

K. 37025

LEASE AGREEMENT

THIS AGREEMENT made this 9 day of May, 1984, by and between JAMES M. BARNES, who is the Lessor and hereinafter called "Barnes," and FRANK H. WALLACE and PEGGY L. WALLACE, husband and wife, who are the Lessees and hereinafter called "Wallace", all of the County of Klamath, State of Oregon,

W I T N E S S E T H :

Barnes and Wallace agree to the following terms and conditions:

(1) Barnes owns real property in Klamath County, Oregon, described as the SW-1/4 NW-1/4 SE-1/4 and the SW-1/4 SE-1/4 of Section 4, Township 41 South, Range 10 East Willamette Meridian, subject to easements and rights of way of record or apparent on the land and contracts, obligations, laws, regulations or assessments for irrigation or drainage purposes, and Barnes has the right to lease the real property to Wallace upon the terms and conditions described in this agreement.

(2) The real property consists of a cinder pit and other undeveloped lands in the vicinity which are suitable to be developed and used for a site for an asphalt/concrete mixing plant and Portland cement concrete batch plant. Barnes has been in the past, and presently is, in the process of excavating, removing and selling cinders, and such use is permitted by the present Klamath County zoning laws. Operation is a concrete batch plant may be permitted under the grandfather clause of the Klamath County Zoning Ordinance and is a conditional use for which a conditional use permit may be obtained.

(3) Barnes hereby leases to Wallace for a period of thirty (30) years the right to exclusively occupy the real property described in Sections (1) and (2) of this agreement and to excavate, remove and sell cinders. Barnes hereby consents to allow Wallace to operate an asphalt/concrete plant and Portland cement concrete batch plant. Barnes hereby grants to Wallace a non-exclusive easement for ingress and egress over and across Barnes' property on existing roads.

(4) Barnes shall permit Wallace to place a mobile home upon the following described real property: Beginning at a point on the South line of said NE-1/4 of the SW-1/4 of Section 3, which is 42.24 feet East of the Southwest corner thereof, thence East along said South line of the NE-1/4 of the SW-1/4 of said Section 3,

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1,017.06 feet; thence North 33° 48' West 450.12 feet; thence North 60° West 85.8 feet; thence South 80° West 85.8 feet; thence South 56° 24' West 728.64 feet more or less to the point of beginning. The placement of the mobile home shall be located at the pre-existing mobile home site where the power, telephone, and septic system hook-up are presently situated. Wallace shall be responsible for and pay all expenses incurred in the placement, use and removal of the mobile home including but not limited to maintenance, utility costs, and taxes assessed upon the mobile home, its contents and the portion of land occupied by the mobile home. Wallace shall be permitted to remove the mobile home upon termination of this lease. Upon removal of the mobile home, Wallace shall leave the premises in as good condition as when received.

(5) Wallace shall pay to Barnes as rental payment from the date of this agreement until the termination of this lease agreement the sum of \$.30 per truck yard measure of cinders or aggregate, or if weighed over a scale or sold over a scale, then the amount of tonnage to a yard measure as long as the pit price per truck yard measure is \$2.50, or less. When the pit price is increased the sum payable to Barnes per truck yard measure shall be equal to 12% of the pit price. Wallace shall not be required to pay a minimum rental fee between the date of this agreement and the 1st day of November, 1984. Beginning November 1, 1984, and for each month thereafter, Wallace shall pay to Barnes a minimum of \$250.00 each month during the remainder of the term of this lease agreement. All sales made by Wallace shall be recorded by sales tickets made in triplicate. Barnes shall receive copies of the sales tickets by the 25th day of each month following the month of sale; but in the event Wallace receives payment for the product on a contract monthly estimate basis, Wallace shall make payments to Barnes on the same basis within 5 days after Wallace has received payment. Wallace shall keep complete records of all materials sold and Barnes shall have a right to inspect the records at any reasonable time.

(6) Wallace agrees that they will indemnify and hold Barnes harmless from and against any liabilities, claims, demands and expenses whatsoever, including court costs and attorney's fees arising from or growing out of any injury to any persons or damage to any property under and by virtue of Wallaces' operations conducted upon or from the real property which is the subject of this lease agreement.

