

**CONTRACT ZONING AGREEMENT  
AMONG THE TOWN OF CASCO,  
P & K SAND AND GRAVEL, INC.  
AND CBJ PROPERTIES, INC.  
FOR THE RIGHT TO EXCAVATE & PROCESS  
LOAM, COMMON BORROW, GRAVEL & ROCK  
AT THE HEATH QUARRY PROPERTY  
CASCO, MAINE**

The agreement is made this 20<sup>th</sup> day of November, 1997, by and among the Town of Casco, a municipal corporation, located in Cumberland County, State of Maine (hereinafter "Casco"), P & K Sand and Gravel, Inc., a Maine corporation located in Naples, Maine (hereinafter "P & K" ) and CBJ Properties, Inc., a Maine corporation located in Naples, Maine (hereinafter "CBJ") and is as follows:

**WITNESSETH**

**WHEREAS**, for a number of years P & K has operated a gravel excavation and rock quarry facility on a large tract of land owned by CBJ Properties, Inc., located near the "Heath" in Casco, Maine. This property includes Map 9 Lots 30-1, 30-2, 30-4, 30-5, 30-6, 30-7, 30-8, and a portion of 30-25, Town of Casco, published by James W. Sewall Co. (hereinafter the "Property"). The Property contains 283 acres, more or less. The property consists of land shown in the following deeds:

Deed from Morning Meadows Management, Inc. to CBJ Properties, Inc., dated June 8, 1993, and recorded in Cumberland County Registry of Deeds, Book 10782, Page 72.

Deed from Morning Meadows Management, Inc. to CBJ Properties, Inc., dated April 15, 1994, and recorded in Cumberland County Registry of Deeds, Book 11398, page 309.

Deed from Joyce Shaw to CBJ Properties, Inc. dated April 15, 1994, and recorded in Cumberland County Registry of Deeds, Book 11398, Page 313.

Deed from Joel M. Carson and Carole A. Carson to CBJ Properties, Inc. dated February 2, 1995, and recorded in Cumberland County Registry of Deeds, Book 11815, Page 54.

Deed from Joyce Shaw to CBJ Properties, Inc. dated December 19, 1995, and recorded in Cumberland County Registry of Deeds, Book 12280, Page 326.

Deed from W. Henry Shaw to CBJ Properties, Inc. dated December 19, 1995, and recorded in Cumberland County Registry of Deeds, Book 12280, Page 327.

Deed from Hancock Land Management Limited Liability Company to P & K Sand and Gravel, Inc. dated August 4, 1995, and recorded in Cumberland County Registry of Deeds, Book 12190, Page 26.

A Plan of the Property to be rezoned is attached as Exhibit A hereto; and

**WHEREAS**, the Property in its final form will contain the following major elements:

- A: One or more sites that will be excavated by whatever means for the removal of loam, common borrow, gravel, and similar earth materials.
- B: One or more sites that will be excavated by whatever means for the removal of rock and stone.
- C: One or more sites that will contain the mechanized equipment to screen, crush, or otherwise process the above mentioned materials.

**WHEREAS**, the entire process of the excavating, processing the material and reclaiming the sites in their final form will take a substantial period of time to complete; and

**WHEREAS**, the Town, P & K and CBJ are desirous of establishing a Contract Zoning Agreement; to fix and establish the relevant rules, regulations and ordinances under which the development shall proceed; to provide certainty of construction and interpretation concerning all matters over which the town has jurisdiction, for an initial period of 20 years from the date hereof; and

**WHEREAS**, the Casco Planning Board shall review and recommend that the Casco Board of Selectmen extend the Agreement for additional ten-year periods if there are no significant changes to P & K's operations on the Property and P & K's operations on the Property continue to comply with all State and local laws, statutes, rules, regulations, codes, ordinances and orders; and

