



**Oldcastle**<sup>®</sup>  
Materials

---

**DAVID M. TOOLAN**  
Associate General Counsel

**Oldcastle Materials, Inc.**  
900 Ashwood Parkway, Suite 700  
Atlanta, GA 30338-4780  
Tel: 770 392-5368, Fax: 770 392-5305  
dmtoolan@oldcastlematerials.com

January 9, 2009

**Via Express Mail**

Honorable Bruce Chuluda  
Mayor, City of Westbrook  
Westbrook City Hall  
2 York Street  
Westbrook ME 04092

**Re: Excavating Activities in Spring Street in Westbrook**

Dear Mayor Chuluda:

Pike Industries, Inc. ("Pike") received your October 7, 2008 letter and the Memorandum regarding the Spring Street Quarry dated September 9, 2008. The Memorandum was prepared by William L. Plouffe, Esq. of Drummond Woodsum & McMahon. As noted by Mr. Plouffe, counsel for Idexx Laboratories, Inc. ("Idexx"), the Spring Street Quarry has been in existence for a significant period of time so any analysis regarding the same involves substantial historical research. Since Idexx did not relocate to the City of Westbrook ("the City") until 1991, however, Mr. Plouffe did not possess several documents necessary to analyze the zoning issues related to Spring Street Quarry. As a result, I attached the additional documents necessary to analyze this matter and have addressed the issues raised in the Idexx Memorandum.

**I. History of the Spring Street Quarry:**

While the Idexx Memorandum and 1971 Mining Plan reference the "Old Quarry" and the "New Quarry," there is only one quarry located on the westerly side of Spring Street. A "quarry" is defined as "a place where rock is excavated" under 38 M.R.S.A. § 490-W (17) and the specific extraction area within the quarry is defined as a "working pit" under 38 M.R.S.A. § 490-W (24). Under Maine law, therefore, the Spring Street Quarry is composed of a 31.88 acre quarry containing 2 working pits. As Pike continues to extract rock from the Spring Street Quarry, the 2 working pits at the quarry will be consolidated into a single working pit.

The Spring Street Quarry began operating prior to the City's adoption of its first Zoning Ordinance in 1951 and has never been cited for violating a single zoning regulation. In fact, the aerial photographs attached to the Idexx Memorandum demonstrate that the Spring Street Quarry has been in operation since at least 1940. In addition, the City obtained aerial photographs in 1964, 1975, 1976, 1986, 1994, 1995, and 2002 which demonstrated active quarry operations at the Spring Street Quarry. The City Solicitor and City Engineer even visited the Spring Street Quarry on December 26, 1968 in order to examine the results of a recent blast. (A copy of the photograph is attached hereto as "Exhibit 1.") If the Spring Street Quarry had been violating any zoning ordinance, therefore, the City would have issued a citation for that violation.

Although Blue Rock Industries ("Blue Rock") provided the City with a General Concept Plan for the Spring Street Quarry dated January 9, 1968, the State of Maine did not require quarry operators to file a mining plan until the passing of The Mining-Conservation Land Act ("The Act") in 1969. (A copy of the pertinent portion of the General Concept Plan is attached hereto as "Exhibit 2.") In response to the passing of that Act, Blue Rock submitted a Mining Plan dated May 5, 1971. The Maine Mining Commission approved Blue Rock's Mining Plan, which outlined a quarry "grandfathered" on 31.88 acres of land, on September 28, 1971. (A copy of the approved Mining Plan is attached hereto as "Exhibit 2.")

The Spring Street Quarry was "grandfathered" because it had been operating for at least 11 years when the City adopted its first Zoning Ordinance on November 9, 1951. As noted in the case of *C Company v. City of Westbrook*, 269 A.2d 307, 308 (Me. 1970), the City owned and operated the Spring Street Quarry until it sold the quarry to Sheldon S. Grant on October 24, 1951. The City had also been operating a crusher at the quarry. Since the City needed the rock from the Spring Street Quarry in order to maintain its roadways, the deed from the City to Mr. Grant provided that Mr. Grant would operate a rock crusher and provide crushed rock to the City. The deed also provides that asphalt mix could be manufactured on the property. *Id.*

Mr. Grant conveyed the Spring Street Quarry, including the quarry, crusher, and stockpiles, to Cook & Company, Inc. on November 1, 1955. Cook & Company, Inc., which changed its name to C Company on November 4, 1968, continued to operate the quarry and sold the same to Paul E. Merrill on June 30, 1969. Mr. Merrill sold the Spring Street Quarry to Blue Rock on October 28, 1970. On December 16, 2005, Blue Rock sold the Spring Street Quarry to Pike. Pike is the current legal owner and operator of the Spring Street Quarry.

In the *C Company* case, the Supreme Judicial Court of Maine determined that the quarry and crusher were operated on the property for *at least* 5 years after the City sold the Spring Street Quarry to Grant in 1951. *Id.* at 310. While Idexx asserts that the quarry and crusher had not been operated since 1956, the Court did not address that issue and there is no evidence of record to support this assertion. Similarly, the lower court did not make any specific findings of fact and does not appear to have addressed this issue. *Id.* at 309. Instead, both courts held that length of use was irrelevant because the condition of the deed was fully satisfied when the quarry and crusher had been operated for at least 5 years. *Id.* at 310. The courts, therefore, have judicially established that the quarry and crusher were operated until *at least* October 24, 1956.

