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STATE OF WASH
By *Kielinski & Laurie*

Oct 4 4 37 PM '91
P. Lowry

REAL ESTATE CONTRACT

GARY J. OLSON

THIS CONTRACT, made and entered into this 25th day of September, 1991, between KENETH W. PETERSON and ELSIE M. PETERSON, husband and wife, hereinafter called the "Sellers", and FERN PRAIRIE LAND COMPANY, a Washington corporation, doing business as APHIS READY MIX, hereinafter called the "Purchasers".

WITNESSETH; That the Sellers agree to sell to the Purchasers and the Purchasers agree to purchase from the Sellers the following described real estate, with improvements, fixtures and appurtenances, in Skamania County, State of Washington:

A tract of land located in the East Half of Section 19, Township 2 North, Range 7 East of the Willamette Meridian, in the County of Skamania, State of Washington, more particularly described as follows:

Lot 1 of the Longview Fibre Company Short Plat as recorded in Book 3 of Short Plats at page 48 of Skamania County Deed Records.

As used in this Real Estate Contract the term "fixtures" shall include the following:

1. Silo
2. Scales
3. Buildings
4. Conveyors
5. Triple Hoppers
6. Ad mixture equipment

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is Sixty Thousand and No/100 Dollars (\$60,000.00), of which \$10,000.00 has been paid, the receipt whereof is hereby acknowledged. The balance of said purchase price shall be paid as follows:

a. \$2,000.00 or more at Purchasers' option, on or before the 25th day of October, 1991, and \$2,000.00 or more, at Purchasers' option, on or before the 25th day of each succeeding calendar month thereafter, through and including May 25, 1992.

c. Purchasers agree that the entire remaining balance of the purchase price shall be paid in full by June 25, 1992, and that the amount of the final payment shall be the remaining balance unpaid at the time of the final payment.

2. Purchasers agree to pay \$25.00 as reasonable liquidated damages, and not as a penalty, in the event that any regularly scheduled payment is made after the due date but prior to the expiration of 10 days from the due date. Such amounts shall be added to the principal balance remaining unpaid. In the event payment is not made within 10 days of the due date, it shall constitute a default hereunder.

3. All payments to be made hereunder shall be made as follows:

A. \$1,000.00 per month paid directly to:

Keneth and Elsie Peterson
P. O. Box 305
North Bonneville, WA 98639

14576

Registered 3
Indexed, Dir 0
Indirect 0
Index 10/11/91
Mailed

768.00

Jed Depietry

B. \$1,000.00 per month paid directly to:

Peterson Precast Concrete Products
P. O. Box 407
North Bonneville, WA 98639

or at such other place as the Sellers may direct in writing.

4. As referred to in this contract, "date of closing" shall be September 25th, 1991.

5. Purchasers may at their option pay the entire balance of the purchase price remaining due, or any part of such balance, at any time before maturity, without penalty and without notice to Sellers.

Closing Costs

6. Sellers' Closing Costs. Sellers shall pay the following closing costs:

- A. One-half (1/2) of the fee for the title insurance policy;
- B. Real Estate excise tax;
- C. Fee to record the Real Estate Contract; and
- D. One-half (1/2) of the closing fee to Kielpinski & Lorne, P.C.

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- A. One-half (1/2) of the fee for the title insurance policy; and
- B. One-half (1/2) of the closing fee to Kielpinski & Lorne, P.C.

Pro-Rated Items

8. The following shall be pro-rated as of the date of closing:

- A. 1991 Real Property Taxes
- B. Insurance, interest, mortgage insurance, water and other utilities constituting liens, if applicable.

Taxes and Assessments

9. The Purchasers assume and agree to pay before delinquency all taxes and assessments, including but not limited to any governmental improvement assessments or charges that may as between grantor and grantee hereafter become a lien on said real estate. Upon request by Seller, Purchasers will show proof of said payments.

Inspection

10. The Purchasers agree that full inspection of said real estate has been made and that neither the Sellers nor their assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the Purchasers or Sellers or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract.

a. Purchasers are acquiring the property "as is" and Sellers make no representations or warranties except as to title as set forth herein. Without limiting the generality of the

foregoing, Purchasers acknowledge that they have made their own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant they may retain. Purchasers may not rely upon any representation of any party whether or not such party purports to act on behalf of Sellers, unless the representation is expressly set forth therein or in a subsequent document executed by Sellers. All representations, warranties, understandings and agreements between Purchasers and Sellers are merged herein and shall not survive closing.

Taking

11. The Purchasers assume all risk hereafter placed on said real estate or of the taking of said real estate or any part thereof for public use and agree that any such taking shall not constitute a failure of consideration. In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to the Sellers and applied as payment on the purchase price herein unless the Sellers agree in writing to allow the Purchasers to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking.

