of Oct A.D., 19 92 at 10:03 o'clock A. M., and duly recorded in Vol. M92
of _____ of Deeds on Page 24727.
By Evelyn Biehn County Clerk
Quellen / Mullendare

FEE \$40.00