Although the Spring Street Quarry operated until at least October 24, 1956 and the City's aerial photographs demonstrate that the quarry and crusher were still operating in 1964, the City never cited the Spring Street Quarry for violating the 1951 Zoning Ordinance. The City never cited the Spring Street Quarry because the quarry was grandfathered and complied with all of the applicable zoning regulations. The Spring Street Quarry was grandfathered because Section IX of the 1951 Zoning Ordinance provided that any lawful use of a premises existing at the time of the adoption of the ordinance could be continued even if the use did not conform to the provisions of the ordinance. In addition, the 1951 Zoning Ordinance permitted the removal of gravel, loam, sand or stone from a Farming zone if approved by the Zoning Appeals Board ("ZAB"). After the adoption of the 1951 Zoning Ordinance, Blue Rock sought to establish that the Spring Street Quarry was in or should have been an Industrial zone. The issue was rendered moot, however, because the property was rezoned from Farming to Industrial on June 25, 1968.

On November 7, 1968, the ZAB issued a decision regarding the Spring Street Quarry which also resolved any issue regarding the issue of continuous use. Under the 1951 Zoning Ordinance, the ZAB could extend a nonconforming use throughout a property and approve the reestablishment of any nonconforming use that had been discontinued for a period of one year. After the Spring Street Quarry was rezoned in 1968, the ZAB unanimously voted to grant Blue Rock, Wildlands Co., and C Company permission to operate a quarry, rock crushing plant, concrete plant, and asphalt plant on the westerly side of Spring Street in accordance with the January 9, 1968 General Concept Plan. The ZAB also established a set of safeguards to protect the public and provided that the covenants set forth in its decision would run with the land. Since the Spring Street Quarry has complied with those safeguards since 1968 and no one appealed the ZAB's November 7, 1968 decision, Pike has the right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant on the westerly side of Spring Street.

The limitations and conditions imposed on Extractive Industries by the 1969 Zoning Ordinance relative to property located in an Industrial zone did not apply to the Spring Street Quarry. In fact, Section III (B) of the 1969 Zoning Ordinance specifically addressed the Spring Street Quarry and the *C Company* case which was pending at the time of the ordinance revision. This section notes that C Company had agreed to refrain from using the disputed 15 acre tract and the City had been enjoined from rezoning the land during the pendency of the litigation. Consequently, the 1969 Zoning Ordinance provides that the limitations and conditions imposed by the ordinance revision on Extractive Industries did not apply to the Spring Street Quarry.

More importantly, Section III (B) specifically provided that any lawful rights as to the use of the property possessed by C Company or its successors on the effective date of the 1969 Zoning Ordinance were deemed *vested* and could be continued as a nonconforming use regardless of the conditions and limitations imposed by the revised ordinance. Since the ZAB had already authorized Blue Rock to operate a quarry, rock crushing plant, concrete plant, and asphalt plant on the westerly side of Spring Street, those rights vested when the City enacted the 1969 Zoning Ordinance on December 1, 1969.

Blue Rock was authorized to operate the Spring Street Quarry even if the property was subject to limitations and conditions imposed by the 1969 Zoning Ordinance. Section XIV(C)(2) of the 1969 Zoning Ordinance provides that Extractive Industries, including quarrying operations, were Special Exceptions within the Industrial District. Under Section VI, a Special Exception is defined as a permitted use of a property. Since the Spring Street Quarry was located in an Industrial zone and had been approved by the ZAB, Blue Rock could operate the Spring Street Quarry even if it was subject to the 1969 Zoning Ordinance.

The City did not alter the legal status of the Spring Street Quarry when it revised the Zoning Ordinance on December 3, 1973. Section XVII(C)(2) of the 1973 Zoning Ordinance provides that Extractive Industries, including quarrying operations, were Conditional Uses within the Industrial District. Under Section VI(A), a Conditional Use is defined as a generally acceptable use of a property. As noted previously, Blue Rock's right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant at the Spring Street Quarry had been approved by the ZAB and vested when the City enacted the 1969 Zoning Ordinance. The 1973 Zoning Ordinance, therefore, did not affect the Spring Street Quarry.

Similarly, the City did not alter the legal status of the Spring Street Quarry when it revised the Zoning Ordinance on February 9, 2004. In fact, the revisions incorporated into the 2004 Zoning Ordinance demonstrate that the assertions raised in the Idexx Memorandum concerning "nonconforming use" are incorrect. Section 3.112 of the 2004 Zoning Ordinance provides that Extractive Industry is permitted in the Industrial Park District as a Special Exception under Section 204. Under Section 201.88A, a "Special Exception" is defined as "[a] use which is by policy permitted in a particular zoning district and consistent with the most recently adopted comprehensive plan; is neither a nonconforming use nor subject to a variance under customary circumstances; which is by policy considered to be of an essential or desirable nature for the general welfare of the community, and at the same time is not essentially incompatible with existing uses in the district, but not at every or any location therein or without restriction or conditions as may be imposed on the use." Since the ZAB had already imposed conditions on the use of the Spring Street Quarry and an Extractive Industry is permitted as a Special Exception in the Industrial Park District, the Spring Street Quarry is *neither a nonconforming use nor subject to a variance*. The City, therefore, did not alter the legal status of the Spring Street Quarry when it enacted the 2004 Zoning Ordinance.

