

File No. 39778LEASE AND PURCHASE AGREEMENT

THIS INDENTURE, made and entered into as of the 23rd day of March, 1964, by and between PAUL UNRUH and RETA M. UNRUH, his wife, of Eureka, County of Eureka, State of Nevada, hereinafter referred to as "Lessee" or "Buyer" and HOWARD E. STEARNS and JEAN STEARNS, his wife, of Grand Island, County of Hall, State of Nebraska, hereinafter referred to as "Lessor" or "Seller",

W I T N E S S E T H:

IN CONSIDERATION of the mutual promises, covenants and agreements hereinafter contained, to be kept and performed by the parties hereto, it is agreed by and between the parties hereto as follows, to-wit:

LEASE PROVISIONS

1. Lessor does hereby lease and demise to Lessee all of the following described real and personal property situate in the County of Eureka, State of Nevada, to-wit:

REAL PROPERTY

TOWNSHIP 21 NORTH, RANGE 63 EAST, N.D.B. & M.

Section 9: All

Together with the improvements and appurtenances thereunto belonging or in anywise appertaining, including but not limited to the irrigation wells and potato storage building; and

Together with all water and water rights appurtenant thereto, belonging or in anywise appertaining; specifically including but not limited to water rights under permit Nos. 20089, 20090, 18899 and 18900 issued by the Engineer's office of the State of Nevada.

PERSONAL PROPERTY

The following list is equipment located upon the foregoing described real property, unless noted otherwise:

- 5 - Farmland wheel move sprinkling systems
- 1 - McDowell wheel move sprinkling system
(located on Morrison property)
- 2 - Layne Bowler pumps
- 2 - GMC 671 engines with gearheads and drive lines
(to be obtained and placed on property by Lessor)
- 1 - mile of 8" and 6" main line with valves and
hydrants (3/4 mile on property and the balance
on the Morrison place)
- 1 - trailer house
- 1 - Onan light plant
- 1 - Utility room with contents
- 300' of steel casing
gravel
- 1 - Farmland hand move irrigation system (on
Morrison place)

2. The Lessee to have and hold the said premises from the date hereof until midnight, February 28, 1965, unless otherwise sooner terminated or cancelled as herein provided. The Lessee agrees that he has received possession of the leased premises as of the date of execution of this document by Lessee and will occupy the same throughout the term of this lease in accordance with the provisions contained herein.

3. The lands and property herein being leased are leased to Lessee for the specific purpose of farming the same and raising potatoes, small grains and other crops decided upon by mutual agreement. In this regard Lessee agrees that he will farm and raise crops upon at least 240 acres of said lands, and that of said acreage he will raise at least 40 acres of potatoes. No other use shall be made of the property without the prior written consent of the Lessor first had and obtained.

4. There is hereby reserved to Lessor as rent for said property and premises and the Lessee agrees to pay to Lessor as consideration for this lease, the sum of \$3,500.00 cash, payable upon the execution of this lease, plus 20 per cent of the value of all crops produced on said premises, payable as hereinafter

set out.

WATKINS & SONS
ATTORNEYS AT LAW
Bismarck, North Dakota

5. All expenses, costs incurred and labor used in the operation and management of the leased premises and the production of crops thereon shall be borne by Lessee.

6. At the termination of the harvest of the crop, the same shall be sold for the full market value, or stored, fully or partially, and as sold Lessor shall be paid 20 per cent of said market value. Sales shall be at Lessee's discretion.

7. Lessee agrees to finance the entire farming operation and neither party may pledge or use as security for financing more than the respective share of the crop of such party.

8. Lessee shall at all times operate said premises in a good husband type and like manner.

9. Lessee agrees to at all times reasonably and properly irrigate said premises with available water to the extent reasonably prudent, and to apply to beneficial use the waters allocated, permitted and apportioned to said premises.

10. Lessor shall place said equipment in a workable state of repair, and Lessee agrees to maintain in repair and substantially the condition in which they now are or in which they may be put by Lessor, all improvements on the premises, including but not limited to all pumps, engines and irrigation equipment, reasonable wear and tear excepted.