Liability and Fire Insurance

12. Lessee shall, at Lessee's sole expense, immediately upon occupancy of the premises, maintain public liability and property damage insurance insuring against any and all claims for injury to or death of persons and loss of or damage to property occurring upon, in or about the premises. Such insurance shall have liability limits of not less than \$200,000.00 in respect of injury or death to any one person, and not less than \$1,000,000.00 in respect of any one occurrence or accident. All such insurance shall name Lessor and Lessee as co-insureds, with severability of interest endorsement.

Title Insurance

13. The Sellers have delivered, or agree to deliver within fifteen (15) days of the date of closing a purchasers' policy of title insurance in standard form, or a commitment therefor, issued by Skamania County Title Company, insuring the Purchaser to the full amount of said purchase price against loss or damage by reason of defect in Sellers' title to said real estate as of the date of closing and containing no exceptions other than the following:

- a. Printed general exceptions appearing in said policy form;
- b. Liens or encumbrances which by the terms of this contract the Purchasers are to assume, or as to which the conveyance hereunder is to be made subject; and
- c. Any existing contract or contracts under which Sellers are purchasing said real estate, and any mortgage or other obligation, which Sellers by this contract agree to pay, none of which for the purpose of this paragraph 12. shall be deemed defects in Sellers' title.

Deed

14. The Sellers agree, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to Purchasers a statutory warranty fulfillment deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the Sellers, and subject to the exceptions noted in Paragraph 13 hereof.

Possession

15. Unless a different date is provided for herein, the Purchasers shall be entitled to possession of said real estate on the date of closing and to retain possession so long as Purchasers are not in default hereunder. The Purchasers covenant to keep any improvements on said real estate in good repair, not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The Purchasers covenant to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date Purchasers are entitled to possession.

Removal of Personal Property

16. Sellers and Daryl L. Peterson of North Bonneville, Washington, shall have thirty (30) days from the date hereof to remove all personal property which does not constitute fixtures from the subject premises.

Use of Premises

17. Purchasers covenant and agree to make or permit no unlawful, offensive or improper use of the premises or any part thereof.

Assignment

18. The rights hereby granted are personal to the Purchasers and Sellers' reliance upon Purchasers' ability and integrity is a part of the consideration for this contract. Neither this contract nor any interest therein, nor the possession of the property, may be assigned or transferred by Purchasers, nor shall Purchasers make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of Sellers.

Default

19. In case the Purchasers fail to make any payment herein provided, the Sellers may make such payment, and any amounts so paid by Sellers, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by Purchasers on Sellers' demand, all without prejudice to any other right the Sellers might have by reason of such default.

20. Time and the covenants of Purchasers are of the essence of this contract, and it is agreed that in case the Purchasers shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the Sellers may at their option exercise any of the following alternative remedies upon giving Purchasers thirty (30) days written notice specifying the default and the remedy to be exercised should Purchasers fail to secure all defaults at the expiration of the 30-day period:

- a. Suit for Delinquencies. Sellers may institute suit for any installments or other sums then due and payable under this agreement together with any sums advanced by Sellers for and the amount of any delinquencies for items such as water assessments, taxes, insurance, payments and underlying obligations and lienable items, together with interest thereon at the rate of 12% per annum from the date each such payment was advanced or due, as the case may be.
- b. Forfeiture and Repossession. The Sellers may cancel and render void all rights, title and interests of the Purchasers and their successors in this contract and in the property (including all of Purchasers' then existing rights, interests and estates therein and improvements thereon) by giving a Notice of Intent to Forfeit pursuant to RCW 61.30.040-070, and

said cancellation and forfeiture shall become effective if the default therein specified has not been fully cured within ninety (90) days thereafter and the Sellers record a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract, the Sellers may retain all payments made hereunder by the Purchasers and may take possession of the property ten (10) days following the date this contract is forfeited and summarily eject the Purchasers and any person or persons having possession of the said property by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Purchasers or any person or persons claiming by, through or under the Purchasers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture remain in possession of the property more than ten (10) days after such forfeiture, the Purchasers, or such person or persons, shall be deemed tenants at will of the Sellers and the Sellers shall be entitled to institute an action for summary possession of the property, and may recover from the Purchasers or such person or persons in any such proceeding the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including the Sellers' reasonable attorneys' fees.

