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ARM INC
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FILED FOR RECORD ON THIS 13TH DAY OF JUNE A. D. 1969 AT 9:21
O'CLOCK A. M. AND RECORDED IN MISC. BOOK 4 AT PAGE 557.
Fee: \$14.25
KITTY A. ROUSH, Register of Deeds

557

AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of December, 1960, by and between Hills Farm, Inc., a Nebraska corporation, hereinafter referred to as "Seller", and Lincoln Sand & Gravel Company, a Nebraska corporation, hereinafter referred to as "Buyer", and Carl C. Rix, tenant of Seller, hereinafter referred to as "Rix",

WITNESSETH:

WHEREAS, Seller has on this date sold and conveyed to Buyer certain real estate located in Sections 25, 26, 35 and 36, Township 17 North, Range 8 East of the 6th P.M. in Dodge County, Nebraska, and Seller still owns other land located in said Sections and any reference to other land of Seller herein shall apply to that owned by it in the aforesaid Sections less that sold to Buyer and conveyed by deed of same date as this Agreement.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by Seller and Rix, the parties hereto agree as follows:

1. The Seller shall have the right for its agents, officers and tenants on a non-commercial basis to cross the following described land at places to be designated by the Buyer, provided such action does not interfere with Buyer's operations:

A parcel of land contained in Sections 26, 35 and 36, all in Twp. 17 N., R. 8 E. of the 6th P.M., Dodge County, Nebr. and being described as follows: Beginning at a point on the common Section line of said Sections 35 and 36, 6.92 chs. South of the Northeast corner of said section 35; thence North 66°28' West, a distance of 16.82 chs.; thence North 3°18' West, a distance of 17.09 chs. and to the Southerly margin of the Twp. road; thence along said Southerly margin North 57°42' West, a distance of 4.21 chs. to the Easterly margin of the C. B. & Q. railroad right of way; thence along said Easterly margin, the same being the West margin of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 26, South 0°25' West, a distance of 18.79 chs. to the Southwest corner of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26; thence East along the common section line of Sections 26 and 35, South 89°38' East, a distance of 1.13 chs. to the Easterly margin of the C. B. & Q. railroad right of way; thence along said Easterly margin South 4°28' West, a distance of 0.51 chs.; thence along said Easterly margin South 9°47' West, a distance of 5.73 chs. thence along said Easterly margin South 17°25' West, a distance of 11.41 chs.; thence along said Easterly margin South 17°46' West, a distance of 22.91 chs. to the Northerly or left bank of the Platte River; thence Easterly and Southeasterly along said river bank to the South margin of Section 36; thence South 89°49' East, a distance of 3.79 chs. to the Southeast corner of the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of said Section 36, hereinafter referred to as 80 acre tract; thence along the East margin of said 80 acre tract, North 0°12' East, a distance of 39.89 chs. to the Northeast corner of said 80 acre tract; thence North 0°12' East, a distance of 7.88 chs., said point being on the East margin of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 36, and .76 chs. (50 feet) South of the center line of the pole line; thence North 66°28' West, and .76 chs. (50 feet) distant from and parallel to said pole line, a distance of 64.82 chs. to the point of beginning, together with all accretions and islands incident or appurtenant thereto.

2. Buyer shall have and is hereby granted a sole and exclusive easement fifty (50) feet wide for constructing and maintaining a railroad right of way across the land of the Seller as hereinafter more specifically set out. Buyer

shall have the right to construct a spur track from the end of the existing Chicago & Northwestern - Union Pacific track in the Southwest Quarter (SW $\frac{1}{4}$) of said Section 25. The exact location of said spur shall be determined by Buyer but said spur shall be located in accordance with paragraph 3 and not be so located as to prohibit Seller from using the existing hog house, farm buildings and stockyards in the extreme Northeast corner of Section 35.

3. Construction of spur track.

(a) Drainage. In the building of any spur track, on a tract of land contained in Sections 25 and 36, all in Twp. 17 N. R. 8 E. of the 6th P.M., Dodge County, Nebraska, and being described as follows: Beginning in the East margin of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 36, hereinafter referred to as 80 acre tract, at a point 7.88 chs. North of its Southeast corner; thence North along the East margin of said 80 acre tract, and continuing along the East margin of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 25, a distance of 48.89 chs. to the Southerly margin of the Union Pacific railroad right of way; thence Northwesterly along said railroad right of way, a distance of 8.04 chs.; thence Southeasterly on a 5° curve to a point 0.76 chs. (50 feet) distant from said first mentioned course; thence South and parallel to and 0.76 chs. (50 feet) distant from said first mentioned course to a point 0.76 chs. (50 feet) South of the center line of said pole line; thence Southeasterly to the point of beginning, hereinafter referred to as Tract #2, or on Seller's land, Buyer agrees that it will provide adequate water-ways under its track and fill at the points of natural drainage so as to allow the water to escape and not to cause it to back upon Seller's land, it being understood, however, that Buyer shall not be liable for flooding occasioned by abnormal rainfall nor for any cause not reasonably attributable to Buyer's failure to provide adequate drainage as herein set forth; Seller's engineer shall work in conjunction with Buyer's engineer to determine the proper and necessary culverts and drainage structures to be used and their placement, to accomplish this adequate drainage. Adequate drainage shall be such as is designed to handle all normal rainfall and drainage.