**WHEREAS**, the parties acknowledge and anticipate that the statutory definitions of many items such as "excavation", and "processing", may and will change from time to time. It is a central purpose of this Agreement that Heath Quarry as ultimately approved by the Casco Planning Board, or Casco Code Enforcement Officer, for so long as it remains a loam, common borrow, gravel and rock excavation and processing site, operate in accordance with the permits issued to it by Casco and in accordance with this Agreement, regardless of future changes in ordinance, statute, definitions, setback or lot line or size requirements or similar change in ordinance or statutes which could affect its operation; and

**WHEREAS**, the town has, pursuant to the provisions of 30-A M.R.S.A.

S 4352 et seq Adopted the necessary Enabling Ordinance to permit the adoption and implementation of a Contract Zoning Agreement, such as that contemplated herein; and

**WHEREAS**, the proposed uses of the Property have been determined to be appropriate and a zoning amendment is required to accommodate certain of such uses: and

**WHEREAS**, the Planning Board of the Town of Casco, pursuant to 30-A M.R.S.A. S 4352 (8) and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however to certain conditions as set forth herein; and

**WHEREAS**, Casco by and through the vote of the inhabitants thereof, held at a town meeting duly convened and held on June 21, 1997, have determined that said rezoning will be pursuant to and consistent with the Town's Comprehensive Plan and have thereupon authorized the execution of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Property Rezoned:

Upon the Effective date hereof the zoning map for the Town of Casco dated \_\_\_\_\_, 1997, as amended and on file in the zoning ordinance by Section 4.2 thereof, is amended by adopting the Map Change Amendment shown on the zoning map for the Property, such change to be the inclusion of the property into the Commercial District; provided however, that the Property shall be used only for the mineral excavation and mineral processing uses permitted in the Commercial District and uses accessory thereto, and for no other use permitted thereunder, and that the mineral excavation and mineral processing uses shall be subject to the terms and conditions of this Agreement. The area rezoned is shown on attached Exhibit A.

2. Special Matters:

- (a) Minimum setbacks for excavations and/or disturbed areas. Twenty five (25) feet from abutments property lines, 25 feet from any wetlands, 130 feet from any emergent wetland, 130 feet from any town designated stream, 250 feet from any lake.

- (b) For purposes of this agreement, a "wetland" shall be as defined in the 1987 U.S. Army Corp. of Engineers wetland Delineation Manual.

For purposes of this agreement on "abutters property line" shall be the boundary line between land owned by CBJ Properties, Inc., and leased by P & K and land owned by other people or entities.

- (c) The Casco Code Enforcement Officer (hereinafter the "CEO") shall approve each proposed individual area of excavation on the Property upon finding that all of the following conditions are met and maintained:

1. Each individual area of excavation consists of less than 2 acres of total excavated area;
2. There is a minimum of 100 feet undisturbed distance between the edge of the individual area of excavation and any abutter's property line;
3. There is a minimum of 25 feet undisturbed distance between the edge of any individual area of excavation and the upland edge of any wetland;
4. The total area of individual areas of excavation open in each year shall not exceed 6 acres; and
5. There shall be a minimum 100-foot undisturbed separation between individual areas of excavation.

Notwithstanding the authority of the CEO as stated above in this section, the CEO shall have the authority to require Casco Planning Board Site Plan Review approval of any individual area of excavation.

- (d) The CEO shall approve the location of small movable screens for loam and gravel processing at sites other than the central processing site upon finding that all of the following conditions are met and maintained:

1. There is a minimum of 100 feet undisturbed area between the proposed screen site and any abutter's property line; and
2. There is a minimum of 25 feet between the proposed screen site and any wetland.

Notwithstanding the authority of the CEO as stated above in this section, the CEO shall have the authority to require Casco Planning Board Site Plan Review approval of any area of excavation.

(e) Each of the following activities shall require Casco Planning Board Review approval:

1. Central mineral processing sites which shall include the following activities: screening, crushing, and stockpiling.
2. Excavation of any individual area of excavation where the total excavated area of that site exceeds 2 acres.
3. Excavation of any individual area of excavation within 100 feet of any abutter's property line.
4. Excavation of any individual area of excavation within 25 feet of any wetland.

