

EASEMENT & LEASE

THIS EASEMENT AND LEASE made and entered into this 5 day of MARCH, 1991, by and between RAYMOND W. ANDES and MAXINE ANDES, his wife, hereinafter referred to as lessors, and RUTH BIRDZELL, a single person, hereinafter referred to as lessee.

WITNESSETH,

WHEREAS, RUTH BIRDZELL is the owner of a certain real estate lying along the Walnut River in Cowley County, Kansas, which by agreement, she has leased to ALBERT CRANE for the removal and sale of gravel; and,

WHEREAS, in order to obtain access to the river to remove this gravel, and for general access to the Birdzell property, it is necessary to enter onto and cross a portion of land owned by RAYMOND W. ANDES and MAXINE ANDES; and,

WHEREAS, the parties hereby desire to enter into a written agreement whereby lessee will have the right to enter onto and use land owned by lessors for general access, including the mining and removal of gravel, and to define the rights and obligations of each of the parties hereto in using the lessors' land for these purposes.

NOW THEREFORE, IT IS AGREED AND STIPULATED:

1. That lessors hereby grant to lessee an easement and right-of-way to enter onto and cross a portion of lessor's land described as:

Commencing at a point near the southeast corner of the Northeast $\frac{1}{4}$ of Section 23, Township 33 South, Range 4 East, at a point where a road exits from Cowley County Highway #20 onto lessors' property; thence, proceeding in a southerly direction to the southeast corner of the Northeast $\frac{1}{4}$ of Section 23, Township 33 South, Range 4 East; thence, in a general westerly direction to a point where lessors' property and property owned by lessee adjoin.

It is understood and agreed that the above legal description is only a general description of the area in which lessee shall have the right of ingress and egress across lessors' property. The

exact location of the points of ingress and egress shall be determined by lessors and strictly adhered to by lessee.

The primary term of this lease shall be for one (1) year commencing on April 1, 1991, and terminating on March 31, 1992, but may be renewed by lessee for successive one (1) year terms as hereinafter set forth.

Rental for the primary term shall be the sum of Five Hundred and no/100 Dollars (\$500.00) payable in quarterly installments of One Hundred Twenty-Five and no/100 Dollars (\$125.00) due on the first (1) day of April, the first (1) day of July, the first (1) day of October, and the first (1) day of January, of the primary term, or corresponding months of any successive terms.

Lessee retains the option to renew this lease for successive one (1) year terms by the continuous payment of additional sums of One Hundred Twenty-Five and no/100 Dollars (\$125.00) on the first of April, July, October and January in any succeeding term.

Lessee shall also retain the option to renew the lease for successive terms by the payment of the sum of One Hundred and no/100 Dollars (\$100.00) in lieu of the Five Hundred and no/100 Dollars (\$500.00) in quarterly payments as set forth in the preceding paragraph. In the event lessee elects to pay only One Hundred and no/100 Dollars (\$100.00), the lease shall remain in full force and effect, except that no gravel of any amount may be transported across the leasehold during the next succeeding term, unless an additional Four Hundred and no/100 Dollars (\$400.00) is paid in full prior to the transportation of any gravel.

The parties agree that election of the option to pay One Hundred and no/100 Dollars (\$100.00) on the anniversary date of any succeeding term to preserve access for all purposes other than the hauling or transportation of gravel, shall constitute a waiver of any right to pay in installments, and it is understood that neither lessee, nor her employees, representatives or agents shall haul or transport gravel during the unexpired portion of

the renewal term unless full payment of an additional Four Hundred and no/100 Dollars (\$400.00) is made to lessor prior to the transportation of gravel.

The parties agree that time is of the essence in this agreement, particularly with respect to the payment of rental for renewal terms, and the failure of lessee to pay any rental or installment within twenty-one (21) days from the due date as set forth herein shall immediately terminate this lease and lessors may rightfully reject any rental tendered thereafter and bar lessee from any further use of the land subject to this lease.

Lessee shall also pay to lessor, upon execution of this agreement, the sum of Four Hundred and no/100 Dollars (\$400.00) as and for liquidated damages previously caused by ALBERT CRANE, his employees or agents, in the destruction of certain trees and/or land in the attempted construction of a road across lands owned by lessors, and not subject to this lease.

Any damages which lessors sustain to any crops by lessee's operation under this easement and lease shall be paid to lessors by lessee within thirty (30) days of receipt of written notice of the amount and nature of the damages claimed by lessors.

Lessee will not stockpile any gravel or dirt on lessors' land unless specifically agreed to, in writing, between lessors and lessee.

In the event it is necessary for lessee to remove any brush, limbs, or trees in exercising her rights under this easement and lease, she shall first consult with lessors and secure from lessors their approval as to the nature and extent of the removal of any brush, limbs or trees and the disposal thereof.

Lessee shall not be entitled to assign any rights under this lease or any extension thereof to any third party without the express written approval of lessors.

Within sixty (60) days following the execution of this lease, lessee shall, at her expense, construct a gate at the entrance of lessors' property sufficient to prevent ingress and

egress by any persons not otherwise authorized to enter onto lessors' property. Lessee shall purchase a padlock which shall be installed on this gate and shall furnish to lessors a key to the padlock to enable lessors to have access to their property.

Any road surfaces used by lessee under this easement, or which she may create and use under this easement, shall be maintained by lessee so as not to cause any damage to lessors' land or their use thereof, and upon the termination of this easement, lessee shall restore the road surface to as nearly the same condition as it was at the time of the execution of this lease and shall promptly vacate the property and return the same to lessors in as nearly the same condition as it was at the time of the execution of this easement absent normal wear.

Lessee shall assume all liability for any damages arising from the use of said road, and shall hold lessors harmless from any damage of any kind whatsoever to any person whomsoever that may arise from or be occasioned by the usage or travel on or across said road.

In the event lessee breaches any of the terms or conditions of this lease relating to the removal of gravel and remains in breach thereof for thirty (30) days or more, lessors may, in their discretion, demand from lessee in writing, that she immediately cease whatever portion of this agreement she is breaching and cure any default thereunder. Within fourteen (14) days upon receipt by lessee of notice of breach and demand to cure, lessee shall comply therewith and in the event she remains in default thereafter, lessors may declare such portion of this lease cancelled; whereupon the same shall terminate and lessee shall terminate the gravel hauling.

Notwithstanding any other provisions herein, lessors or lessee may petition the Cowley County District Court for a declaratory judgment should a dispute arise concerning any of the terms or conditions of this lease or any renewal thereof.

This easement and lease shall be binding upon the par-

ties hereto, their heirs, devisees, legatees, executors, administrators, trustees, creditors, successors and assigns.

WITNESSETH, the hands of the parties hereto the date and year first above written.

Raymond Andes
RAYMOND W. ANDES, lessor

Maxine Andes
MAXINE ANDES, lessor

Ruth Birdzell
RUTH BIRDZELL, lessee