11. Lessee agrees to remain in actual possession of said premises and manage and operate the same and produce the crops thereon during the lease year.

12. The Lessee acknowledges that he has inspected said premises, knows the conditions thereof and accepts the same as they now exist, which acceptance is based solely upon his inspection thereof and is not based upon any representation, warranty, covenant or undertaking by Lessor not contained herein.

13. Lessor agrees to continue Lessee in possession of

the demised premises and to allow him peaceful and quiet possession thereof during the term of this lease.

14. Lessor will allow Lessee use of the water appurtenant to the property and premises herein leased. It is distinctly understood by Lessee that Lessor does not guarantee a warranted quantity of water, if any, which will be available for irrigation of the leased premises from time to time, and Lessee waives any and all rights and claims for damages against Lessor by reason of the failure in whole or in part of the water supply for irrigation of said premises.

15. The Lessee may, at his expense, make improvements, subject to the written consent of Lessor first had and obtained. In such event, upon demand of Lessor, Lessee will post notices of Lessor's non-responsibility and cause the appropriate notice and affidavit thereof to be recorded as allowed and provided by law.

16. Lessor, his agents and employees shall have the right to enter upon the leased premises at any and all reasonable times to inspect the same.

17. This lease is made strictly between the Lessor and the Lessee herein named, and shall be deemed a personal lease strictly between the parties hereto. The lease, or any interest of Lessee in the leased premises, shall not be transferred, assigned or sub-let in any manner, without the express consent and authority of the Lessor first had and obtained, save and except that the Lessee is hereby permitted and authorized to sub-let the portion of said property and premises that will be planted to potatoes, with the understanding that Lessor receives 20 per cent of the total crop as hereinbefore set out.

18. The Lessee shall not allow any encumbrances, liens

or process of law to attach against said premises. Any attempt at legal process levied against said premises shall, if attempted in good faith, result thereby automatically in a complete termination of this lease, all of Lessee's right in and to this lease, and said leased premises; subject to the right of Lessee to cause the discharge of a pretended lien within thirty (30) days after the filing or levy thereof, and further, Lessor shall be entitled to all crops grown or growing thereon, and may enter upon the leased premises at any time after said thirty (30) day period, in the event that the pretended lien is not discharged, and in Lessor's discretion, continue the farming of said premises, without any obligation to reimburse the Lessee, or his heirs, assigns or obligees whatsoever.

19. In the event that the Lessee holds over for any period after the termination date hereof, in the absence of any express written agreement to the contrary, Lessee shall be deemed a tenant by sufferance at most, and such holding over shall expressly and distinctly not allow Lessee any right to continue in possession for any term, season or the balance of the year thereafter.

20. All the terms, covenants and conditions and promises expressed herein to be performed on the part of the Lessee shall be deemed material terms of this Lease. In the event the Lessee breaches any of the terms hereof, he shall be thereby deemed in material default, and in addition to all remedies of Lessor, as provided by law or in equity, Lessor shall have the right, upon fifteen (15) days notice, to require Lessee to correct said default or defaults or to forthwith quit possession of said premises. The exercise of such remedy shall not be deemed

exclusive, and in addition thereto, Lessor shall have all right to demand, recover and sue for any actual loss or damage caused by Lessee to Lessor.

In the event Lessee quits possession of said premises or any part thereof, or fails to operate and manage the same in a good husband-like manner, such fact shall be deemed a consent by Lessee to Lessor to immediately enter upon said premises or to lease, rent, transfer, sell or assign the same forthwith in any manner, yet preserving the right of Lessor to sue for and recover all damages and future rental from the Lessee.

21. Lessor agrees to pay the county, state and school district ad valorem taxes accruing during the term of said lease.

22. Upon the termination of this lease, and should the Lessee fail to purchase the said property, the Lessee agrees to deliver up the said premises and property forthwith.