3. Governing Ordinances for Mineral Excavating and Mineral Processing Material at the Heath Quarry.

In order to provide consistency of interpretation and enforcement, the following ordinances shall govern exclusively, with respect to the Property and all permits (including building permits) issued for such portions of the Property until the earlier of the following:

- i. 20 years from the Effective Date hereof; or
- ii. The expiration of any extension of this Agreement; or
- iii. The date that the last individual area of excavation or processing site is opened.

(a) The Town of Casco's Land Use Ordinances (including without limitation), the Zoning Ordinance dated June 7, 1995, the Building Ordinance (with amendment thereto), and the Review Guidelines for Mineral Extraction and Processing dated April 28, 1997, and all amendments to each prior to the Effective Date hereof.

4. Binding Effect:

The above stated restrictions, provisions and conditions are an essential part of the rezoning, and shall run with the property, shall bind P&K, CBJ, their successors, heirs and assigns of the said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and shall be enforceable by the Town of Casco by and through its duly authorized representatives.

The Agreement shall not affect the applicability of any provision of State or Federal law in effect from time to time not otherwise subject to the control of the Town of Casco.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision and such determination shall not affect the validity of the remaining restrictions, provisions, conditions or portions hereof.

5. Miscellaneous Provisions:

This Agreement shall be governed by the laws of the State of Maine. It represents the entire agreement between the parties and may not be altered, changed or amended without the written consent of the parties hereto.

This Agreement shall become effective ("the Effective Date") upon the last to occur of the following:

The execution hereof by all parties, and the expiration of any period for appeal.

The Town, P & K and CBJ shall execute a recordable certificate establishing conclusively the Effective Date upon its occurrence.

The Casco Planning Board shall review and recommend that the Casco Board of Selectmen extend this Agreement for additional ten-year periods if there are no significant changes to P & K's operations on the Property and P & K's operations on the Property continue to comply with all State and local laws, statutes, rules, regulations, codes, ordinances and orders.

**IN WITNESS WHEREOF**, the parties caused this Agreement to be signed as of the date and year written above.

*Chris Shupe*  
Witness

P & K SAND & GRAVEL, INC.  
By: *Bruce Plummer*  
Bruce Plummer  
Its *Vice Pres*

*Chris Shupe*  
Witness

TOWN OF CASCO  
By: *David P. Morton*  
David P. Morton  
Town Manager

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, SS

11-20, 1997

Personally appeared before me the above named \_\_\_\_\_,  
duly authorized \_\_\_\_\_ of said CBJ Properties, Inc.,  
and acknowledged the foregoing instrument to be his free act and  
deed and the free act and deed of CBJ Properties, Inc.

*Lucille D. Griffin*  
\_\_\_\_\_  
Notary Public/Attorney at Law

Print Name \_\_\_\_\_  
LUCILLE D. GRIFFIN  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MARCH 15, 2001

STATE OF MAINE  
CUMBERLAND, SS.


Personally appeared before me the above named Bruce Plummer, duly  
authorized Vice President of said P & K Sand and Gravel,  
Inc., and acknowledged the foregoing instrument to be his free act  
and deed and the free act and deed of P & K Sand and Gravel, Inc.

*Lucille D. Griffin*  
\_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
(Print Name) LUCILLE D. GRIFFIN  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MARCH 15, 2001

STATE OF MAINE  
CUMBERLAND, SS.

Personally appeared before me the above named David P. Morton, Town Manager of said Town of Casco, duly authorized, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Town of Casco.

  
\_\_\_\_\_  
Notary Public/Attorney-at-Law  
LUCILLE D. GRIFFIN  
NOTARY PUBLIC, MAINE  
\_\_\_\_\_  
(Print Name) MY COMMISSION EXPIRES MARCH 15, 2001

of 30-A M.R.S.A. §4352 and have thereupon authorized the execution of this Amendment;

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties hereby agree to amend the Contract Zoning Agreement as follows:

1. Exhibit A to the Agreement (map showing area of contract rezoning) shall be replaced by adopting Amended Exhibit A (revised map), attached hereto and incorporated herein.