## **II. Pike Has a Vested Right to Operate the Spring Street Quarry**

Since vested rights adhere to the land under Maine law, Pike has a vested right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant at the Spring Street Quarry even if those uses are considered "nonconforming." As noted in the case of *Keith v. Saco River Corridor Comm'n*, 464 A.2d 150, 154 (Me. 1983), a legal nonconforming use is a vested right which adheres to the land and is not forfeited by a purchaser who takes with knowledge of the regulations which are inconsistent with the existing use. *Id.* Pike, therefore, acquired a vested right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant on Spring Street.

The City may enact regulations to gradually or eventually eliminate nonconforming uses but is prohibited from enacting zoning regulations which impair vested rights. While the policy of zoning may be to gradually or eventually eliminate nonconforming uses as speedily as justice will permit, the implementation of this goal must be carried out within legislative intentment. *Keith* at 154. The City specifically stated that the limitations imposed on properties within an Industrial zone by the 1969 Zoning Ordinance did not apply to the C Company property and that Pike's lawful rights to use the property vested on December 1, 1969. By that time, the ZAB had granted Blue Rock and its successors the right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant on the westerly side of Spring Street. As a result, Pike acquired a vested right to conduct those activities. Under Maine law, the City is now prohibited from enacting zoning regulations which would impair Pike's vested rights. See *Norton v. C. P. Blouin, Inc.*, 511 A.2d 1056, 1061 (Me. 1986).

### **III. Blue Rock and Pike Complied with the ZAB Decision**

Idexx correctly asserts that Blue Rock did not appeal the ZAB's November 7, 1968 decision and that the decision became final. The ZAB decision applied to all properties owned or acquired in the future by Blue Rock on the westerly side of Spring Street. Pursuant to Maine law governing appeals from municipal boards, any aggrieved party was required to appeal the ZAB's decision to the Superior Court in accordance with the Maine Rules of Civil Procedure. See Me. Rev. Stat. Ann. tit. 30, § 2411 (now Me. Rev. Stat. Ann. tit. 30-A, § 2691). Since no one appealed the ZAB's decision, the decision became final and Pike has the right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant at the Spring Street Quarry.

The City never cited Blue Rock for violating the terms of the ZAB decision or any other zoning ordinance because Blue Rock and Pike have complied with the same. Article 1 of the ZAB decision required Blue Rock to make the safeguard items contained in the decision legally binding upon the quarry operators. Pike agreed to be legally bound by the provisions and safeguards referenced in the decision. Blue Rock and Pike, therefore, have complied with Article 1 of the ZAB decision.

Although the City also refused to sign the "Agreement" referenced in Article 2 of the ZAB decision, the City is bound by the terms of the Agreement. Article 2 required Blue Rock and the City to enter into an Agreement extending the provisions and safeguards referenced in the decision to all abutting properties owned or acquired by Blue Rock. Blue Rock and Pike have complied with Article 2 by adopting the provisions and safeguards referenced in the decision to all abutting properties owned or acquired on Spring Street since November 7, 1968.

Pike has complied with Article 3 of the ZAB decision because it has been willing to transfer its Main Street operations to Spring Street. Article 3 provided that Blue Rock would transfer its Main Street operations to Spring Street within 3 years of the "passing of papers by the parties" or pay a penalty of \$300.00 per day. The "papers" relate to the Agreement referenced in Article 2. The City, therefore, can require Pike to transfer its operations from Main Street to Spring Street. To date, however, the City has not initiated the transfer process.

Similarly, Pike and Blue Rock have complied with Article 4 of the ZAB decision. Article 4 required Blue Rock to conduct vibration testing during the first phase of quarry operations at the Spring Street Quarry. Blue Rock conducted the required vibration testing and provided the results of the same to the City. As noted previously, the City Solicitor and City Engineer even visited the Spring Street Quarry on December 26, 1968 in order to examine the results of a recent blast. Although Blue Rock completed the first phase of quarrying operations, Pike continues to conduct the required vibration testing and provides the vibration data to any interested parties. Pike, therefore, has complied with all of the Articles set forth in the ZAB decision.

#### **IV. The City is Bound By the ZAB Decision**

The ZAB decision was not made contingent upon the execution of the Agreement and is binding upon the City. While the ZAB noted that the City had reached a tentative agreement with Blue Rock concerning emission controls, the ZAB incorporated the tentative agreement into the safeguards attached to its decision. The City, however, decided that it wanted to add new conditions to the ZAB decision but did not know how to amend that decision. *Portland Evening Express*, November 20, 1968. As a result, the City Council voted to rescind "Order #26" on December 2, 1968. Order #26 was a separate agreement involving the sale of the C Company property, the straightening of Spring Street, and quarrying safeguards. (A copy of the May 14, 1968 letter regarding Order #26 is attached hereto as "Exhibit 4"). According to Alderman Philip R. Rondeau, the City Council approved Order #26 in order to obtain land necessary for a downtown relief route. *Portland Press Herald*, September 27, 1968.

