FILED NO. 1132 Compared
BOOK 31 PAGE 306
1976 DEC 22 PM 2:07
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
5 pgs.
Fee #10 50

LEASE AGREEMENT

THIS LEASE, made and entered into this 8th day of JUNE, 1976, by and between Patrick James Flannery and Janice M. Flannery of RR Winterset, Iowa (hereinafter referred to as First Party), and GENDLER STONE PRODUCTS CO., INC., an Iowa corporation, with its principal place of business in the City of Des Moines, Polk County, Iowa **(hereinafter referred to as Second Party),**

W I T N E S S E T H:

1. First Party is the owner in fee simple of the following described real estate situated in Madison County, Iowa, to-wit:

S½ of NE¼ of section 19-76N-28W, except no quarrying to be done within 200 feet of the existing house

For Termination of Lease see Misc. Rec. 33-153

Lease assigned to Gendler Stone Company by Gendler Stone Co. Inc. Misc. Rec. 107-465

and has this day leased the above described real estate to Second Party for a period of twelve years commencing on the 8th day of JUNE, 1976, and terminating at Midnight on the 7th day of JUNE, 1988.

2. Second Party is hereby given the right to operate a rock quarry and crushing and processing plants, such operation to include the stockpiling of rock either sold or to be sold by Second Party, together with land for the building and maintaining of a road from said quarry site for the purpose of egress and

ingress to the quarry site and for purposes of ingress and egress to any contiguous land leased or owned by Second Party, and for all purposes incidental to the mining and removing from said land rock to be crushed and sold commercially, and Second Party is hereby given the exclusive right to extract and remove from the leased property any and all rock, stone, sand, gravel and rock products which Second Party shall desire to extract and remove during the term of this lease.

3. In consideration of the use and occupancy and the rights given to Second Party hereunder, Second Party shall pay to First Party a fixed royalty of twelve cents per ton on all stone, sand or gravel which may be extracted and sold from the leased premises during the term of this lease and any extensions thereof, said royalties to be paid as follows:

(a) $1200.00 XX as advance royalties upon the signing of this lease agreement, receipt of which is hereby acknowledged, which advance royalties shall apply on the fixed royalty set out above.

(b) First Party shall receive additional advance royalties in the sum of $1200.00 XX on the 8th day of JUNE of each succeeding year in which this lease and any extensions thereof is in effect, provided First Party has not received in royalty payments during the expired term of this lease, or any extensions thereof, an amount that would average a minimum of $1200.00 XX per year.

(c) Additional payments on said fixed royalty shall be made to First Party at the end of each month during the term of this lease and any extensions thereof, for all rock, sand, gravel or stone extracted and sold during the preceding month after crediting the payment of any advance royalties.

4. In the event that Second Party refused, fails, or neglects to make payments to First Party according to the terms of this Agreement, then and in that event, First Party, after giving ten (10) days' written notice by U. S. Certified or comparable mail to Second Party, and providing Second Party is still in default,

may enter upon said leased premises and take possession thereof, and terminate this lease, and said lease shall thenceforth be deemed null and void in all respects. Any termination under these provisions by First Party shall in no wise forfeit First Party's right to collect any rents or royalties, either monthly or yearly, then due under the terms of this lease.

5. It is further agreed that Second Party shall not be liable to First Party for damages or injuries to First Party's livestock which may be on said premises during the term of this lease, but Second Party covenants and agrees that it will repair all fences which may be damaged or destroyed by reason of its operating said quarry on said premises.

6. It is further agreed that said Lease shall not in any way prohibit First Party from pasturing or growing crops on the leased premises during the period of this Lease so long as the use of the surface of the said leased premises shall not in any way interfere with the quarry operations of Second Party.

7. It is further agreed that Second Party shall render to First Party true and correct monthly statements of all rock sold and removed during the preceding month and First Party shall have the right at reasonable times to inspect records of Second Party to ascertain the correctness of such statements.

8. It is further agreed that Second Party shall have the absolute right during the period of this Lease, or upon termination thereof, to remove any and all buildings, equipment, machinery and structures placed by it on the demised premises, provided that the royalties or monthly or yearly rental due First Party has been paid. It is further agreed that Second Party shall have the right up to twenty-four (24) months after the expiration of this lease to sell or remove any existing stockpiles and shall be entitled to maintain scales and loading equipment on the leased property for this purpose, said existing stockpiles to be subject to the regular fixed royalties as provided herein.

9. It is further agreed that First Party shall in no wise be liable to Second Party or any of its employees or to any third parties on account of any personal injury or property damage which may result from the operation of the quarry and such liability for loss or damages shall remain and be the

liability of the Second Party.

10. First Party hereby warrants and agrees to defend the title to the real estate above described and agrees that Second Party shall have the right at any time to redeem for First Party, by payment, any mortgage, taxes, or other liens on the above described real estate, in the event of default of payment by the First Party, and be subrogated to the rights of the holder thereof, and First Party hereby agrees that any such payments made by the Second Party for the First Party shall be deducted from any account of money which may be due or may become due the First Party under the terms of this lease.

11. First Party does hereby grant to Second Party an option to renew this lease for an additional period of twelve years under the same terms and conditions as this original lease providing that Second Party gives notice by certified or comparable mail to First Party of its intention to exercise said option at least ninety (90) days prior to the expiration of the original term of this lease. The notice of intention to exercise said option shall be addressed to First Party (or successors thereto) at the same address to which royalty checks are mailed by Second Party to First Party.

12. Second Party shall have the right to terminate this lease at any time after said lease has been in effect for two (2) full years by giving First Party one (1) years' notice in writing of said desire to terminate, said notice to be sent by certified or comparable mail to the First Party at the same address to which royalty checks are mailed by Second Party to First Party.

13. This lease shall be binding upon and inure to the benefit of the heirs and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have ~~this~~ day executed this lease in duplicate.

Patrick James Flannery

Pat Flannery

Janice M. Flannery

FIRST PARTY

GENDLER STONE PRODUCTS CO., INC.

BY: Stanley Isaacson, V.P.

SECOND PARTY

STATE OF IOWA)
) SS.
POLK COUNTY)

On this 8th day of June, A.D. 1976, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Stanley Isaacson, to me personally known, who, being by me duly sworn, did say that he is the Vice President of said corporation executing the within and foregoing instrument to which this is attached, that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Stanley Isaacson acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

S. DAVID PESHKIN
MY COMMISSION EXPIRES
September 30, 1978