

LEASE AGREEMENT

THIS AGREEMENT made and entered into this 1st day of July, 1990, by and between RAYMOND C. BUDDEN individually and as legal guardian for FAYE BUDDEN, and WALLACE A. BUDDEN, hereinafter referred to as the First Party, whose address is Route 4, Box 1000, Old Fort Road, Klamath Falls, Oregon 97601, and BASIN ROCK PRODUCTS, INC., an Oregon corporation, whose address is P.O. Box 1029, Klamath Falls, Oregon 97601-0056, hereinafter referred to as the Second Party.

MCB
individually
AS legal
guardian
of Faye
Budden
WB

W I T N E S S E T H:

WHEREAS, First Party is the owner of certain lands adjacent to the City of Klamath Falls, Klamath County, Oregon, upon which are located a hard rock and gravel pit with other undeveloped lands in the vicinity which can be developed and used for site of an asphaltic concrete mixing plant and Portland cement concrete batch plant, plus rock crushing and related activities, and

WHEREAS, Second Party desires to lease sufficient land in the above generally described area to establish thereon a complete asphaltic concrete plant and Portland cement concrete batch plant and related activities, including but not limited to mining of hard rock, crushing of rock, storage of rock, equipment parking and repair areas and related activities in near proximity to the rock and gravel pit,

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto as follows:

1. The First Party hereby leases to Second Party, for a period of five (5) years from and after May 1, 1980, and gives and grants to Second Party the following interests and related rights in First Party's heretofore designated real property:

a. The right to exclusively occupy real property owned by First Party adjacent to the City of Klamath Falls, Klamath County, Oregon and in or in near proximity to the rock and gravel pit there located (the exact location to be specified by First Party) to construct an asphaltic concrete plant and Portland cement concrete batch plant, rock crushing facilities, rock and stockpile areas, batching equipment, equipment parking and repair areas, and shop buildings and related facilities or activities, together with full rights of access thereto and ingress and egress across other property of First Party.

b. The exclusive right to mine rock and gravel

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from any quarry site located on First Party's property and the right to sell mined and crushed rock and gravel to any customers, and to sell any asphaltic concrete or Portland cement concrete manufactured at Second Party's plant, including sale at pit site.

c. First Party reserves the right to mine rock and gravel from the rock quarry for his own use but not for resale to other parties.

2. It is agreed that Second Party will pay for this lease an annual rent equal to the greater of (a) \$2,000.00 per year, payable \$166.67 per month commencing July / 1990, or (b) \$.25 per ton for all unprocessed pit run rock and gravel, and \$.70 per ton for all clean topsoil sold by Second Party, such unit price to be determined as of the removal of the material from the quarry site. It is agreed that the price per ton payable under (b) above shall be subject to renegotiation at the request of Second Party for any contract jobs over 1,000 tons. All sales will be recorded by sales tickets made in triplicate, First Party to receive copies of such sales tickets by the 25th day of each month following the month of sale; provided, however, in event the Second Party receives payment for the product on a contract monthly estimate basis, Second Party shall make payments to First Party on the same basis within five days after Second Party has received payment. Second Party to keep complete records of all materials sold, and First Party shall have the right to inspect said records at any reasonable times.

Additionally, it is acknowledged that there have been two prior leases and there is approximately \$19,000.00 in past due lease charges which are not the personal obligation of Basin Rock Products, Inc. However, Basin Rock will agree to pay to Budden when Basin Rock earns a profit of at least \$50,000.00 net of crushing expenses and operating expenses, an additional amount of \$2,000.00 every six months until the entire \$19,000.00 is paid. First Party acknowledges receipt of \$1,000.00 on this date.

3. Second Party has inspected the premises and it is understood and agreed that First Party has made no representations as to quality or quantity of any product, and Second Party enters this agreement and expends its funds entirely upon its own initiative.

4. The Second Party agrees that it will indemnify and hold the First Party harmless from and against any liabilities, claims, demands, and expenses whatsoever, including court costs and attorney's fees, arising from or growing out of any injury to any persons or property under and by virtue of its operations conducted under this agreement.

