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CONTRACT  
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THIS AGREEMENT, made and entered into this 1st day of February, 1972, by and between HAROLD A. CAMPBELL, Party of the First Part, and DONALD V. COMBS, doing business as NU-MIX CONCRETE, Party of the Second Part, hereinafter known as Nu-Mix;

W I T N E S S E T H:

Party of the First Part, for and in consideration of the covenants and agreements of Party of the Second Part, covenants and agrees as follows:

1. To sell to Party of the Second Part, in place, aggregate and fill dirt located upon the real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof as if fully set out herein; said real property being owned by the Party of the First Part; provided, however, the Party of the First Part reserves the right to designate the particular locations in the hereinabove described area from which said aggregate and fill dirt may be removed.

2. To permit Party of the Second Part to remove aggregate and fill dirt herein contracted to be sold.

3. Subject to the Party of the First Part's rights reserved in paragraph 1 above, to permit Party of the Second Part to install on the above described real property adequate equipment for the removal and processing of the aggregate and fill dirt herein contracted to be sold.

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4. To purchase the above-mentioned aggregate and fill dirt and to pay for all aggregate and fill dirt removed from the premises at the following rates:

(a) Twenty-five cents (25¢) per twenty-four hundred (2,400) pounds. For the purpose of this computation, a cubic yard shall be considered as twenty-four hundred (2,400) pounds and a ton as two thousand (2,000) pounds.

(b) Reject dirt, fill sand, overburden, scalping and all similar materials shall be paid for at the rate of ten cents (10¢) per cubic yard. The aforementioned pound value shall not apply to these materials.

(c) But in no event, less than FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) per year, payable as follows: \$3,000.00 upon the execution hereof and \$2,000.00 six months after the execution of this contract; and a like payment of \$3,000.00 on the 1st day of February, 1973 and a payment of \$2,000.00 on the 1st day of August, 1973; and a like payment of \$3,000.00 on the 1st day of February, 1974 and a payment of \$2,000.00 on the 1st day of August, 1974; and a like payment of \$3,000.00 on the 1st day of February, 1975 and a payment of \$2,000.00 on the 1st day of August, 1975; and a like payment of \$3,000.00 on the 1st day of February, 1976 and a payment of \$2,000.00 on the 1st day of August, 1976; and a like payment of \$3,000.00 on the 1st day of February, 1977 and a payment of \$2,000.00



on the 1st day of August, 1977; said annual payments as hereinabove mentioned shall be advance payments for the twelve (12) months immediately following. Said payments are due and payable as aforesaid, whether or not the Party of the Second Part removes aggregate and fill dirt from the premises and is to be considered as a minimum payment.

5. Party of the Second Part shall make monthly reports of all aggregate and fill dirt and other materials removed from the above described property during the preceding calendar month, first report shall be made on or before the 1st day of March, 1972, and like reports on or before the same day of each month thereafter.

IT IS EXPRESSLY UNDERSTOOD AND AGREED between the parties hereto that the failure of the Party of the Second Part to make such monthly reports within ten days of the date required therefore, shall be considered by the Party of the First Part a default under this contract and a breach thereof.

6. The Party of the First Part shall have the right, at all reasonable times, to inspect the books of account of the Party of the Second Part to determine the accuracy of said monthly reports.

7. When the purchase price of material removed at the afore-mentioned rate shall equal the advance annual payment of FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS, payment for all materials removed thereafter shall be made at the time of rendering such monthly reports, or within sixty (60) days of the sale of 2,500 yards or more.

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Party of the Second Part, for and in consideration of the covenants and agreements of Party of the First Part, covenants and agrees as follows:

1. To obtain and maintain public liability and property damage insurance in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for damage to any one individual and TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) to more than one individual arising out of any one incident, insuring the parties hereto as their interest may appear. Copies of said liability and property damage insurance shall be delivered to the Party of the First Part.

2. To not interfere with the presently existing natural drainage without providing adequate drainage facilities to two existing reservoirs. To not interfere in any way with the said existing reservoirs nor to allow any sediment nor clog in any way said existing reservoirs, caused by crushing or processing operations of the Party of the Second Part. Party of the Second Part shall not be held responsible for the maintenance of the existing reservoirs from natural run-off or drainage sediments or clogging.

3. To remove from the premises all aggregate and reject dirt quarried or dug from the premises which is saleable. After termination of this contract; however, Second Party agrees not to remove fill dirt which has not been used in connection with Second Party's operations.

4. To remove, within a reasonable time, all aggregate and fill dirt quarried, or dug from the premises, which is saleable.

5. To not commit nor permit any harm to livestock



of the Party of the First Part grazing on the premises or any damage to fences now or hereafter installed.

6. To maintain all gates now on the above described premises and used by the Party of the Second Part and to keep the same closed so as to prevent the escape of livestock.

7. To remove within sixty (60) days from the date of the termination of this contract for quarrying or digging of aggregate and fill dirt, all instruments and improvements placed on the premises by the Party of the Second Part, and if the same is not so removed by the Party of the Second Part, then the Party of the First Part may remove and store the same and the Party of the Second Part shall pay on demand the costs of such removal and storage.

IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

1. Party of the First Part shall have the right to lease the property which is subject to this agreement within thirty (30) days of the termination of this contract.

2. Party of the First part shall have and reserve unto himself the right to graze livestock on the above-described premises.

3. Party of the Second Part has the first right to negotiate a new contract at the end of five (5) years, provided no defaults are in effect by the Party of the Second Part. The Party of the First Part may terminate this contract by giving written notice of termination to the Party of the Second Part no later than thirty (30) days before the end of each year that this contract remains in force. Said notice shall be given as hereinafter and before provided.

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4. Party of the Second Part shall have the right to replace any now existing or hereafter installed gates used by him with adequate metal cattleguards and shall maintain any such cattleguards installed by him or by the Party of the First Part.

5. In the event of the exhaustion of the saleable aggregate on the above described premises, Party of the Second Part shall have the right to terminate this contract by thirty (30) days notice in writing to the Party of the First Part, and in the event of any such termination by the Party of the Second Part, all sums theretofore paid by the Party of the Second Part to the Party of the First Part shall be forfeited to the Party of the First Part. Second Party agrees that upon termination, Second Party will pay to First Party in cash any unpaid sums due and owing for aggregate and fill dirt which has been removed by Second Party prior to said termination.

6. Should the Party of the Second Part be adjudicated a bankrupt at any time during the continuance of this contract, the Party of the First Part may, at his option, terminate this contract within thirty (30) days of the receipt by the Party of the First Part of the notice of the first meeting of creditors in said bankruptcy, and retain all aggregate and fill dirt not excavated or processed and in place on the premises.

7. Should the Party of the Second Part's interest under the provisions hereof be attached or levied upon and such attachment or levy cause stoppage of operations, Party of the Second Part has thirty (30) days to settle such attachment or levy or



Party of the First Part may, at his option, terminate this contract within thirty (30) days after the thirty (30) day waiting period, and retain all aggregate and fill dirt not excavated or processed and in place on the premises, unless given adequate evidence the matter is under legal consideration and negotiation for settlement.

8. Should First Party desire to purchase any aggregate or fill dirt from the hereinafter described premises for his own use, they agree to pay the purchase price then in effect, and Second Party, minus the royalties set forth in paragraph 4, page 2 of this contract.

9. IT IS EXPRESSLY UNDERSTOOD that TIME IS OF THE ESSENCE HEREOF, and should Party of the Second Part fail to make any payments due hereunder promptly or within ten (10) days from the date due or fail to make the aforesaid monthly reports or fail to remedy any other breach, Party of the First Part may declare this contract terminated and immediately pursue such remedy or remedies as they may have at law or in equity, included, but not limited to, forcible entry and detainer and waiver by Party of the First Part of any breach by Party of the Second Part shall not be considered a waiver of any subsequent breach by Party of the Second Part.

10. Party of the Second Part expressly agrees to install a rock crusher either at pit or home plant. Second Party shall install or negotiate for the necessary machinery or equipment for the processing of rock for sale at the pit. Second Party agrees to hold First Party harmless for any damage in connection with the installation or operation of said equipment.

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11. Party of the First Part hereby warrants and covenants that he has the right to lease the above described premises and that, they will defend against, and hold the Party of the Second Part harmless from any claims adverse to the rights of the Party of the Second Part arising hereunder, and will indemnify said Party of the Second Part against any loss arising from any such adverse claim.

12. This agreement shall be binding upon the heirs, administrators, personal representatives, executors, assigns and successors in interest of the parties hereto.

13. This contract shall not be assignable without the written consent of the Party of the First Part being first had and obtained, provided, however, such consent shall not be unreasonably withheld.

14. All notices under this contract, including notices of breach thereof, shall be given by depositing the same in the United States Mail, postage prepaid, directed to the parties at the following addresses:

PARTY OF THE FIRST PART: Route 2, Box 714, Klamath Falls, Oregon

PARTY OF THE SECOND PART: Box 1061, Klamath Falls, Oregon.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first hereinabove mentioned.

*Harold A. Campbell*  
HAROLD A. CAMPBELL, Party of the  
First Part

*Donald V. Combs*  
DONALD V. COMBS, dba NU-MIX CONCRETE  
Party of the Second Part



EXHIBIT "A"

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That portion of the S $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, Township 38, Range 9 East of the Willamette Meridian lying East of the Old Port Road, and that portion of the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 36, Township 38, Range 9, East of the Willamette Meridian, standing in the name of HAROLD A. CAMPBELL, all in Klamath County, Oregon.

Rev. ~~Mr.~~ Mink Concrete  
80 B/1061  
18 Falls Ch

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 4th day of January A.D., 1977 at 3:42 o'clock P.M., and duly recorded in Vol. M77, of Deeds on Page 189.

FEE \$27.00

WM. D. MILNE, County Clerk

By Hazel Dragic Deputy