(7) Wallace agrees to obtain, carry and maintain on all their operations policies of insurance covering liability for property damage of not less than \$100,000.00 for each occurrence and policies of insurance for bodily injury in an amount not less than \$300,000.00 for each claim thereunder, and not less than \$500,000.00 for the aggregate of all claims thereunder. Said policy or policies to be in an insurance company licensed to do business in the State of Oregon. Wallace also agrees to furnish Barnes with an insurance certificate certifying Wallace is insured against liability for bodily injury, including death, property damage and liability

arising out of the operation of motor vehicles in an amount satisfactory to Barnes. The certificates shall certify that it includes the contractual liability assumed by Wallace hereunder and shall constitute primary insurance and shall not be canceled except upon 15 days' written notice to Barnes. Wallace shall cause Barnes to be included as an additional named insured on all coverage required by the terms of this agreement. Wallace shall also obtain and maintain casualty insurance coverage on the equipment which Wallace is purchasing from Barnes.

(8) Wallace agrees that they will carry insurance on their workmen as provided by the State of Oregon and on any and all employees for any operations conducted upon or from the real property which is the subject of this lease agreement and that immediately upon hiring of any employees Wallace will furnish to Barnes proof that the new employees are covered by such insurance.

(9) Wallace agrees to comply with all state and local laws, rules and regulations governing their operation, including load limit requirements required by the City of Merrill.

(10) Wallace agrees that they will not permit any liens or charges to be made against any of Barnes' real property as a result of their operations.

(11) Barnes shall not compete with Wallace by using any adjoining property for extraction and sale of cinders.

(12) If Wallace breaches any of the terms of this agreement, including failure to make any payments when due or within 30 days thereafter, it is agreed that at Barnes' option, or other termination of lease, this lease agreement and all rights and duties accruing under this agreement shall terminate and Wallace shall have 90 days to remove all equipment. Any materials or equipment thereafter remaining shall become the property of Barnes. All improvements to the real property, including construction of buildings shall become part of the real property and upon termination of the lease term shall remain on the property and become the property of Barnes. In the event of a breach by Wallace under the terms of this agreement and delivery by Barnes of his written notice of option to terminate this agreement, all of Wallaces' right under the terms of this agreement shall thereupon cease, and Barnes without further notice to Wallace shall have the right immediately to enter the leased premises and take possession thereof with or without process of law and to remove all personal property from the premises and all persons occupying the premises and to use all necessary force therefor and in all respects to take the actual, full and exclusive possession of the premises and every part thereof as Barnes' original estate, without incurring any liability to Wallace or to any persons occupying or using the premises or for any damage caused or sustained by any reason of such entry on the premises or such removal of such persons or property.

(13) Any waiver of any breach of the terms of this agreement to be kept and performed by Wallace shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent Barnes from declaring a forfeiture for any succeeding breach, either of the same condition or otherwise.

(14) In the event any suit or action is brought to collect any of the rents or to enforce any provisions of this lease or to repossess the premises, the losing party agrees to pay such sums as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action, and in the event of any appeal in such suit or action the losing party agrees to pay such further sums as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees.

(15) Barnes agrees to cooperate as required for Wallace to obtain all permits and certificates necessary to conduct their operations on the leased land.

(16) This lease shall be binding upon and inure to the benefit of Barnes and Wallace, their successors and assigns. No part of the leased premises may be assigned or subleased without the prior written consent of Barnes, which consent shall not unreasonably withheld.

(17) This instrument does not guarantee that any particular use may be made of the property described in this instrument, except as specifically provided herein. Wallace should check with the appropriate county planning department to verify approved uses.

IN WITNESS WHEREOF the parties have hereunto set their hands the day, month and year first above written.

James M. Barnes
James M. Barnes

Frank H. Wallace
Frank H. Wallace

Peggy L. Wallace
Peggy L. Wallace

STATE OF OREGON)
County of Klamath) ss.
)

Before me this 9 day of May, 1984, personally appeared the above-named JAMES M. BARNES and acknowledged the foregoing instrument to be his voluntary act and deed.

(S E A L)

[Signature]
Notary Public for Oregon
My Commission Expires: 5-87

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STATE OF OREGON)
County of Klamath) ss.

Before me this 9 day of May, 1984, personally appeared the above-named FRANK H. WALLACE and PEGGY L. WALLACE, and acknowledged the foregoing instrument to be their voluntary act and deed.

[Signature]
Notary Public for Oregon
My Commission Expires: 8-5-87

(S E A L)

*Return to Mike Brant
325 Main St.
K. Falls*

STATE OF OREGON: COUNTY OF KLAMATH:ss
I hereby certify that the within instrument was received and filed for record on the 22nd day of May A.D., 1984 at 10:04 o'clock A M, and duly recorded in Vol M84, of Deeds on page 8418.

Fee: \$ 20.00

EVELYN BIEHN, COUNTY CLERK
by: *[Signature]*, Deputy