23. The Lessee will maintain Nevada Industrial Insurance on all employees hired in connection with the business operated upon the premises, and shall comply with all regulations thereof and with all other laws or regulations for the welfare and benefit of said employees.

PURCHASE PROVISIONS

24. Subject to the contingency hereinafter set out in Paragraph 34 the seller agrees to sell and the Buyer agrees to purchase from the Seller all that certain real and personal property hereinbefore described in Paragraph 1.

25. It is agreed by and between the Buyer and Seller that the purchase for the above described real and personal property shall be a total sum of SIXTY-EIGHT THOUSAND DOLLARS (\$68,000.00), payable from the Buyer to the Seller as follows, to-

wit:

A. Buyer shall receive credit against the purchase price for the sum of \$3,500.00 paid pursuant to Paragraph 4.

B. The sum of approximately \$10,843.95 shall be paid by the Buyer's assumption of the unpaid balance of the conditional sales contract on the sprinkler system, the balance of said contract to be assumed by Buyer or paid by Buyer on the closing date.

C. The Balance of the purchase price shall be paid by Buyer to Seller in cash coincidently with the delivery of Seller's Deed and Bill of Sale, on the closing date.

26. The Seller shall convey and the Buyer shall accept a title insurable by either Nevada Title Guaranty Company or Pioneer Title Insurance Company of Nevada, without exceptions, reservations, liens or encumbrances, save and except those set out in the current form used by said title companies, and save and except taxes that may be a lien but not yet due and payable.

27. On the closing date the Seller shall execute and deliver to Buyer a good and sufficient Grant, Bargain and Sale Deed and Bill of Sale conveying the above described real and personal property to the Buyer, subject only to the financing contract on the irrigation system.

28. On the closing date the Seller shall provide to the Buyer a title insurance policy in the principal sum of \$34,000.00.

29. On the closing date the lease of the property and premises shall terminate and the rental consisting of 20 per cent of the value of the crops shall be waived by the Seller. In the event that any portion of the 20 per cent rental has, prior to closing, been paid to Seller, the same shall be credited to reduce

the cash balance payable on the purchase price on closing.

30. State, County and school district taxes on the real and personal property shall be prorated as of the closing date.

31. The closing date shall be at the convenience of the parties, within thirty (30) days after the Buyer has received approval of the Farmers Home Administration loan as hereinafter set out.

32. The agreements contained in Paragraphs 12 and 14 shall be applicable to the purchase of the property, save and except that the Seller warrants as follows, to-wit:

A. That with regard to water permits Nos. 18899 and 18900 that the proof of completion has been filed and that the time within which the proof of beneficial use must be filed has been set as November 21, 1965; and

B. That with regard to water permits Nos. 20089 and 20090 that proof of commencement of work has been filed and that the time for filing proof of completion of work has been extended until the 5th day of November, 1964.

33. Regarding the seed wheat presently located in the potato storage cellar, it is acknowledged to be the property of the Seller and a separate sale of the same will either be negotiated between Buyer and Seller or Seller will have the right to leave said wheat stored in its present location for a reasonable period of time.

34. The respective obligations of the Buyer and of the Seller, as set out in this purchase portion of the agreement, are contingent upon the Buyer applying for and receiving a commitment to borrow a minimum amount of \$50,000.00 on said property from or through the Farmers Home Administration. In this connection the

Buyer agrees to make prompt application for such loan and to make all reasonable efforts to obtain such loan and to exercise reasonable diligence to procure the same. The Buyer may apply for the maximum loan which may be authorized by such lending agency.

35. Seller shall pay the following costs and fees, to-wit:

- A. For the preparation of this agreement.
- B. For the preparation of the Deed.
- C. Revenue stamps in the sum of \$37.40.
- D. One-half of the title policy premium.

36. Buyer shall pay the following costs and fees, to-wit:

A. All costs in connection with obtaining the Farmers Home Administration loan.

B. Recording fees on deed.

C. One-half of the title policy premium.

37. This contract will not be assigned by the Seller or the Buyer without the written consent of the other party first had and obtained.