The parties had already settled the quarrying safeguard issues when the City Council rescinded Order #26. *See American Journal*, August 20, 1968. In fact, Blue Rock executed a non-revocable option agreement with the Maine Central Railroad Company ("MCRR") for approximately 4 acres of property on Main Street on November 20, 1968 because the quarrying safeguards related to Order #26 had been incorporated into the ZAB decision. *See American Journal*, December 11, 1968. (A copy of the Option Agreement is attached hereto as "Exhibit 5.") The City and MCRR needed to obtain the option so that they could proceed with the downtown relief route and a railroad industrial park. *Westbrook American*, April 24, 1968. Blue Rock's tract was the "key" to the proposed railroad industrial park and the downtown relief route. *Westbrook American*, August 21, 1968. In fact, Blue Rock was using the tract as bargaining power in the Spring Street Quarry negotiations and the City had been using its claim to the C Company property as bargaining power with regard to those negotiations. *Portland Sunday Telegram*, December 1, 1968.

The Mayor vetoed the City Council's vote to rescind Order #26 because Blue Rock had performed its contractual obligations. The City Council, however, overrode the veto on December 9, 1968. *American Journal*, December 11, 1968. Alderman William K. Robie and Alderman Leigh W. Flint voted against the motion to rescind because Blue Rock had already fulfilled its obligations. *Portland Evening Express*, December 3, 1968.

Since Blue Rock detrimentally relied upon the settlement related to the quarrying safeguards, the City is estopped from asserting that Blue Rock does not have the right to operate the Spring Street Quarry. The doctrine of promissory estoppel, which is an accepted doctrine in Maine, provides that a promise which the promisor should reasonably expect to induce action on the part of the promisee and which does induce such action is binding if injustice can be avoided only by enforcement of the promise. *See Sullivan v. Porter*, 2004 ME 134, 861 A.2d 625, 2004 Me. LEXIS 155 (2004). Estoppel may be applied to the activities of a governmental agency in the discharge of its governmental functions. *F.S. Plummer Co. v. Cape Elizabeth*, 612 A.2d 856, 861 (Me. 1992). Blue Rock reasonably believed that the City would comply with the conditions set forth in the ZAB decision when it executed the non-revocable option agreement on November 20, 1968. By executing the option agreement, Blue Rock relinquished its bargaining power with regard to the Spring Street Quarry. The City, therefore, is estopped from asserting that the parties did not agree on the conditions incorporated into the ZAB decision.

#### **V. Laches**

Blue Rock resumed its quarrying operations on December 10, 1968 because no one appealed the ZAB decision. *Portland Press Herald*, December 17, 1968. Although City officials visited the quarry on December 26, 1968 in order to observe the results of the recent blasts, the City never filed a petition to enjoin Blue Rock's activities. *See Westbrook American*, December 31, 1968. Apparently, the City did not know whether the ZAB decision authorized Blue Rock to operate the Spring Street Quarry. *Portland Press Herald*, December 17, 1968. Blue Rock, however, asserted that the ZAB decision and quarry's "grandfathered" status enabled it to operate the Spring Street Quarry. *American Journal*, April 2, 1969. Since the City has not issued a violation or filed for an injunction for over 40 years, the City clearly determined that the Spring Street Quarry has complied with all applicable zoning regulations.

If the City attempts to bring an enforcement action, Pike will assert that the City is guilty of laches. Laches is the failure to bring an action for an unreasonable and unexplained period of time under circumstances prejudicial to the adverse party. *A.H. Benoit & Co. v. Johnson*, 160 Me. 201, 207, 202 A.2d 1, 5 (1964). Whether the equitable doctrine of laches applies to a particular case is a question of law. *H.E. Sargent, Inc. v. Town of Wells*, 676 A.2d 920, 926 (Me. 1996). Since the City has had actual knowledge of the quarrying activities for over 40 years and has collected taxes with regard to the same during that period, the City is clearly guilty of laches in this case.

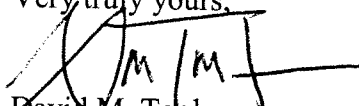
#### **VI. Conclusion**

Since Pike has a vested right to operate a quarry, rock crushing plant, concrete plant, and asphalt plant at the Spring Street Quarry, the City will be violating Pike's vested rights if enacts legislation or takes any action to impair those rights. Further, Pike believes that the City's attempt to legislatively close the Spring Street Quarry for the benefit of Idexx constitutes a significant violation of the constitutional protections set forth in 1 M.R.S. § 816 (2007).

Honorable Bruce Chuluda  
January 9, 2009  
Page 8 of 8

Please contact me if you have any questions or need any additional information.