2. The description of the property covered by the terms of the Contract Zoning Agreement shall be amended by deleting from the description the property transferred to John and Kimberly England described in Exhibit 1, attached hereto and incorporated herein. Said property shall revert to its zoning classification immediately preceding the effective date of the Contract Zoning Agreement and shall not be used for any use permitted by the Contract Zoning Agreement.

3. The description of the subject property shall be further amended by adding to it the property transferred from John and Kimberly England to CBJ, as described in Exhibit 2. Said property shall be subject to all of the requirements of the Contract Zoning Agreement.

4. All other provisions of the Contract Zoning Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties caused this Amendment to Agreement to be signed as of the date and year written above.

[Signature]

CBJ PROPERTIES, INC

By: C B Bruce Plummer

Its Vice Pres

[Signature]

P & K SAND & GRAVEL, INC

By: C B Bruce Plummer

Its Vice Pres

[Signature]

TOWN OF CASCO

By: [Signature]

David P. Morton  
Its Town Manager

STATE OF MAINE  
CUMBERLAND, ss

August 10, 1999

Personally appeared before me the above named C Bruce Plummer, duly authorized Vice President of CBJ Properties, Inc., and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of CBJ Properties, Inc.

[Signature]  
Notary Public/Attorney at Law

ALFRED L. BOWMAN  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MARCH 1, 2006  
(Print name)

STATE OF MAINE  
CUMBERLAND, ss

August 10, 1999

Personally appeared before me the above named C Bruce Plummer, duly authorized Vice President of P & K Sand & Gravel, Inc., and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of P & K Sand & Gravel, Inc.

SEAL

*Alfreda L. Bowman*  
Notary Public/ Attorney-at-Law

ALFREDA L. BOWMAN  
(Print name) NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MARCH 1, 2006

STATE OF MAINE  
CUMBERLAND, ss

August 10, 1999

Personally appeared before me the above named David P. Morton, duly authorized Town Manager of the Town of Casco, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Casco.

*Alfreda L. Bowman*  
Notary Public/ Attorney-at-Law

ALFREDA L. BOWMAN  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MARCH 1, 2006  
(Print name)

SEAL

RECEIVED  
RECORDED REGISTRY OF DEEDS  
1999 AUG 16 PM 2: 00

CUMBERLAND COUNTY  
*John B O'Brien*

**AMENDMENT TO CONTRACT ZONING AGREEMENT AMONG  
THE TOWN OF CASCO, P & K SAND AND GRAVEL, INC. AND  
CBJ PROPERTIES, INC. FOR THE RIGHT TO EXCAVATE AND PROCESS  
LOAM, COMMON BORROW, GRAVEL & ROCK AT THE HEATH  
QUARRY PROPERTY, CASCO, MAINE**

This Amendment to Agreement is made this 19<sup>th</sup> day of June, 1999, by and among the Town of Casco, a municipal corporation located in Cumberland County, State of Maine (hereinafter "Town"), CBJ Properties, Inc., a Maine corporation located in Naples, Maine (hereinafter "CBJ") and P & K Sand and Gravel, Inc., a Maine corporation located in Naples, Maine (hereinafter "P & K") and is as follows:

**WHEREAS**, CBJ, P & K and the Town entered into a Contract Zoning Agreement, dated November 20, 1997, in order to allow certain excavation uses of the property identified in that Agreement; and

**WHEREAS**, CBJ has sold a portion of the subject property to John F. and Kimberly England and has purchased another parcel from the Englands; and

**WHEREAS**, the parties wish to amend the Agreement to reflect the purchase and sale of these two parcels; and

**WHEREAS**, the Planning Board of the Town of Casco, pursuant to 30-A M.R.S.A. §4352 and after notice and hearing and due deliberation thereon, recommended the approval of this Amendment; and

**WHEREAS**, the Town, by and through the vote of the inhabitants thereof, held at a town meeting duly convened and held on June 8+19<sup>th</sup>, 1999, have found this Amendment to be consistent with the Town's comprehensive plan, and that the rezoned areas are consistent with the existing and permitted uses within the existing and permitted uses in the original zone, and that the rezoning otherwise complies with the requirements