(b) Crop damage. In constructing any spur tracks the Buyer agrees to pay Seller and its tenant, the reasonable price of all crops damaged or destroyed by said operations.

(c) Survey and plat. In the event that Buyer desires to build the spur track referred to in paragraph 2 hereof on Seller's land, it will proceed to survey the location of its desired spur track and have a blue print made thereof.

Rix will then locate thereon at reasonable intervals fences and drain tubes of a reasonable width capable of providing ingress or egress for a vehicle or foot travel, depending upon the location. Road, Seller's private lane, pastures, lots, and livestock yards used for such purposes will depend upon the type of livestock raised on the land that the spur track is pastured on.

(d) Construction

graph (c) have been agreed upon and the same shall be in accordance with the following terms:

(e) Terms. This contract shall terminate upon the completion of its mining operations in Sections 25, 26, 35 and 36, Township 17 North, Range 8 East, Dodge County, Nebraska.

After said completion, Buyer shall be responsible for the width and at the locations hereinafter specified such sand and gravel as Buyer may require. It is provided that after Buyer has completed its operations it will be deemed to have abandoned all rights of sand and gravel in any future operations.

(f) Removal

the termination of said rights of sand and gravel. Seller, either allow said rights to be removed and the leveling off and maintenance of natural drainage.

(g) Taxes

special assessments against the land, or taxes or assessments or interest thereon.

(h) Weeds

on or before the 1st day of January of each ensuing crop year, its rights-of-way across the land.

4. Leasing

year, Buyer will notify Seller of the date of the ensuing crop year, and the amount of rental of any or all of the land to be delivered to Buyer's office.

5. Take

Rix will then locate thereon at reasonable and appropriate places crossings, gates, fences and drain tubes of a reasonable nature and size. The crossings shall be capable of providing ingress or egress for farm, four-row machinery, livestock, motor vehicle or foot travel, depending upon whether or not it is bisecting the Township Road, Seller's private lane, pasture, farm or gravel areas. Said spur will be so placed as not to prohibit the use of the farm buildings, their real estate, contiguous lots, and livestock yards used in conjunction with said improvements. The type of fence will depend upon the type of livestock that is to be fenced in and also the use of the land that the spur track is passing through.

(d) Construction and maintenance. After the items referred to in paragraph (c) have been agreed upon, they shall be constructed and maintained by Buyer. 15

(e) Terms. This spur track easement will continue until Buyer has completed its mining operations for sand and gravel on the purchased premises in Section 25, 26, 35 and 36, Township 17 North, Range 8 East of the 6th P.M. in Dodge County, Nebraska. After said completion, Buyer may also use the aforesaid easement and right-of-way in the width and at the locations hereinbefore specified for the transportation by railroad, of such sand and gravel as Buyer may produce on land, either bought or leased by it, provided that after Buyer has completed mining operations on the purchased premises it will be deemed to have abandoned said right-of-way unless it is used for transportation of sand and gravel in any full period of three years.

(f) Removal of track and leveling out of fill, or allowing to remain. On the termination of said right-of-way easement agreement, Buyer will, at the option of Seller, either allow said facilities to remain, or within six months cause their removal and the leveling off and out of the railroad right-of-way fill in conformity with natural drainage.

(g) Taxes and special assessments. Seller agrees to pay all taxes and special assessments against the leased right-of-way land, however, Buyer is to pay any taxes or assessments or improvements made by it on said right-of-way.

(h) Weeds. It is agreed that Buyer on or before the 1st day of July and on or before the 1st day of September of each year, will destroy the weeds growing on its rights-of-way across Seller's land.

4. Leasing back land not worked. On or before the first day of March of each year, Buyer will notify Seller what portion of its ground is available for use for the ensuing crop year, and its rental terms. Seller shall have the option to accept the rental of any or all of the land so offered. Said acceptance to be in writing delivered to Buyer's office by March 15 of said year.

5. Take from stripping piles. Buyer hereby gives Seller the right to draw

reasonable amounts from stripping piles for use on Seller's premises provided such action does not interfere with Buyer's operations.