Very truly yours,



David M. Toolan

Cc: Jonathan Olson

EXHIBIT 1



**Yes, They Blasted** Westbrook City Solicitor Francis Rochelleau, left, and City Engineer Robert Ballew examine with their own eyes Thursday the big hole opened by Blue Rock Quarry's first Spring Street blast earlier that day. The sloping foot of the hill was blasted out to a depth of about 20 feet, with many tons of rock thrown out by the blast. In this photo, Spring Street is out of view in the background; the County Road is several hundred feet away to the right.

EXHIBIT 2

9 Jan 1968  
Blue Rock Quarry

2

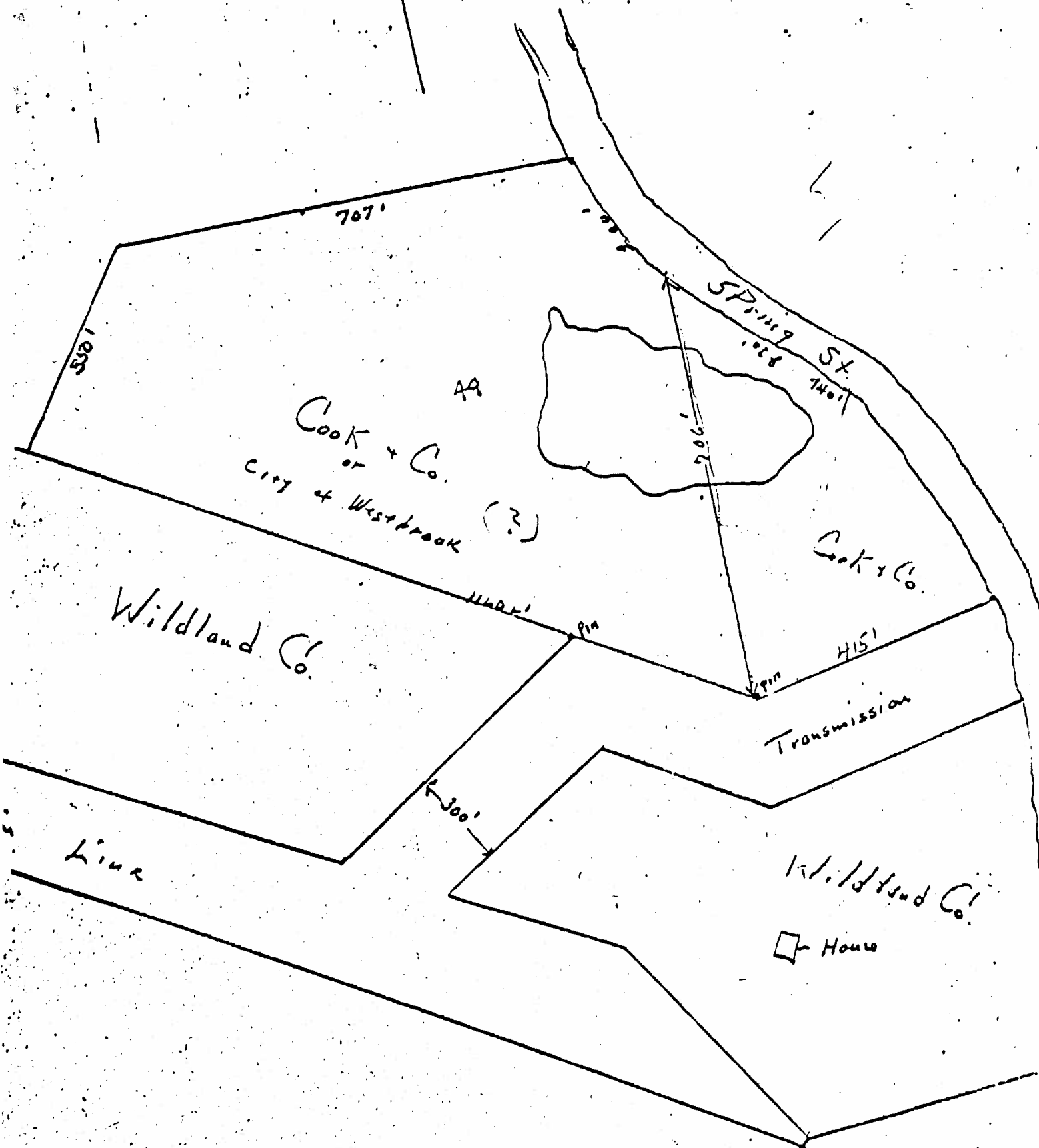


EXHIBIT 3

APPLICATION FOR APPROVAL OF MINING PLAN

Serial No. 0035  
Date June 19, 1971

TO: Director, Maine Mining Commission  
State House  
Augusta, Maine 04330

Dear Sir:

Application is hereby made for approval of the attached mining plan as required by the Mining - Conservation and Rehabilitation of Land Act of 1969.

It is our intention to affect <sup>GRANDFATHERED</sup> 31.88 acres of land. We are submitting herewith a certified check and/or money order, payable to the Treasurer, State of Maine, in the amount of \$ 50.00 as payment of mining plan application fee.

We specifically grant to the Director of the Maine Mining Commission or his authorized representatives the right of entry upon our lands or operation for the purpose of making necessary field inspection.