- c. Specific Performance. Sellers may institute suit to specifically enforce any of the Purchasers' covenants hereunder.
- d. Property Rental. In the event this contract is forfeited as herein provided, or in any other manner permitted by law, or by mutual agreement of the Purchasers and Sellers, and the Purchasers shall thereafter remain in possession of the property beyond any period otherwise permitted by law, the Purchasers agree that they will occupy the property as a tenant at will, and the Purchasers shall be obligated to pay, and hereby promise to pay, during the period of such tenancy at will, a fair market rental in the amount then agreed to by the parties or, in the absence of such agreement or until such agreement is reached, an amount equal to two (2) times the installment amount as and when provided for in the specific terms hereof, and the Sellers shall have, in addition to all other remedies for the collection of rentals and the recovery of possession that are available to landlords under the laws of the State of Washington, the right to institute an action for summary possession of the property as provided by law.

21. a. In the event Sellers should default in any of their obligations under this contract and such default continues for fifteen (15) days after the Purchasers give the Sellers written notice specifying the nature thereof and the acts required to cure the same, the Purchasers shall have the right to specifically enforce this contract, institute suit for their damages caused by such default, or pursue any other remedy which may be available to Purchasers at law or in equity.

b. The waiver of Sellers to elect to pursue any of the above remedies at any time upon a breach of any of the terms of this contract by the Purchasers shall be deemed only an indulgence by the Sellers with regard to that particular breach and shall not be construed, in any manner whatsoever, to be a waiver of any right of Sellers to pursue any of the above remedies for the same or a different breach at a subsequent time; election of the Sellers to utilize any particular remedy to enforce a breach of this contract

shall not preclude Sellers from electing to use an alternate remedy to enforce a subsequent breach. The remedies stated herein are cumulative and not mutually exclusive. Any delay or failure of Sellers to take action upon default shall not be construed as a waiver of said default. If Sellers are required to institute legal action to enforce any of the remedies indicated, Purchasers agree to pay Sellers' costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

Notice

22. Any notice, declaration, demand, consent or communication to be given by any party to this contract to any other party shall be in writing and transmitted to the other party by either personally delivering the notice or by certified or registered mail, return receipt requested, addressed as follows:

To Purchasers: Fern Prairie Land Company
d/b/a Aphis Readymix
P. O. Box 1019
Camas, Washinton 98607

To Sellers: Keneth and Elsie Peterson
P. O. Box 305
North Bonneville, WA 98639

Either party may change its address by giving written notice to the other party in the manner provided above, provided that in no event shall Sellers be required to send any notice to more than two (2) addresses. The mailing and registering or certifying of any such notice as herein provided shall be sufficient service thereof. Service shall be complete when such notice is registered or certified and placed in the United States mail as shown by the cancellation stamp or postage meter stamp, as the case may be.

Costs and Attorneys' Fees

23. If either party shall be in default under this contract, the nondefaulting party shall have the right, at the defaulting party's expense, to retain an attorney to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this contract. The defaulting party hereby promises to pay all costs and expenses so incurred by the nondefaulting party, including, without limitation, court costs, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation). In the event either party hereto institutes any action to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for its court costs and reasonable attorneys' fees, including such costs and fees as are incurred on appeal. All reimbursements required by this paragraph shall be due and payable on demand, may be offset against any sum owed to the party so liable in order of maturity, and shall bear interest at the default rate from the date of demand to and including the date of collection or the due date of any sum against which the same is offset.

Succession

24. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

Governing Law

25. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

Use of Pronouns

26. Unless the context requires otherwise, references to the singular shall include the plural and references to the plural shall include the singular. Unless some other meaning or intent

is apparent from the context, masculine, feminine and neuter pronouns are used interchangeably herein.

Entire Agreement

27. This Agreement supersedes any prior agreement and contains the entire agreement of the parties as to the matter covered. No other agreement, statement or promise made by any party or to any employee or agent of any party shall be binding unless made in writing and signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

SELLERS:

PURCHASERS:

FERN PRAIRIE LAND COMPANY,
d/b/a APHIS READY MIX

Kenneth W. Peterson
KENETH W. PETERSON

By Marilyn R. Webb
MARILYN R. WEBB, President

Elsie Peterson
ELsie M. PETERSON

BY Ronald F. Webb
RONALD F. WEBB,
Vice-President

STATE OF WASHINGTON)
) ss
County of Skamania)

On this day personally appeared before me **KENETH W. PETERSON** and **ELSIE M. PETERSON**, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of September, 1991.

Sharon Feldman
Notary Public in and for the
State of Washington, residing
at Carson .

Commission expires: 6-13-93

STATE OF WASHINGTON)
) ss
County of Skamania)

On this day personally appeared before me **RONALD F. WEBB** and **MARILYN F. WEBB**, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

SEPT 25 1991
GIVEN under my hand and official seal this 25th day of September, 1991.

Harmon L. Edkausen
Notary Public in and for the
State of Washington, residing
at Carson

Commission expires: 6-13-93