6. Prohibition of truck traffic. Buyer will not use private lane across Seller's land which has not been sold to transport its sand and gravel by truck.

7. Rights and restrictions as to other land of Seller.

(a) Subject to lease to Marlo Cowles. Seller at the present time has under lease to Marlo Cowles for sand and gravel purposes, that part of its land, lying between the Chicago, Burlington & Quincy Railroad right-of-way and the old Main Street bridge road and South of Seller's pasture fence. The provisions contained in this paragraph 7 are subject to said lease.

(b) Land south of Township Road or private lane. In the event that Seller decides to sell or lease any part or all of its land lying north of the purchased land and south of the Township Road and Seller's private lane, Seller shall give to Buyer the right to match or meet any price offered for the purchase or lease thereof.

(c) Land excepted. The land referred to in paragraph (a) of this paragraph 7 is excepted as to leasing.

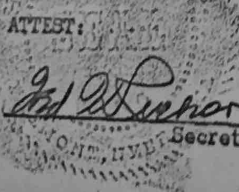
(d) Marlo Cowles Lease. With reference to Seller's land North of that leased to Marlo Cowles, the Buyer shall have the right to meet or match any proposed lease of said land for sand and gravel operations and before Seller shall sell said land it shall be first offered for sale by the Seller to the Buyer on such terms as Seller shall determine.

(e) Seller's right of refusal. Buyer agrees that before it sells any of the land purchased or before it leases all of said land as a unit, it will first offer said land to be sold or the entire land to be leased to the Seller on such terms as the Buyer shall determine.

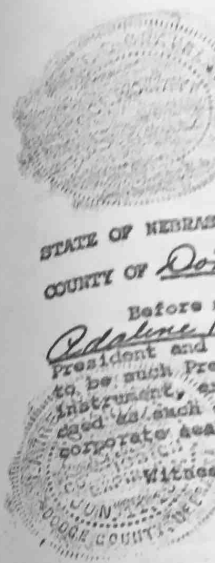
(f) Restrictions as to land north of Township Road and private lane. Seller agrees that as long as it owns the land which it now owns north of the Township Road and its private lane, that it will not use it or lease it to others for sand or gravel purposes or allow the construction of railroad rights-of-way to be used for local sand and gravel production purposes. If Seller should decide to sell said land, it will provide in the instrument of conveyance that it is restricted in its use for sand-gravel purposes.

8. Rix hereby ratifies and approves the foregoing agreement and consents to the execution thereof by Seller and Buyer. Rix further agrees and does hereby relinquish to the Buyer as of this date all rights and claims which he has or may have to the premises purchased by the Buyer on this same date from the Seller, all of which are located in Sections 25, 26, 35 and 36, Township 17 North, Range 8 East of the 6th P.M. in Dodge County, Nebraska, as more particularly described in a certain warranty deed of even date herewith.

9. All covenants and agreements herein made shall extend to and be binding upon the parties hereto, their heirs, administrators, executors, successors or assigns.

ATTEST:

Ed. Richards Jr.
Secretary

HILLS FARM, INC., a corporation
Edwin B. Richards
President



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LINCOLN SAND & GRAVEL COMPANY, A corporation

By George P. Abel Pres
Carl C. Rix
Carl C. Rix



STATE OF NEBRASKA)
COUNTY OF Dodge) SS.

Before me, a Notary public qualified in said county, personally came George P. Abel and Carl C. Rix President and Secretary respectively of Hills Farm, Inc., a corporation, known to me to be such President and Secretary and identical persons who signed the foregoing instrument, and each acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that its corporate seal was thereto affixed by its authority.

Witness my hand and notarial seal on December 2nd, 1960.

My commission expires: June 11, 1964

James H. Post
Notary Public

STATE OF NEBRASKA)
COUNTY OF LANCASTER) SS.

Before me, a notary public qualified in said county, personally came George P. Abel to me known personally to be the President of Lincoln Sand & Gravel Company, a corporation; who acknowledged that he had read the foregoing agreement, knew and understood its contents and that he executed the same as his voluntary act and deed and as the voluntary act and deed of said corporation.

Witness my hand and notarial seal on December 2nd, 1960.

My commission expires: 1-18-63

E. C. Thomas
Notary Public

STATE OF NEBRASKA)
COUNTY OF _____) SS.

On this _____ day of _____, 1960, before me, the undersigned, a Notary Public, in and for said county, personally appeared the above named Carl C. Rix, to me known to be the identical person who executed the foregoing agreement, and acknowledged that he had read the same, understood its contents and purposes; and that he executed the same as his voluntary act and deed.

Witness my hand and notarial seal the day last above written.

Notary Public

My commission expires: _____