5. The Second Party agrees to procure, carry, and maintain on all its operations hereunder, policies of insurance covering liability for property damage in the amount of not less than \$50,000 for each occurrence and policies of insurance for liability for bodily injury in an amount not less than \$100,000 for each claim thereunder, and not less than \$300,000 for the aggregate of claims thereunder, said policy or policies to be in an insurance company licensed to do business in the State of Oregon. The Second Party further agrees to furnish the First Party an insurance certificate certifying that the Second Party is insured against liability for bodily injury,

6. The Second Party agrees that it will carry insurance on its workmen as provided by the State of Oregon on any and all employees for any operations conducted hereunder and that immediately upon hiring of any employees Second Party will furnish to the First Party proof that such employee is covered by such insurance.

7. The Second Party agrees to comply with all state and local laws, rules and regulations governing its operations, including load limits required by the City of Klamath Falls.

8. First Party hereby gives and grants to Second Party a right to renew this agreement contemporaneously and indefinitely for additional five (5) year periods upon the same terms and conditions as the within agreement except that the rental payments will be renegotiated. Second Party shall notify First Party in writing of its intent to renew not less than 90 days prior to the expiration of the original lease term. Rent for the renewal term shall be as agreed upon between the parties and, if they do not agree, each party will choose an arbitrator and both arbitrators will choose a third and the decision of a majority of the arbitrators shall be binding upon the parties. The determination as such arbitrators shall be final as to both parties and the cost thereof shall be borne equally by the parties.

9. First Party hereby gives and grants to Second Party for the term of this agreement, including renewal under paragraph 8 above, a first right of refusal to purchase the premises and all adjacent real property. It is agreed that in the event First Party should decide to sell he shall notify Second Party in writing of any offer which is satisfactory to him and the terms and conditions thereof, and Second Party shall have 30 days in which to exercise in writing its right to purchase at such price and on such terms and conditions.

10. Any modification of any terms or conditions hereof (including any re-negotiation of unit price pursuant to paragraph 2 hereof), shall be in writing, signed by each of the parties.

11. It is agreed by Second Party that the face of the pit shall at all times be kept at the proper slope and that at the end of the lease period the pit shall be returned to good order satisfactorily maintained in accordance with good rock pit maintenance and operation.

12. The Second Party agrees that it will not permit any liens or charges to be made against any of First Party's real property as a result of its operations.

13. In event of breach of any of the covenants hereof, including failure to make any payments when due or within 10 days thereafter, it is agreed that at First Party's option, or other termination of the lease, this agreement, and all rights and duties accruing hereunder, shall terminate and Second Party shall have 90 days to remove all buildings and equipment, and two years to remove all stockpiled materials. Any materials, equipment, or fixtures thereafter remaining shall become the property of First Party.

14. Any waiver of any breach of covenant to be kept and performed by the Second Party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the First Party from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

15. In the event of any suit or action brought to collect any of said rents or to enforce any provision of this lease or to repossess said premises, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action, the losing party agrees to pay such further sum the appellate court shall adjudge reasonable as the prevailing party's attorney's fees.

16. First Party agrees to cooperate as required for Second Party to obtain all permits and certificates necessary to conduct its operations on the leased premises.

17. This lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18. Second Party shall have the right to terminate this lease at any time upon 90 days written notice following a determination Second Party that all raw materials suitable for processing have been exhausted.

19. Property taxes are the responsibility of the First Party provided, however, that the Second Party may in its sole discretion pay any property taxes owed against said property and obtain a credit from any sums due under this agreement.

18171

1st IN WITNESS WHEREOF, the undersigned have set their hands this
day of September, 1990.

FIRST PARTY:

Raymond C. Budden
RAYMOND C. BUDDEN

Wallace A. Budden
WALLACE A. BUDDEN

Wallace A. Budden
Raymond C. Budden
RAYMOND C. BUDDEN, as legal
guardian for Faye Budden

SECOND PARTY:

BASIN ROCK PRODUCTS, INC.

By Keith S. Rigney, President

See attached exhibit "A"
for description

Township 38 South, Range 9 E.W.M.

Section 10: SE $\frac{1}{4}$, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 9: NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15: NE $\frac{1}{4}$ NE $\frac{1}{4}$ and all of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ except for the South 465.44 feet thereof.

SAVING AND EXCEPTING THEREFROM any portion in Old Fort Road.
and as of September 15, 1989 at 8:00 A.M.

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112779

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 10th day
of _____ A.D., 19 90 at 4:25 o'clock _____ P.M., and duly recorded in Vol. M90
of _____ Deeds on Page 18167

Evelyn Biehn County Clerk

By Pauline Muelenders

FEE \$48.00

Return: Mike McAllister
P.O. Box 25, Falls City, Or. 197344