We further certify that all information contained in our application is true and correct to the best of our knowledge and that any wilful misrepresentation of facts in any and all future documents submitted will be cause for revocation of any approval issued.

Yours truly,

Subscribed and sworn to  
before me  
this 19th day of JUNE,  
1971.

[Signature] LS  
Signature  
CHIEF ENGINEER  
Title

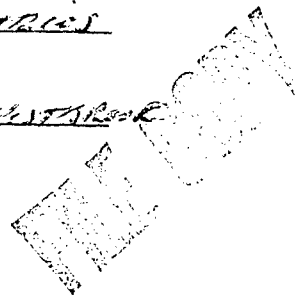
[Signature]  
Notary Public  
My Commission expires  
JAN. 29, 1975

Blue Hill Industries  
Company  
58 MAIN STREET, WESTBROOK  
Address

APPROVED

SEP 28 1971

MAINE MINING COMMISSION  
(21)



Serial No. 0035

MINING PLAN

for

Blue Rock Industries  
(Operator)

CUMBERLAND  
(County of Operation)

SPRING STREET  
(Address)

WESTBROOK (City) MAINE (State)

June 14, 1971  
(Date)

H. H. Cassidy  
(Plan prepared by)

We hereby certify that all details contained in this Mining Plan are true and correct to the best of our knowledge. We fully understand that any willful misrepresentation of facts will be cause for withdrawal of approval.

H. H. Cassidy  
Signature

CHIEF ENGINEER  
Title



APPROVED

SEP 23 1971

MAINE MINING COMMISSION

MINING PLAN (sheet 2)

Serial No. 0035

1. General Information:

a. Operator's name and Maine address: Blue Rock Industries  
58 MAIN STREET - GORHAM

b. Name of local management official or individual who may be contacted regarding registration, mining plans, bonds and all other documents: K. V. Cassidy

c. Product(s) to be mined: QUARTZITE Stone Ledge

d. Acreage of land ~~to be~~ affected: 31.88 Parcel to 10/1/69

e. Index map is attached with mining plan area outlined in red and all other required details shown.

f. Current land use of the affected area covered by the mining plan, and land use of adjacent areas, both current and proposed: MINING OF QUARRY STONE FOR CRUSHING  
OPERATION AT OUR MAIN STREET QUARRY

g. Proposed land use of the affected area covered by the mining plan upon completion of reclamation and rehabilitation:  
UNKNOWN AT THIS TIME.

APPROVED  
SEP 28 1971  
MAINE MINING COMMISSION  
GAS

REC'D COPY

MINING PLAN (sheet 3)

(This sheet shall be completed for each of the areas colored in red and numbered on the mining plan map)

Serial No. 0035

Area No. 1

2. Description of change of affected land

a. Present land condition

- (1) Vegetation: VARIES - STRIPPED TO ROCK - GRASS & TREES
- (2) Soil and/or rock type: QUARTZITE
- (3) Slope and nature of surface: FALLING IRREGULAR
- (4) Land use: QUARRY
- (5) Surface drainage: NATURAL
- (6) Water Table: UNKNOWN

b. Anticipated land condition after being affected

- (1) Vegetation: NEGATIVE
- (2) Soil and/or rock type: QUARTZITE
- (3) Slope and nature of surface: IRREGULAR
- (4) Description of material added or removed: QUARTZITE SLICES  
Ledges
- (5) Changes in drainage: VARIOUS
- (6) Public visibility: NEGLECTABLE

c. Land condition following proposed reclamation: GRANDFATHERED

- (1) Vegetation: NEGATIVE
- (2) Soil and/or rock type: QUARTZITE
- (3) Slope and nature of surface: FLAT
- (4) Drainage pattern: UNKNOWN AT THIS TIME
- (5) Depth and size of permanent water bodies, if any:

\_\_\_\_\_  
(6) Public visibility: NEGLECTABLE **APPROVED**  
SEP 25 1971

MINING PLAN (sheet 4)

(This sheet shall be completed for each of the areas colored in red and numbered on the mining plan map)

Serial No. 0025

Area No. 1

3. Specific reclamation plan and schedule

a. Grading and revegetation: Tree removal prohibited

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Plans for debris and refuse disposal following mining:

None  
\_\_\_\_\_  
\_\_\_\_\_

c. Safety precautions: as directed by Company

INSURERS  
\_\_\_\_\_  
\_\_\_\_\_

d. Reclamation cost and scheduling: UNKNOWN AT THIS TIME

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED

SEP 25 1971

MAINE MINING COMMISSION

*JAP*

FILE COPY

Serial No. 0035

MINING AND RECLAMATION SCHEDULE

Mine Area No.	No. Acres	Mining Data (estimated)		Reclamation Data (estimated)		
		Date Mining to Commence	Mining Completion Date	Date to Begin	Completion Date	Seeding or Planting Date
Area No. <u>3168</u>		<u>1968</u>	<u>UNKNOWN</u>	<u>UNKNOWN</u>	<u>UNKNOWN</u>	<u>-</u>
Area No.						
Area No.						
Area No.						
Area No.						
Area No.						