38. Assuming the approval of the Farmers Home Administration loan as hereinbefore set out, and in the further event that Buyer fails to close the sale and pay the purchase price within the said 30 day period, the Seller may then declare the contract forfeited and terminated and retain any sums of money theretofore paid as liquidated and stipulated damages, including sums paid on the purchase price or as rental, and the lease of the property shall be immediately terminated and possession thereof delivered forthwith to the Seller. In this event, regardless of the prior termination, Seller shall be entitled to full rental

pursuant to the lease agreement.

In the event the Seller fails to affect the closing on or before the date specified, the Buyer having complied with all terms and conditions of the lease and the purchase agreement, and being ready and able to perform with the requirements of closing, may then institute an action for specific performance, or may pursue any other remedy which it may have in law or equity for the enforcement of this contract, or the collection of damages, or both.

Nothing contained herein shall restrict the Seller, or the Buyer, from any lawful defense which they might have as an excuse for non-performance by reason of any acts of the other, nor from pursuing any other remedy such party may have.

39. In the event the Buyer is unable to obtain a commitment for a loan from the Farmers Home Administration in the minimum amount of \$50,000.00, as specified hereinabove, on or before the 1st day of October, 1964, then this purchase agreement shall terminate and there shall be no further obligation or liability on the part of the Seller or the Buyer to perform the provisions of this purchase agreement. Sums theretofore paid from Buyer to Seller shall be applied to rental under the terms of the lease agreement.

GENERAL PROVISIONS

40. The following provisions shall be applicable to both the lease agreement and the purchase agreement, the same being as follows:

- A. Time shall be of the essence of this agreement.
- B. The singular shall include the plural and the masculine line gender and the feminine gender wherever used herein.

C. In the event any covenants, terms or conditions shall be contrary to law, the same shall not void this entire agreement, but such provisions shall be deemed a divisible part of the agreement, and the balance shall remain in full force and effect according to the terms hereof.

D. All notices to the respective parties may be personally served upon the other or served by certified mail as follows:

Notices to Lessor - Seller

Howard E. and Jean Stearns
Box 587
Grand Island, Nebraska

Notices to Lessee - Buyer

Paul and Beta M. Unruh
Eureka
Nevada

E. Subject to the restrictions herein contained on assignment, this agreement shall be binding upon and inure to the benefit of the respective parties hereto, their heirs, executors, administrators and assigns.

F. The waiver of any of the covenants hereof shall not be a waiver of any subsequent breach or of any other covenant or agreement contained herein.

G. A termination of the lease prior to the closing date of the purchase agreement shall automatically terminate Buyer's rights pursuant to the purchase agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate.

Howard E. Stearns
HOWARD E. STEARNS

Paul Unruh
PAUL UNRUH

Jean Stearns
JEAN STEARNS

Beta M. Unruh
BETA M. UNRUH

STATE OF ARIZONA)
COUNTY OF Maricopa) SS.

On this 30 day of March, 1964, personally appeared before me, a Notary Public in and for said County and State, HOWARD E. STEARNS and JEAN STEARNS, his wife, known to me to be the persons described in and who executed the foregoing instrument; who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

My Commission Expires Feb. 6, 1967

Mary Jane French
NOTARY PUBLIC



STATE OF NEVADA)
COUNTY OF ELKO) SS.

On this 15th day of April, 1964, personally appeared before me, a Notary Public in and for said County and State, PAUL UNRUH and RETA M. UNRUH, his wife, known to me to be the persons described in and who executed the foregoing instrument; who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Robert W. Vaughan
NOTARY PUBLIC



FILE NO. 39778

Filed for record at the request of Paul Unruh
May 4, 1964, at 50 minutes past 9 A.M. Recorded In
Book 4 of Official Records, page 102-113 Records of EUREKA
COUNTY, NEVADA.
Fee: \$11.50

Willis A. DeFaul
Recorder.

WILLIS A. DEFAUL
ATTORNEY AT LAW
ELKO, NEVADA