Serial No. 0035

Company Blue Hill Industries Signature [Signature]  
 Title CHIEF ENGINEER Date June 14, 1971

APPROVED  
 SEP 28 1971  
 MAINE MINING COMMISSION  
[Signature]

Serial No. 0035

MINING AND RECLAMATION SCHEDULE  
FENCING SCHEDULE

Mine	Area No.	Mining Data (estimated)		Date to Begin	Reclamation Data (estimated)		Seeding or Planting Date	EST. COST
		Date Mining to Commence	Mining Completion Date		Completion Date	Seeding or Planting Date		
		STACK			30 Working days after approval of the Mining Commission			\$22,300
	AREA A	WIRE FENCE			To be installed by Blue Rock Industries, but not required by the Mining Commission			
	AREA B	WIRE FENCE						
	Area No.							
	Area No.							
	Area No.							
	Area No.							

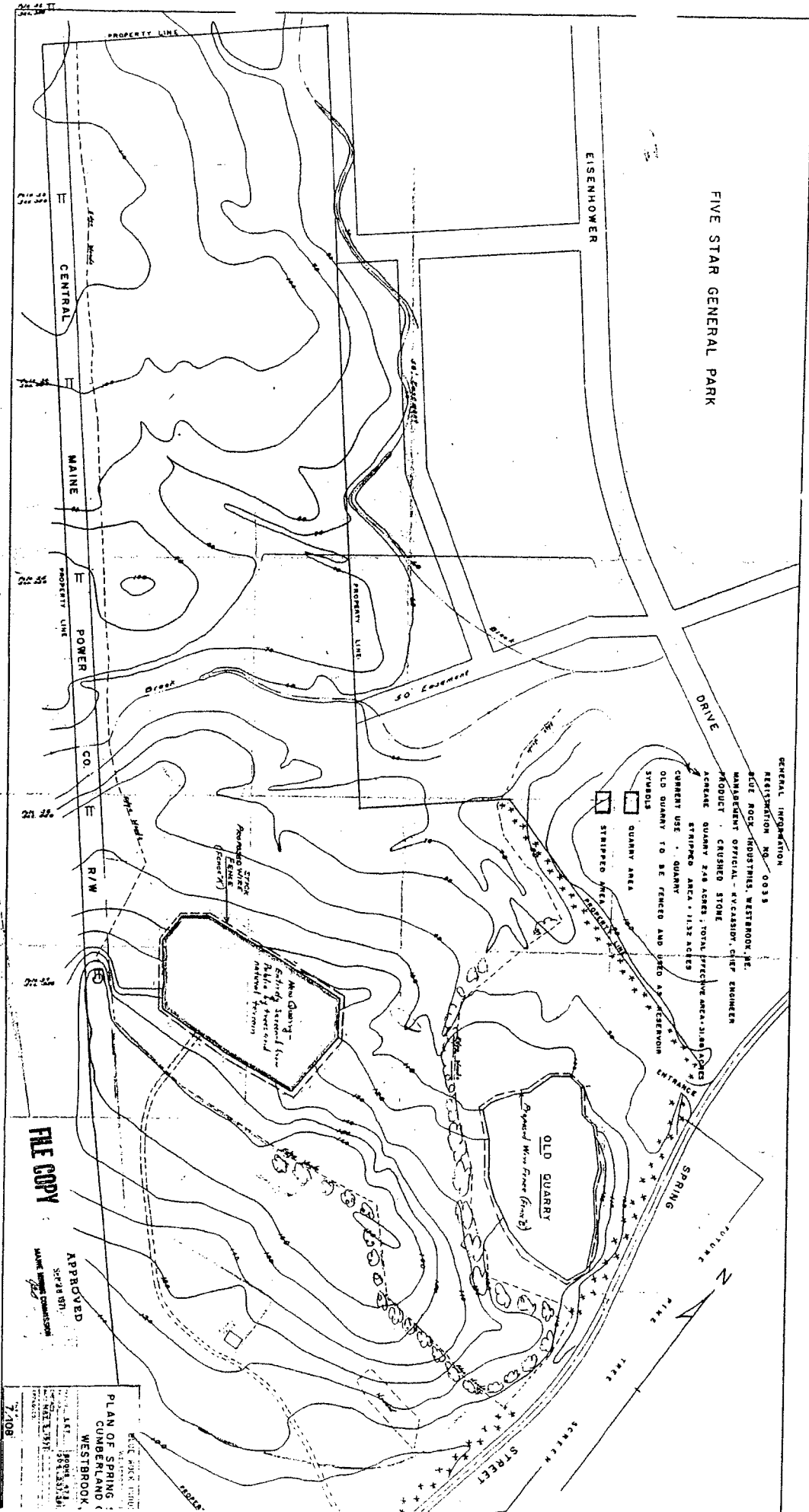
Serial No. 0035

Company Blue Rock Industries Signature J. Thom Benson

Title Chief Engineer Date Sept 15, 1971

*[Faint handwritten notes and stamps]*

FIVE STAR GENERAL PARK



GENERAL INFORMATION  
 REGISTRATION NO. 0033  
 RICE ROY, INDUSTRIES, WESTBROOK, ME.  
 MANAGEMENT OFFICIAL - RYLANDER, CHIEF ENGINEER  
 PRODUCT - CRUSHED STONE  
 ACRES QUARRY 248 ACRES TOTAL PROJECT AREA - 318.00 ACRES  
 STRIPED AREA - 1132 ACRES  
 CURRENT USE - QUARRY  
 OLD QUARRY TO BE FENCED AND USED AS ESCAPEMENT  
 SYMBOLS  
 [ ] QUARRY AREA  
 [ ] STRIPED AREA

FILE COPY

APPROVED  
 [Signature]  
 STATE COMMISSIONER

PLAN OF SPRING  
 CUMBERLAND  
 WESTBROOK,  
 ME.  
 77-108

EXHIBIT 4

CITY CLERK  
WILLIAM L. CLARKE



# City of Westbrook, Maine

790 MAIN STREET · WESTBROOK, MAINE 04092

May 14, 1968

To:

Blue Rock Quarry, att. Mr. Philip Corey  
Portland Terminal Co., att. Mr. Charles Rivers  
Maine State Highway Commission, att. Mr. David Stevens  
Westbrook Planning Board, att. Mr. Charles H. Henderson  
Westbrook City Council, att. Mr. William K. Robie

Subject: Spring Street Quarry property,  
Westbrook, Maine

Gentlemen:

You are herewith informed that, in a Special Meeting of the City Council, held May 10, 1968, with ten aldermen being present, the following order was passed by a 9 - 1 vote:

Order #26, dated May 6, 1968, Titled Sale of City Title and Interests in Spring Street Quarry Property

"That the City of Westbrook sell its Title and all Interests in the Spring Street Quarry property to Blue Rock Quarry of Westbrook for the sum of \$2,000.00, when the Mayor and the Quarry have settled in writing the problems involved in the straightening of Spring Street, and the noise, blasting and other related quarrying problems.

The provisions of this order shall be subject to the approval of the Planning Board."

Very truly yours,

*William L. Clarke*

William L. Clarke  
City Clerk

EXHIBIT 5

# PORTLAND TERMINAL COMPANY

C. G. RIVERS  
MANAGER-INDUSTRIAL DEVELOPMENT  
REAL ESTATE AND TAXATION

242 ST. JOHN STREET  
PORTLAND, MAINE  
04102

November 22, 1968

Blue Rock Quarry  
58 Main Street  
Westbrook, Maine

Att: Mr. Philip Corey, President

Dear Phil:

Enclosed is a Portland Terminal Company voucher #15715 in the amount of \$100. to cover deposit on the option which you signed with the Portland Terminal Company November 20th.

Very truly yours,

  
Manager, Industrial Development,  
Real Estate & Taxation

CGR:ems  
Enc.

1. Said option may be exercised by the Buyer, its successors and assigns, by mailing a written notice by registered or certified mail, postage prepaid, addressed to the Seller within ninety (90) days from the date hereof.

2. The notice of exercise of this option shall set a day and time for delivery of the deed and payment of the purchase price hereunder, such day to be no more than thirty (30) days after mailing of said notice.

Be it further agreed, this option may be extended \_\_\_\_\_  
( ) days by giving written notice of the extension thereof to the Seller  
\_\_\_\_\_ ( ) days before the termination of this option.

3. In the event of the exercise of this option, said Premises shall be conveyed to the Buyer or the Buyer's successors or assigns, together with the benefit of all easements and appurtenances thereto belonging, by a good and sufficient warranty deed conveying a good, clear record and marketable title to the same, free from all mortgages and other encumbrances, including, but without limiting the generality of the foregoing, unrecorded leases of said Premises.

4. If said Buyer, after the term of this option, including all extensions, fails or has failed to pay the purchase price to the Seller, this agreement shall be terminated and the Seller shall retain, as liquidated damages, all monies paid to him by the Buyer.

5. For such deed, the Buyer, its successors or assigns, shall pay the purchase price of Fifty-One Thousand Six Hundred Dollars and no cents ( \$51,600.00 ) against which all option payments shall be credited. Said purchase price shall be paid in cash, or by certified or bank cashier's check, upon delivery of said deed.

6. Full possession of the Premises, free of all tenants, licensees,

and occupants, shall take place at the time of delivery of the said deed.

7. During the option period the Buyer shall have the right to enter upon said Premises from time to time with men and equipment for the purposes of surveying, to dig test holes and make test borings and the Buyer agrees to perform such work with due care and to restore the Premises to their original condition upon completion of such work.

8. This option shall inure to the benefit of the successors and assigns of the Buyer and shall inure to the benefit of and be binding upon the successors and assigns of the Seller.

9. The undersigned, heretofore mentioned as the Seller, does hereby affirm that it is the lawful owner of the above Premises and does hereby agree to grant said Option under the terms and conditions mentioned above.

In Witness Whereof, the Seller has caused this option to be executed by its President, thereunto duly authorized and caused its corporate seal to be affixed this 20<sup>th</sup> day of November, 1968.

WITNESS:

[Signature]

[Signature]

Portland Terminal Co.

[Signature]

Buyer Mgr. Ind. Develop

Blue Rock Quarry

Seller PT Body Perm.